

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD

Romairo Raymundo,

Applicant,

vs.

Omega Extruding Corp. of California; Old Republic administered by Gallagher Bassett Services,

Defendant(s).

Case No. ADJ9895929

San Bernardino District Office

FINDINGS AND ORDERS

The above-entitled matter having been heard and regularly submitted, Myrle R. Petty, Workers' Compensation Administrative Law Judge, now makes her decision as follows:

FINDINGS OF FACT

1. Romairo Raymundo, born 4/5/1978, while employed as a packer, at Rancho Cucamonga, California, during the period 2/6/2014 – 2/6/2015, by Omega Extruding Corporation of California, then insured as to workers' compensation liability by Old Republic and whose claims are administered by Gallagher Bassett Services, did not sustain injury arising out of and occurring in the course of his employment to the wrists, back, shoulders, knees, feet and stomach.

2. All other issues have been rendered moot.

ORDERS

IT IS ORDERED that applicant take nothing by reason of his application filed herein.

IT IS FURTHER ORDERED that these matters be scheduled for lien conference in conformance with Title 8, California Code of Regulations, Section 10562(f).

NOTICE: Pursuant to Board Rule 10840 (Cal. Code Reg., title 8, subsection 10840), as amended effective November 17, 2008, any Petition for Reconsideration from this decision, order, or award may be filed with any district office of the Workers' Compensation Appeals Board or with the office of the Appeals Board in San Francisco.

Dated at San Bernardino, California
September 2, 2016

A handwritten signature in black ink that reads "Myrle R. Petty". The signature is written in a cursive, flowing style.

MYRLE R. PETTY
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Filed and Served by mail on all parties as shown below on the Official Address Record.

Date: September 6, 2016 By: JShehee

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. ADJ9895929
San Bernardino District Office

Romairo Raymundo v. Omega Extruding Corp. of
California; Old Republic administered by Gallagher Bassett Services

JUDGE: MYRLE R. PETTY

HEARING DATE: June 30, 2016

SUBMISSION DATE: June 30, 2016

OPINION ON DECISION

This is the claim of a 36-year-old packer for Omega Extruding in Rancho Cucamonga who claims to have sustained a cumulative trauma injury from 2/6/14 – 2/6/15 to his wrists, back, shoulders, knees, feet and stomach. The employer was insured for workers' compensation by Old Republic and the claim is administered by Gallagher Bassett Services. Earnings were \$497.34 per week. No compensation was paid. Some medical treatment was provided. No attorney fees have been paid and no attorney fee arrangements have been made. Liens were deferred.

Raised in issue were the following:

1. Injury arising out of and in the course of employment.
2. Permanent and stationary date.
3. Permanent disability and apportionment.
4. Need for further medical treatment.
5. Attorney fees.
6. Defendant asserts this claim is barred by LC 3600(a)(10) (post-termination).
7. Applicant asserts per LC 5402 – 5404 a presumption of knowledge of injury.
8. Applicant objects to the PQME reporting of Dr. Bouz as not compliant with the AMA Guides and not substantial evidence.

It is noted that there are several typographical errors in the Minutes of Hearing and Summary of Evidence of the June 30, 2016 trial, specifically at Page 2, Lines 8.5 and 18.5, which should read as follows:

Line 8.5 – “5. The employer has furnished some medical treatment.”

Line 18.5 - “...5402 – 5404, which does not have a subsection “b,” have to do...”

Substantiality of Evidence – PTP and PQME

I find the reporting of applicant’s primary treating physician, Dr. Johnson, while admissible, has no probative value whatsoever insofar as Dr. Johnson has a severely incomplete and deficient history of applicant’s work activities subsequent to his termination from Omega Extruding. Further, Dr. Johnson’s initial comprehensive narrative report assumes causation without “connecting the dots” in regard to his causation discussion as between the type of work performed by the applicant with this employer (and applicant’s subsequent employers, who are not mentioned at all), and the symptoms and objective findings on examination. The description of applicant’s job duties is insufficient to make the causal connection. Further, Dr. Johnson never reviewed the available records, including medical and personnel records.

On the other hand, despite applicant’s allegation that Dr. Bouz didn’t comply with the AMA Guides and is not substantial evidence, I find that Dr. Bouz did review all of the available records, did take a detailed history and had knowledge of applicant’s subsequent employment. I don’t know how or why applicant is asserting that Dr. Bouz didn’t comply with the AMA Guides, as this was a general allegation without providing any specific information, but I do find Dr. Bouz’s reporting to constitute substantial medical evidence. He explains his differences in opinion with the treating physician and explains how the diagnostic studies previously undertaken do not correlate to the clinical presentation. Dr. Bouz has determined that he does not believe the applicant ever had any industrial injury with Omega Extruding. He opines that there are no objective findings on examination and finds no impairment. Dr. Bouz’s opinions are much more persuasive than those of Dr. Johnson.

There is no substantial medical evidence proving that applicant sustained a cumulative trauma injury while working for Omega Extruding.

Injury AOE/COE

Notwithstanding the lack of substantial medical evidence to support industrial injury, applicant asserts that there is a presumed injury by reason of defendant’s knowledge of injury and failure to give notice per LC 4402-5404. Defendant asserts this claim is barred as having been reported and filed after the applicant’s termination per LC 3600(a)(10).

Based upon applicant’s testimony at trial, as well as the testimony of defense witnesses, applicant certainly knew how to report a work-related injury, insofar as he had a prior injury to his finger in 2013, which he reported, for which he filled out a claim form, and for which he was treated and ultimately released without restriction. There was no negative action taken against the applicant for reporting the prior injury.

It is clear from the testimony of the applicant that he believed that the symptoms he was experiencing, starting within a year of working for Omega Extruding, were related to his work activities. Yet, applicant did not make any report of injury or of any physical complaints related to the instant claim until after his termination for working with false documentation. Further, there is no documentation in any of applicant's medical records that he was seen for or treated by anyone for the parts of body alleged in the instant claim prior to his termination. This fact scenario fits squarely within the post-termination defense afforded to defendants by LC 3600(a)(10).

Thus, I find that not only is there no substantial medical evidence of any type of industrial cumulative trauma injury with Omega Extruding, but even if there were, applicant's claim would be barred by LC 3600(a)(10) as having been filed after his termination without any applicable exception to that rule.

All other issues are moot.

Lien Deferral

In accordance with Title 8, California Code of Regulations, Section 10562(f), where liens are deferred, the WCALJ shall, upon issuance of their decision on the remaining issues, issue a 10-day notice of intention to order payment of the lien in full or in part, issue a 10-day notice of intention to disallow the lien or continue the lien issues to a lien conference. To afford due process to the lien claimants whose liens have been deferred herein, I will order this matter to be set for a lien conference on Board notice.

Dated at San Bernardino, California
September 2, 2016

A handwritten signature in black ink that reads "Myrle R. Petty". The signature is written in a cursive, flowing style.

**MYRLE R. PETTY
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE**

Filed and Served by mail on all
parties as shown below on
the Official Address Record.

Date: September 6, 2016 By: JShehee