

STATE OF CALIFORNIA
Workers' Compensation Appeals Board

Case No. ADJ10914107

JOSE MIRELES,

Applicant,

vs.

**S.O.S. STEEL CO., INC.; FEDERAL
INSURANCE COMPANY, administered by
GALLAGHER BASSETT SERVICES, INC.;**

Defendants.

**FINDINGS OF FACT, ORDER, and
OPINION ON DECISION**

Applications having been filed herein; all parties having appeared; and the matter having been regularly submitted, the Honorable John E. Durr, Workers' Compensation Judge, Finds, and Orders as follows:

FINDINGS OF FACT

1. The injury did not arise out of employment.

ORDER

IT IS ORDERED THAT the Applicant shall take nothing by way of his claim for this industrial injury.

OPINION ON DECISION

It was stipulated to by the parties that the applicant was at work as an ironworker doing a residential construction. The applicant was working on the job site and through his testimony, and the testimony of the supervisor from that day, he was working spreading decking. The decking was being spread on the first floor, which was approximately 10 feet above the cement

floor of the basement. There was a period of time when he had completed spreading the decking that had been delivered. This time was while the foreman was getting additional decking with the forklift. The applicant was seen on video finishing working on the decking and walking over to the tallest steel pole on the site. The applicant inserted a tool into one of the holes on that steel pole. He then pulled himself up and on to the pole with his feet 3 to 4 feet off the first floor.

There was no credible evidence or testimony given as to any reason for the applicant to attempt to climb that pole. As the applicant appeared to be trying to come down the pole one of the tools slipped out of the hole in the steel pole and the applicant fell to the cement at the basement level.

The applicant was not performing any service in furtherance of the employer's interests while climbing that pole when he had no other work to perform. Therefore, the injury did not arise out of employment.

The employer asserted the affirmative defense of horseplay. As the injury was not found to arise out of employment, the affirmative defense is moot.

DATE: 3/23/18



John E. Durr
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:

APPEL LAW WALNUT CREEK, US Mail
COLANTONI COLLINS SAN FRANCISCO, Email
EDD SDI STOCKTON, Email
GALLAGHER BASSETT 95833 SACRAMENTO, Email
JOSE MIRELES, US Mail
SOS STEEL CO INC, US Mail

PROOF OF SERVICE BY MAIL

I, Cathy Weibel, certify that the following is true and correct:

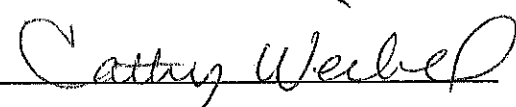
I am employed in the city of Stockton, and county of San Joaquin, California. I am over the age of eighteen years, and am not a party to the within entitled cause.

My business address is 31 E. Channel Street #344, Stockton, California 95202. On 3/23/18, I served the FINDINGS OF FACT, ORDER, and OPINION ON DECISION for ADJ10914107 by causing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, to be placed in the United States Post Office mail box at Stockton, California, or by email if so designated, addressed to the following parties:

APPEL LAW WALNUT CREEK	Law Firm, 100 PRINGLE AVE STE 730 WALNUT CREEK CA 94596, jappel@appellawyer.com
COLANTONI COLLINS SAN FRANCISCO	Law Firm, 455 MARKET ST STE 1940 SAN FRANCISCO CA 94105, CBARRIEAU@CCMPT.COM
EDD SDI STOCKTON	Lien Claimant, PO BOX 201006 STOCKTON CA 95201, DIEAMS210@EDD.CA.GOV
GALLAGHER BASSETT 95833 SACRAMENTO	Claims Administrator, PO BOX 2934 CLINTON IA 52733, GB-CarrierWestWC-Mail@gbtpa.com
JOSE MIRELES	Injured Worker, 120 BRANGUS LN PATTERSON CA 95363
SOS STEEL CO INC	Employer, 1160 RICHARD AVE SANTA CLARA CA 95050

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for delivery by mail. Correspondence so collected and processed is deposited with the United States Postal Service on the same day in the ordinary course of business. On the above date, the said envelopes were collected for the United States Postal Service following ordinary business practices.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on 3/23/2018 at Stockton, California.


Cathy Weibel