STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

ANAIREL DIAZ,

Applicant,

vs.

NUMERO UNO ACQUISITIONS INC.;
INSURANCE COMPANY OF THE WEST;

Defendants.

Case No. ADJ10703677

FINDINGS OF FACT AND ORDER

REZAI AND ASSOCIATES, APC
By: JOSUE S. VILLANUEVA
Attorneys for Applicant

FLOYD, SKEREN, MANUKIAN & LANGEVIN
By: MICHAEL G. McCONVILLE
Attorneys for Defendants

Consuela Arechiga Magana, Cert. No. 301725
Spanish Language Interpreter

The above entitled matter having been heard and regularly submitted, the Honorable **Joanne M. Coane**, Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1. The applicant, ANAIREL DIAZ, born June 17, 1990, while employed on September 26, 2016, as a grocery clerk, occupational group number not identified, at

Los Angeles, California, for NUMERO UNO ACQUISITIONS, INC. [NUMERO UNO], insured for workers' compensation by INSURANCE COMPANY OF THE WEST, claims to have sustained injury arising out of employment and in the course of employment to her left thumb and left hand.

2. There is no substantial medical report evidence, which demonstrates that the applicant, ANAIREL DIAZ, sustained a left thumb and left hand injury, arising out of employment or in the course of employment [AOE/COE], while she was employed by NUMERO UNO, on September 26, 2016. Therefore, the Trial Court finds that the applicant did not sustain injury arising out of employment and in the course of employment [AOE/COE], as claimed.

3. There is substantial testimonial or documentary evidence, which demonstrates that the applicant, ANAIREL DIAZ, never reported her September 26, 2016 injury claim, at any time during her employment with NUMERO UNO. Therefore, NUMERO UNO has demonstrated its entitlement to the Labor Code Section 3600 (a) (10) post-termination defense, regarding the compensability of the applicant's claimed injury. In sum, the applicant's alleged September 26, 2016 injury claim is barred by the employer's Labor Code Section 3600 (a) (10) post-termination defense.

ORDER

IT IS HEREBY ORDERED THAT the applicant take nothing by reason of the Application for Adjudication of Claim filed herein on January 4, 2017.

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DATE: June 11, 2018

Joanne M. Coane
WORKERS' COMPENSATION LAW JUDGE

STATE OF CALIFORNIA
A Division of Workers' Compensation
Workers' Compensation Appeals Board

ADJ10703677

ANAIREL DIAZ v. NUMERO UNO ACQUISITIONS INC.: INSURANCE COMPANY OF THE WEST

OPINION ON DECISION

INJURY, EMPLOYMENT AND INSURANCE COVERAGE BACKGROUND:

The applicant, ANAIREL DIAZ, born June 17, 1990, while employed on September 26, 2016, as a grocery clerk, occupational group number not identified, at Los Angeles, California, for NUMERO UNO ACQUISITIONS, INC. [NUMERO UNO], insured for workers' compensation by INSURANCE COMPANY OF THE WEST, claims to have sustained injury arising out of employment and in the course of employment to her left thumb and left hand. [See 5/9/2018 MINUTES OF HEARING [MOH], page 4, THE FOLLOWING FACTS ARE ADMITTED, item number 1.]

Mechanism of the Alleged September 26, 2016 Injury:

The Applicant's Testimony:

According to the applicant ANAIREL DIAZ, on September 26, 2016, while she was attempting to obtain a box of corn, she injured her left thumb and left hand. Since the box was up high on a shelf, she had to climb up on a ladder, in order to retrieve the corn. While she was pulling the box of corn, her "thick finger," meaning her thumb, on her "right hand." [Note for record: Applicant stated that she injured her "right thumb," even though her claimed injury is to her left thumb.] The applicant explained that her thumb got "bent backwards," and that this caused her to feel pain in her thumb. The applicant confirmed that she never reported this alleged injury, until after she was terminated from her employment with NUMERO UNO on November 16, 2016. She also confirmed that she did not receive any medical treatment for her alleged injury, until after she was terminated on November 16, 2016. [See 5/10/2018 MOH, page 4, line 23 – page 5, line 13.]

The Applicant's November 16, 2016 Termination of Employment:

The applicant confirmed that she was terminated from her employment with NUMERO UNO on November 16, 2016, by Mr. Marin, since she did not "have documents." The applicant confirmed that she does not have legal U.S. work documents. Mr. Marin told her that he had to terminate her since she did not have legal U.S. work documents. She told him that she was not "ashamed" of being "undocumented" and "Mexican." [See 5/10/2018 MOH, page 5, lines 15-21.]

The Medical Evidence Regarding the Applicant's Alleged September 26, 2016 Injury:

Dr. Suzuki: Orthopedic Panel Qualified Medical Evaluator:

According to Dr. Suzuki:

"… The applicant is not a good historian. She did have problems with specific dates. She was unclear" regarding the date of her alleged injury. She also was unclear as to whether

or not the back injury [alleged to have occurred on September 20, 2016, master case ADJ10692258] and the thumb injury occurred on the same day."

Regarding the applicant's alleged September 26, 2017 left thumb and left hand injury, the applicant reported to Dr. Suzuki that: "… she sustained an injury to her right thumb when she was lifting a box with corn; it got stuck. She pulled and then the box fell, striking her on the thumb causing a hyper extension type injury…." [See Dr. Suzuki's 5/6/2017 report, page 2, HISTORY OF INJURY AS RELATED BY THE EXAMINEE, Applicant's Exhibit 2.] Note for record: The applicant reported a right thumb injury to Dr. Suzuki, not a left thumb injury.]

Regarding the causation of injury, Dr. Suzuki opined that:

"Causation would appear to be the result of the injury as I have described in my history. This is based on information provided by the examinee. The earliest reported information regarding this injury was the primary treating physician report of December 22, 2016, which obviously was three months following the injury. I would therefore, indicate that if there is a dispute regarding this injury, I would defer to a trier-of- fact." [See Dr. Suzuki's 5/6/2017 report, page 9, CAUSATION, Applicant's Exhibit 2.]

Dr. Goubran: Primary Treating Physician:

Dr. Goubran was designated by the applicant as being her primary treating physician. [See 12/22/2016 Labor Code Section 4600 / PTP designation letter, Applicant's Exhibit 1.]

Dr. Goubran provided the applicant with various modalities of medical treatment for her alleged September 26, 2016 left thumb and left hand injury. However, none of his medical reports provide any medical opinions regarding the causation of the applicant's alleged left

thumb and left hand injury. [See Dr. Goubran's medical reports dated 5/6/2017, 7/6/2017, 5/26/2017, and 3/9/2017, Applicant' Exhibits 2, 3, 4, and 5, respectively.]

THE TRIAL COURT'S INJURY AOE / COE DETERMINATION:

There is no substantial medical report evidence, which demonstrates that the applicant, ANAIREL DIAZ, sustained a left thumb and left hand injury, arising out of employment and in the course of employment [AOE/COE], while she was employed by NUMERO UNO, on September 26, 2016. Therefore, the Trial Court finds that the applicant did not sustain injury arising out of employment and in the course of employment [AOE/COE], on September 26, 2016, as claimed.

THE EMPLOYER'S DEFENSE OF POST-TERMINATION CLAIM FILING: LABOR CODE SECTION 3600 (a) (10):

There is substantial testimonial and documentary evidence, which demonstrates that the applicant, ANAIREL DIAZ, never reported her September 26, 2016 injury claim, at any time during her employment with NUMERO UNO. Therefore, NUMERO UNO has demonstrated its entitlement to the Labor Code Section 3600 (a) (10) post-termination defense, regarding the compensability of the applicant's claimed injury. In sum, the applicant's alleged September 20, 2016 injury claim is barred by the employer's Labor Code section 3600 (a) (10) post-termination defense.

Labor Code Section 3600 (a) (10):

Pursuant to Labor Code section 3600 (a) (10):

"… where the claim for compensation is filed after notice of termination … and the claim is for an injury occurring prior to the time and notice of termination … no compensation shall be paid unless the employee demonstrates by the preponderance of the evidence that one or more of the following conditions apply:

(A) The employer has notice of the injury … prior to the notice of termination….

(B) The employee's medical records, existing prior to the notice of termination … contain evidence of injury.

(C) The date of injury … is subsequent to the notice of termination … but prior to the effective date of the termination….

(D) The date of injury" is a cumulative trauma injury and such date of injury is determined pursuant to Labor Code Section 5412.

The Testimonial Evidence:

The Applicant's Testimony:

The applicant's testimony, already above reviewed, confirms that the applicant has not satisfied any of the Labor Code Section 3600 (a) (10) (A), (B), (C), and (D) conditions, which if any one of them existed, would bar NUMERO UNO from establishing its entitlement to the Labor Code Section 3600 (a) (10) post-termination defense.

Very clearly, the applicant did not report an injury claim regarding her alleged September 26, 2016 left thumb and left hand injury, prior to her termination on November 16, 2016 [Labor Code Section 3600 (a) (10) (A).] The already above reviewed medical report evidence demonstrates that the applicant does not have any medical records,

which existed prior to her alleged September 26, 2016 left thumb and left hand injury, which confirm the existence of an injury. [Labor Code Section 3600 (a) (10) (B).] There is no evidence, which demonstrates that the applicant reported her alleged September 26, 2016 left thumb and left hand injury, after she received notice of her termination, but prior to the effective date of her termination. [Labor Code Section 3600 (a) (10) (C).] Finally, the applicant does not claim to have sustained a cumulative trauma injury. [Labor Code Section 3600 (a) (10) (D).]

The Employer's Testimony:

According to Manuel Marin, who is NUMERO UNO'S Director of Risk Management and Human Resources, he has worked as a Risk Manager in the super market industry for approximately 40 years. He has worked in this capacity for NUMERO UNO for about 20 years. He recalled that he received information from the Store Manager, at the NUMERO UNO store where the applicant was working, that the applicant may not have legal U.S. work documents. As a result he conducted an investigation into this matter and he personally met with the applicant on November 15, 2016, in order to determine what her actual work status was, with regard to having legal work documents. The applicant told him that she did not have legal documents. Therefore, on November 16, 2016 he told the applicant that he had to terminate her employment with NUMERO UNO, since she was not able to produce legal work documents. [See 5/9/2018 MOH, page 8, line 18 – page 9, line 7.]

Mr. Marin stated that the applicant never reported any alleged work injuries to him, at any point in time, during her employment with NUMERO UNO. [See 5/9/2018 MOH, page 9, lines 10 – 17.]

The Documentary Evidence:

Subpoenaed Employment Records: NUMERO UNO ACQUISITIONS LLC:

The applicant's subpoenaed employment records from NUMERO UNO demonstrate that the applicant did not present or make any claims for any alleged work related injuries, while she was employed by NUMERO UNO. The Trial Court observes that NUMERO UNO employees were required to report whether they experienced or may have experienced any work related injuries, each pay period. The applicant's employment records demonstrate that the applicant never made any injury claims, with regard to any of her pay periods. [See 1/24/2017 subpoenaed records, from NUMERO UNO, Applicant's Exhibit 6.]

DATE: June 11, 2018

J M Coane

Joanne M. Coane
WORKERS' COMPENSATION LAW JUDGE

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

ANAIREL DIAZ,

Applicant,

vs.

NUMERO UNO ACQUISITIONS INC.;
INSURANCE COMPANY OF THE WEST;

Defendants.

Case No. ADJ10692258

FINDINGS OF FACT AND ORDER

REZAI AND ASSOCIATES, APC
By: JOSUE S. VILLANUEVA
Attorneys for Applicant

FLOYD, SKEREN, MANUKIAN & LANGEVIN
By: MICHAEL G. McCONVILLE
Attorneys for Defendants

Consuela Arechiga Magana, Cert. No. 301725
Spanish Language Interpreter

The above entitled matter having been heard and regularly submitted, the Honorable **Joanne M. Coane**, Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1. The applicant, ANAIREL DIAZ, born June 17, 1990, while employed on September 20, 2016, as a grocery clerk, occupational group number not identified, at Los Angeles, California, for NUMERO UNO ACQUISITIONS, INC. [NUMERO

UNO], insured for workers' compensation by INSURANCE COMPANY OF THE WEST, claims to have sustained injury arising out of employment and in the course of employment to her low back.

2. There is no substantial medical report evidence, which demonstrates that the applicant, ANAIREL DIAZ, sustained a low back injury, arising out of employment and in the course of employment [AOE/COE], while she was employed by NUMERO UNO, on September 20, 2016. Therefore, the Trial Court finds that the applicant did not sustain injury arising out of employment or in the course of employment [AOE/COE], as claimed.

3. There is substantial testimonial or documentary evidence, which demonstrates that the applicant, ANAIREL DIAZ, never reported her September 20, 2016 injury claim, at any time during her employment with NUMERO UNO. Therefore, NUMERO UNO has demonstrated its entitlement to the Labor Code Section 3600 (a) (10) post-termination defense, regarding the compensability of the applicant's claimed injury. In sum, the applicant's alleged September 20, 2016 injury claim is barred by the employer's Labor Code Section 3600 (a) (10) post-termination defense.

ORDER

IT IS HEREBY ORDERED THAT the applicant take nothing by reason of the Application for Adjudication of Claim filed herein on December 22, 2016.

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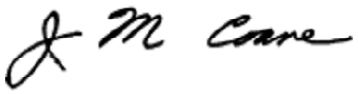
DATE: June 11, 2018



Joanne M. Coane
WORKERS' COMPENSATION LAW JUDGE

STATE OF CALIFORNIA
A Division of Workers' Compensation
Workers' Compensation Appeals Board

ADJ10692258

ANAIREL DIAZ v. NUMERO UNO ACQUISITIONS INC.; INSURANCE COMPANY OF THE WEST

OPINION ON DECISION

INJURY, EMPLOYMENT AND INSURANCE COVERAGE BACKGROUND:

The applicant, ANAIREL DIAZ, born June 17, 1990, while employed on September 20, 2016, as a grocery clerk, occupational group number not identified, at Los Angeles, California, for NUMERO UNO ACQUISITIONS, INC. [NUMERO UNO], insured for workers' compensation by INSURANCE COMPANY OF THE WEST, claims to have sustained injury arising out of employment and in the course of employment to her low back. [See 5/9/2018 MINUTES OF HEARING [MOH], page 2, THE FOLLOWING FACTS ARE ADMITTED, item number 1.]

Mechanism of the Alleged September 20, 2016 Injury:

The Applicant's Testimony:

According to the applicant ANAIREL DIAZ, on September 20, 2016, approximately 2 hours before her shift ended, she was lifting a box of cabbages. While doing so she felt a "pop" and "strong pain" in her back. She said that she stood for a moment and waited for the pain to pass. The applicant confirmed that she never reported this alleged injury until after she was terminated from her employment with NUMERO UNO on November 16, 2016. She also confirmed that she did not receive any formal medical treatment for her alleged injury, until after her November 16, 2016 termination. She stated that she self-treated her back pain with "creams." [See 5/10/2018 MINUTES OF HEARING [MOH], page 4, line 23 – page 5, line 13.]

The Applicant's November 16, 2016 Termination of Employment:

The applicant confirmed that she was terminated from her employment with NUMERO UNO on November 16, 2016, by Mr. Marin, since she did not "have documents." The applicant confirmed that she does not have legal U.S. work documents. Mr. Marin told her that he had to terminate her since she did not have legal U.S. work documents. She told him that she was not "ashamed" of being "undocumented" and "Mexican." [See 5/10/2018 MOH, page 5, lines 15-21.]

The Medical Evidence Regarding the Applicant's Alleged September 20, 2016 Injury:

Dr. Suzuki: Orthopedic Panel Qualified Medical Evaluator:

According to Dr. Suzuki:

"… The applicant is not a good historian. She did have problems with specific dates. She was unclear" regarding the date of her alleged injury. She also was unclear as to whether or not the back injury and the thumb injury [alleged to have occurred on September 26, 2017, companion case ADJ10703677] occurred on the same day."

Regarding the applicant's alleged September 20, 2017 back injury, the applicant reported to Dr. Suzuki that: "… she was lifting boxes of cabbages onto a cart that weighed 40 to 50 pounds, when she felt something pop in her mid and lower back. She states that she felt a burning pain in her left leg and left hip…." [See Dr. Suzuki's 5/6/2017 report, page 2, HISTORY OF INJURY AS RELATED BY THE EXAMINEE, Applicant's Exhibit 2.]

Regarding the causation of injury, Dr. Suzuki opined that:

"Causation would appear to be the result of the injury as I have described in my history. This is based on information provided by the examinee. The earliest reported information regarding this injury was the primary treating physician report of December 20, 2016, which obviously was three months following the injury. I would therefore, indicate that if there is a dispute regarding this injury, I would defer to a trier-of- fact." [See Dr. Suzuki's 5/6/2017 report, page 9, CAUSATION, Applicant's Exhibit 2.]

Dr. Goubran: Primary Treating Physician:

Dr. Goubran was designated by the applicant as being her primary treating physician. [See 12/22/2016 Labor Code section 4600 / PTP designation letter, Applicant's Exhibit 1.]

Dr. Goubran provided the applicant with various modalities of medical treatment for her alleged September 20, 2016 back injury. However, none of his medical reports provide any medical opinions regarding the causation of the applicant's alleged low back injury. [See Dr. Goubran's medical reports dated 5/6/2017, 7/6/2017, and 5/26/2017, and 3/9/2017, Applicant' Exhibits 2, 3, 4, and 5, respectively.]

THE TRIAL COURT'S INJURY AOE / COE DETERMINATION:

There is no substantial medical report evidence, which demonstrates that the applicant, ANAIREL DIAZ, sustained a low back injury, arising out of employment and in the course of employment [AOE/COE], while she was employed by NUMERO UNO, on September 20, 2016. Therefore, the Trial Court finds that the applicant did not sustain injury arising out of employment and in the course of employment [AOE/COE], as claimed.

THE EMPLOYER'S DEFENSE OF POST TERMINATION CLAIM FILING: LABOR CODE SECTION 3600 (a) (10):

There is substantial testimonial and documentary evidence, which demonstrates that the applicant, ANAIREL DIAZ, never reported her September 20, 2016 injury claim, at any time during her employment with NUMERO UNO. Therefore, NUMERO UNO has demonstrated its entitlement to the Labor Code Section 3600 (a) (10) post-termination defense, regarding the compensability of the applicant's claimed injury. In sum, the applicant's alleged September 20, 2016 injury claim is barred by the employer's Labor Code section 3600 (a) (10) post-termination defense.

Labor Code Section 3600 (a) (10):

Pursuant to Labor Code section 3600 (a) (10):

"… where the claim for compensation is filed after notice of termination … and the claim is for an injury occurring prior to the time and notice of termination … no compensation shall be paid unless the employee demonstrates by the preponderance of the evidence that one or more of the following conditions apply:

(A) The employer has notice of the injury … prior to the notice of termination….

(B) The employee's medical records, existing prior to the notice of termination … contain evidence of injury.

(C) The date of injury… is subsequent to the notice of termination … but prior to the effective date of the termination….

(D) The date of injury" is a cumulative trauma injury and such date of injury is determined pursuant to Labor Code Section 5412.

The Testimonial Evidence:

The Applicant's Testimony:

The applicant's testimony, already above reviewed, confirms that the applicant has not satisfied any of the Labor Code Section 3600 (a) (10) (A), (B), (C), and (D) conditions, which if any one of them existed, would bar NUMERO UNO from establishing its entitlement to the Labor Code Section 3600 (a) (10) post-termination defense.

Very clearly, the applicant did not report an injury claim regarding her alleged September 20, 2016 back injury, prior to her termination on November 16, 2016 [Labor Code Section 3600 (a) (10) (A).] The already above reviewed medical report evidence demonstrates that the applicant does not have any medical records, which existed prior to her alleged September 20, 2016 back injury, which confirm the existence of an injury. [Labor Code Section 3600 (a) (10) (B).] There is no evidence, which demonstrates that the applicant reported her alleged September 20, 2016 back injury, after she received notice of her termination, but prior to the effective date of her termination. [Labor Code Section 3600 (a) (10) (C).] Finally, the applicant does not claim to have sustained a cumulative trauma injury. [Labor Code Section 3600 (a) (10) (D).]

The Employer's Testimony:

According to Manuel Marin MARIN, who is NUMERO UNO'S Director of Risk Management and Human Resources, he has worked as a Risk Manager in the super market industry for approximately 40 years. He has worked in this capacity for NUMERO UNO for about 20 years. He recalled that he received information from the Store Manager, at the NUMERO UNO store where the applicant was working, that the applicant may not have legal U.S. work documents. As a result he conducted an investigation into this matter and he personally met with the applicant on November 15, 2016, in order to determine what her actual work status was, with regard to having legal work documents. The applicant told him that she did not have legal documents. Therefore, on November 16, 2016 he told the applicant that he had to terminate her employment with NUMERO UNO, since she was not able to produce legal work documents. [See 5/9/2018 MOH, page 8, line 18 – page 9, line 7.]

Mr. Marin stated that the applicant never reported any alleged work injuries to him, at any point in time, during her employment with NUMERO UNO. [See 5/9/2018 MOH, page 9, lines 10 – 17.]

The Documentary Evidence:

Subpoenaed Employment Records: NUMERO UNO ACQUISITIONS LLC:

The applicant's subpoenaed employment records from NUMERO UNO demonstrate that the applicant did not present or make any claims for any alleged work related injuries, while she was employed by NUMERO UNO. The Trial Court observes that NUMERO UNO employees were required to report whether they experienced or may have experienced any work related injuries, each pay period. The applicant's employment records demonstrate that

she never made any such injury claims, with regard to any of her pay periods. [See 1/24/2017 subpoenaed records, from NUMERO UNO, Applicant's Exhibit 6.]

DATE: June 11, 2018

Joanne M. Coane
WORKERS' COMPENSATION LAW JUDGE