

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

Case No. ADJ10750446

FINDINGS AND ORDER
&
OPINION ON DECISION

The above-entitled matter having been heard and regularly submitted, the Honorable Pauline H. Suh, Workers' Compensation Judge, now decides as follows;

FINDINGS OF FACT

1. Applicant, [REDACTED], born 2/3/1985, while employed on 1/3/2017 as a construction laborer, Occupational Group Number 480, at Los Altos, California, by Via Builders, did not sustained injury arising out of and in the course of employment to his right shoulder, cervical spine, thoracic spine, and lumbar spine.
2. At the time of the alleged injury, the employer's workers' compensation carrier was Starstone National Insurance Company, formerly known as Torus National Insurance Company.
3. Applicant's Exhibits 1 through 9, marked for ID are hereby received and admitted into evidence.
4. Defendant's Exhibit E, marked for ID is hereby received and admitted into evidence.
5. Applicant did not meet his burden of proving that he sustained injury as alleged on 1/3/2017.
6. As such, all other issues deferred are moot.

ORDER

It is ordered that applicant take nothing by reason of the application herein, as against Starstone National Insurance Company, formerly known as Torus National Insurance Company for Via Builders.



Pauline H. Suh

WORKERS' COMPENSATION JUDGE

DATE: 02/04/2021



OPINION ON DECISION

Applicant, [REDACTED], born 2/3/1985, claims to have sustained injury on 1/3/2017 to his right shoulder, cervical spine, thoracic spine, and lumbar spine while employed as a construction laborer (Occupational Group Number 480) by Via Builders.

Matter proceeded to trial on 09/24/2020 and on 12/17/2020 via LifeSize Cloud video conferencing wherein applicant testified. The sole issue was injury AOE/COE with all other issues deferred.

Admissibility of Exhibits

Applicant’s Exhibits 1 – 9, marked for ID are reports from attending or examining physicians allowed under LC 5703. Further, these records were reviewed by the Panel QME in this case. As such, these exhibits are received and admitted into evidence.

Defendant’s Exhibit E, applicant’s deposition transcript, in part were utilized during cross examination. Therefore, Applicant’s Exhibit E p. 15 L16-25, Ps. 19 L 15-17 and p. 39 L2-3 are received and admitted into evidence.

Injury AOE/COE

Pursuant to Labor Code Section 3202.5, applicant has the burden to prove by preponderance of evidence that she suffered an injury meeting the criteria of Labor Code Sections 3208 and 8208.1 causing disability or need for medical treatment with in the diagnostic criteria set forth therein.

While it is clear that applicant sustained an injury on 1/3/2017, it is determined that applicant’s injury did not arise out of nor occur in the course of employment. This finding is based on the lack of credibility of applicant and is equally based on pertinent medical record, specifically the Emergency Room Record dated 1/10/2017, medical evidence most close in time to the said injury.

Pertinent medical record, Sequoia Hospital record dated 1/10/2017 showed applicant reporting falling off his roof while taking Christmas lights down on 1/3/2017.¹ Applicant’s reporting during medical examination as well as during testimony were inconsistent. During his evaluation with the first Panel QME, Dr. Linda Cintron, he reported that he slipped on a wet roof and fell on the ground over 11 feet and was evaluated at the emergency department at Sequoia that day. At the time of this evaluation, Dr. Cintron’s report confirmed that first record was dated 1/25/2017 from US Healthworks.² When applicant was evaluated by Dr. Rovner on 3/30/2018, applicant reported that he fell from a second story on construction

¹ Defendant’s Exhibit G. This was followed by an Instagram photo from applicant’s account dated 1/11/2017 showing applicant in an arm sling on his right arm.

² It appears that during this evaluation, Sequoia hospital records had not been subpoenaed.

project.³ At trial, he testified that he fell off the roof of a single story guesthouse in the back. On 4/11/2018, applicant apparently fell off a ladder, hitting his back on the edge of the foundation of a house.⁴ However, this incident was not reported to Dr. Ilya Sabsovich, the subsequent Panel QME. Applicant, for the first time, reported that couple of years prior, he fell off the second step of a ladder while removing Christmas lights at home during his evaluation with Dr. Sabsovich on 8/7/2019.⁵ Applicant's subjective complaints reported to Dr. Wedemeyer, his treater, and Dr. Sabsovich in 2019 were not accurate as noted by sub rosa film reviewed by the Panel QME and by the undersigned during trial.

In addition to lack of persuasive evidence supporting industrial injury, the undersigned did not find applicant to be a credible witness. Applicant's perceptions and testimony were not supported by the record and were inconsistent with the available records. Applicant's demeanor during testimony also confirmed applicant as lacking in credibility. Applicant was nonresponsive and condescending at times during testimony. By way of example, applicant was asked if his name was [REDACTED], to which he responded that it was his personal life. He confirmed at trial that he had gone by the name of [REDACTED] and [REDACTED]. When asked if he recalled denying going by any other name during deposition, applicant became defensive and upset. Applicant testified during deposition that he went to high school in Mexico. When asked whether this was false, applicant was nonresponsive. He subsequently confirmed that he went to McKinley High School in California. Applicant was asked if he was truthful with the doctors at sequoia Hospital to which he was initially nonresponsive at day 1 of trial. On day 2 of trial, during re-examination, he denied telling anyone at Sequoia Hospital that he injured himself while taking down Christmas lights. At day 1 of trial, he testified that he went back to Sequoia Hospital twice, but the evidence only confirmed the 1/10/2017 visit.

Based on review of the evidence and applicant's lacking in credibility, it is found that applicant did not sustain injury arising out of and occurring in the course of employment on 1/3/2017.



Pauline H. Suh

WORKERS' COMPENSATION JUDGE

DATE: 02/04/2021

[REDACTED]

³ Applicant's Exhibit 3

⁴ Applicant's Exhibit 9

⁵ Sequoia hospital records were available for the PQME to review.