

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

NOV 04 2019

Case No. ADJ11776369

FREDY ALVARADO,

*Applicant,*

vs.

**FINDINGS OF FACT, ORDERS AND  
OPINION ON DECISION**

**C3 CONSTRUCTION GROUP, INC./ BBSI;  
ACE AMERICAN INSURANCE COMPANY;  
CORVEL CORPORATION;**

*Defendants.*

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 BASED ON STIPULATIONS**

1. Applicant, Fredy Alvarado, born February 2, 1985 was employed on August 20, 2018 by BBSI while working at C3 Construction Group, Inc.
2. The applicant was employed as a pickup framer, Occupational Group 480 in California. The employer's workers' compensation insurance carrier on the date of injury was Ace American Insurance.

3. The employer has furnished some medical treatment.
4. No attorney fees have been paid other than Labor Code 5710 fees.

**FINDINGS OF FACT BASED ON EVIDENCE**

5. The applicant claims an industrial injury that occurred on August 20, 2018.

6. The applicant testified that he was working with 2 other employees when he fell off a ladder.

7. The applicant testified that he told Roque Estrada that he had fallen on August 20, 2018.

8. Roque Estrada credibly testified the applicant did not tell him he had fallen on August 20, 2018.

9. There was no credible testimony that the applicant suffered an injury on August 20, 2018.

10. The applicant was laid off on November 19, 2018.

11. The applicant testified that he first requested medical treatment after he was laid off.

12. Even if injury were found; the affirmative defense of a post termination claim would apply and bar the provision of benefits.

### ORDERS

A. **IT IS ORDERED THAT** the minutes of hearing be corrected to indicate that the defendant's Exhibit A was mistakenly identified as having a date of February 18, 2018, when the actual date on the document is December 15, 2018.

B. **IT IS FURTHER ORDERED THAT** the applicant take nothing by virtue of this claim of industrial injury.

### OPINION ON DECISION

The applicant consistently identified in medical reporting and testimony that an alleged injury occurring on August 20, 2018, however, consistency does not in itself equate to a basis for a factual finding. The applicant testified that the work that he was doing when he was

injured involved the setting of a structural beam. The applicant testified that he told Roque Estrada, his supervisor, that he had fallen off a ladder on the day of the injury. Roque Estrada credibly testified that the applicant was working as a "pickup" framer doing finishing work. Mr. Estrada also testified that he had not been told by the applicant or anyone else prior to the layoff that Freddie Alvarado fell off of a ladder on August 20, 2018. Mr. Estrada was not aware of any report of injury or request for medical treatment prior to the layoff.

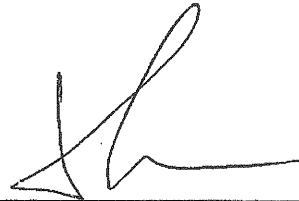
The applicant first became involved with the employer after meeting supervisors at the hospital when his nephew Christian Alvarado sustained an industrial injury by falling off a ladder. After several months of employment, due to business necessities, the employer representative was laying the applicant off at which time Mr. Alvarado questioned the authority of the person laying him off and was terminated. Following the termination, the applicant reported, for the first time, an alleged industrial injury that had supposedly occurred 3 months previously, and he later received treatment for the first time after that report.

There is no credible evidence that the injury occurred in the manner that the applicant described. In the doctor's first report of occupational injury under subjective complaints in paragraph 18, he describes the alleged injury and that the symptomology had resolved, but he now indicates that it has now (November 20, 2018) gotten to the point where he is not able to continue working. Even if the injury did occur, the applicant failed to report the injury in a timely fashion. In fact the alleged injury was not reported until after the applicant had been terminated. The applicant had no problem with reporting injury to the proper person following the termination and appropriate medical care was provided.

Pursuant to Labor Code § 3600(a)(10), claims are barred when the claim for compensation is filed after notice of termination or layoff, including voluntary layoff, and the

claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence of one or more of the following conditions apply: (A) The employer has notice of the injury, as provided under Chapter 2 (commencing with section 5400), prior to the notice of termination or layoff. Here, there is no credible evidence that the employer had notice of the injury prior to the notice of termination or layoff.

DATE: 11/21/09



**John E. Durr**

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Served on all parties listed on the  
Official Address record on the above date.

BY: See POS

BARRETT BUSINESS SERVICES, US Mail  
BBSI C3 CONSTRUCTION GROUP INC, US Mail  
COLANTONI COLLINS FOLSOM, Email  
CORVEL SACRAMENTO, US Mail  
FREDY ALVARADO, US Mail  
GABRIEL HERNANDEZ MODESTO, US Mail

PROOF OF SERVICE BY MAIL OR EMAIL

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

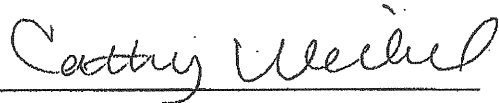
I am employed in the city of Stockton, and county of San Joaquin, California. I am over the age of eighteen years, and am not a party to the within entitled cause.

My business address is 31 E. Channel Street #344, Stockton, California 95202. On 11/4/19, I served the **FINDINGS OF FACT, ORDERS AND OPINION ON DECISION for ADJ11776369** 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 via EAMS if so designated, addressed to the following parties:

BARRETT BUSINESS SERVICES	Employer, 1111 I STREET STE 107 MODESTO CA 95354
BBSI C3 CONSTRUCTION GROUP INC	Employer, PO BOX 277550 SACRAMENTO CA 95827
COLANTONI COLLINS FOLSOM	Law Firm, 340 PALLADIO PKWY STE 533 FOLSOM CA 95630, Mail-SAC@csmpt.com
CORVEL SACRAMENTO	Claims Administrator, PO BOX 277550 SACRAMENTO CA 95827
FREDY ALVARADO	Injured Worker, 1443 SUTRO AVENUE STOCKTON CA 95205
GABRIEL HERNANDEZ MODESTO	Law Firm, 1620 N CARPENTER RD STE C25 MODESTO CA 95351

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 11/4/2019 at Stockton, California.



Cathy Weibel