

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

Case No. ADJ10831211 AND ADJ10833992

**IRMA DAVILA,**

*Applicant,*

vs.

**VALLARTA SUPER MARKETS;  
SEDGWICK 14522 VAN NUYS;**  
*Defendants.*

**JOINT FINDINGS AND ORDER**

**LAW OFFICES OF CORDELL CORDER, JR.**  
Cordell Corder, Jr., Esq.  
Attorneys for Applicant

**GREENUP, HARTSTON & ROSENFELD, LLP**  
Ani Zargarian, Esq.  
Attorneys for Defendant

The above entitled matter having been heard and regularly submitted, the Honorable Eric Yee, Workers' Compensation Administrative Law Judge, now decides as follows:

**FINDINGS OF FACT**

1. Applicant failed to sustain her burden of proof that she had an industrial injury to her neck, back, stress or head which arose out of and in the course of her employment with defendant Vallarta Supermarket on March 26, 2017 (ADJ10831211) or an injury to her hands or shoulders with the same employer from August 5, 2014 to March 26, 2017 (ADJ10833992).
2. The court finds applicant was not credible.
3. The court finds the medical opinions of Gregory Simonian, D.C., were not substantial medical evidence due to conflicting and inaccurate history.
4. There are no funds from which to award an attorney's fee.

**ORDER**

The conditions of compensation pursuant to Labor Code Section 3600 having been shown not to have been met, IT IS ORDERED that applicant takes nothing further on these claims.

DATE: February 14, 2019



**Eric Yee**

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

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ADMINISTRATIVE LAW JUDGE: Eric Yee

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**JOINT OPINION ON DECISION**  
**[Labor Code section 5313]**

These cases proceeded to trial with day one on August 21, 2018. Applicant failed to appear for trial on October 11, 2018 and December 6, 2018. Day two was held on February 7, 2019 and submitted.

**STIPULATED FACTS:**

The parties stipulated to the following facts:

Applicant, Irma Devila, born \_\_\_\_\_, while employed on March 26, 2017 (ADJ10831211), as a meat dispatcher, at Victorville, California, by Vallarta Supermarkets, claims to have sustained injury arising out of and in the course of employment to her neck, back, stress and head.

Applicant also claims that while employed during the period of August 5, 2014 to March 26, 2017 (ADJ10833992), as a meat dispatcher, at Victorville, California, by Vallarta Supermarkets, she sustained injury arising out of and in the course of employment to her hands and shoulders.

At the time of the injury for both cases, the employers' workers' compensation carrier Safety National Casualty Corp., administrated by Sedgwick CMS.

The employer has furnished no medical treatment, and no attorney fees or fee agreements have been made for both cases.

The issues for both cases are: 1) Injury arising out of and in the course of employment; and 2) attorney's fees.

**INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT:**

The Evidence does not support a claim for either a specific injury or a cumulative trauma. Moreover, applicant was not credible.

Case ADJ10831211, Date of Injury 3/26/2017:

Applicant did not sustain an industrial injury to her neck, back, stress or head while employed on March 26, 2017 (ADJ10831211), as a meat dispatcher at Victorville, California, by Vallarta Supermarkets.

During direct examination, applicant testified her last day of work was March 26, 2017, the alleged specific date of injury. On this day, applicant testified a co-worker used a hose and got applicant's back wet from her head down to her back. Applicant denied being knocked down; she was just wet and got sick. (MOH/SOE Trial day 1, 8/21/18, pg. 8:15-21). Leonardo Ortiz, a co-worker who worked with applicant, was the person who used a hose and splashed applicant with water; however, he denied intentionally getting applicant wet when he was washing down the department. (MOH/SOE Trial day 2, 2/7/19, pg. 6:2-6.) He also said there was no investigation regarding any action involving him and the applicant. (MOH/SOE Trial day 2, 2/7/19, pg. 6:6-7.)

In contrast to applicant's testimony, Gregory Simonian, D.C., the primary treating physician ("PTP") examined the applicant on March 29, 2017, three days after the alleged specific injury. Dr. Simonian stated applicant lifted a 40-50 pound piece of meat on March 26, 2017, causing "immediate head pain, neck pain, bilateral shoulder pain, bilateral hand pain, midback pain, low back pain, left knee pain and left foot pain."

Applicant could not recall telling the doctors that she had performed that specific duty on the last day of her work. (MOH/SOE Trial day 2, 2/7/19, pg. 4:22-25.)

According to Dr. Simonian's history, applicant reported her injuries to her supervisor but was told to continue to work; she worked in pain until five minutes before finishing her shift. (Gregory Simonian, D.C., PTP report 3/30/17, Exhibit 1, page 1.) This version of the facts was noted throughout his reporting, and Dr. Simonian maintained applicant sustained a work related "accident" on March 26, 2017. (Exhibit 1, page 2; Exhibit 2, pages 1 & 3; Exhibit 3, pages 1 & 3; Exhibit 5, pages 1 & 3; and Exhibit 6, pages 1 & 2.)

Case ADJ10833992. Date of Injury CT 8/5/2014-3/26/2017:

Applicant did not sustain an industrial injury to her hands or shoulders from August 5, 2014 to March 26, 2017 (ADJ10833992), as a meat dispatcher at Victorville, California, by Vallarta Supermarkets.

Applicant's testimony was not supported by the medical record. Applicant said she was injured due to lifting, pulling, pushing, and cutting with a knife while she worked. She felt she injured her neck, shoulders, hands, knees, feet, and her head used to hurt a lot (MOH/SOE Trial day 1, 8/21/18, pg. 7:1-5). Applicant said she obtained treatment on her own since her supervisors did not provide her with a claim form or referred her to medical treatment. She said she told Dr. Simonian that she performed tasks including carrying heavy things, pulling items, and lifting objects weighing 40 or more pounds, but she could not recall telling the doctors that she had performed those specific duties on the last day of her work. (MOH/SOE Trial day 2, 2/7/19, pg. 4:22-25.)

Applicant apparently treated for stress and not for her hands and/or shoulders. She testified that she had treated at Clinic Del Pueblo in 2014; this facility did not take her off work, diagnosed her of having stress and was given pills for pain. She then continued to work. (MOH/SOE Trial day 1, 8/21/18, pg. 7:7-19.) Applicant testified she saw additional doctors at Molina Healthcare. According to the applicant, this facility also diagnosed her with stress, provided her with medication and wanted to refer her to a social worker because they noted she was having panic attacks. (MOH/SOE Trial day 1, 8/21/18, pg. 7:28-32.) Applicant did not introduce these records into evidence.

Applicant's primary treating physician, Dr. Simonian, noted in the caption of his reports that applicant has both a specific and cumulative trauma injuries. However, Dr. Simonian only opined applicant had a specific injury of March 26, 2017; he did not stated applicant had a cumulative trauma as depicted by applicant's testimony. (Exhibits 1, 2, 3, 5 and 6).

Thus, applicant did not meet her burden of proof on all issues, and applicant's claims for injuries are not compensable.

**ATTORNEY'S FEES:**

There are no funds from which to award an attorney's fee.

DATE: February 14, 2019



**Eric Yee**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

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