

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD
LOS ANGELES DISTRICT OFFICE

Sergio Alvarez
Applicant,

vs.

**Jacmar Food Service Distribution;
Hartford Insurance Company**

Defendants.

Case No: ADJ 9124532

**FINDINGS OF FACT AND ORDER
(Take Nothing)**

Attorney for Applicant

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Attorney for Defendant

Steven M Rosenfeld, Esquire

An application having been filed herein; all parties having appeared and the matter having been regularly submitted, the **Honorable George A. Schulman**, Workers' Compensation Administrative Law Judge, finds, awards, and orders as follows:

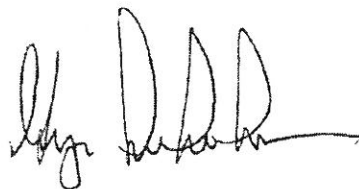
FINDINGS OF FACT

1. Sergio Alvarez, born _____, did not at Inwindale, California, during the period March 6, 2000 through October 5, 2011, sustain an injury in the form of hernia arising out of and in the course of employment as a delivery driver, by Jacmar Food Service Distribution, whose compensation insurance carrier was Hartford Insurance Company.

2. The remaining issues raised herein are moot.

ORDER

Applicant, Sergio Alvarez, shall take nothing in the above captioned matter.



Dated: April 10, 2015

GEORGE A. SCHULMAN
Workers' Compensation Judge

Service by mail on parties as shown
On: Official Address Record
By: *Adrian Romero*

CASE NUMBER: ADJ 9124532

Sergio Alvarez

vs.

Jacmar Food Service
Distribution; Hartford
Insurance Company

WORKERS' COMPENSATION JUDGE:

GEORGE A. SCHULMAN

DATE OF INJURY:

March 6, 2000 through
October 5, 2011

OPINION ON DECISION

BACKGROUND INFORMATION

Applicant, Sergio Alvarez, was a long-term employee at Jacmar Food Service Distribution. Applicant filed a continuous trauma claim alleging injury from March 6, 2000 through October 5, 2011.

Applicant was employed as a delivery driver. He alleges injury in the form of a hernia. Injury is denied by defendant.

The matter proceeded to trial on January 7, 2015. On that date, direct and cross-examination of the applicant was completed. The matter was continued for further hearing on February 11, 2015. Redirect examination of the applicant was waived.

On day two of testimony, defendant offered testimony of three supervisors from Jacmar Food Service Distribution. Upon conclusion of testimony, the matter was submitted for decision.

This Court, subsequent to review of the testimonial and documentary evidence, finds as follows:

INJURY: AOE/COE (Hernia)

Based upon observation of the applicant, and review of his testimony, this Court concluded that the applicant was not a credible witness. His memory

is not reliable. He contradicted himself on multiple occasions. He was contradicted by references to the documentary record as well.

The applicant testified that he reported a hernia injury to his supervisor. Applicant further states that he was not provided with a claim form or referred for medical treatment. Applicant testified that he reported his injury a second time on the date that he was terminated.

Applicant testified that, upon conclusion of his shift, he returned the company truck to the yard. He testified that he failed to do an inspection report. Applicant initially stated that he did an inspection of the vehicle. Video evidence showed that he did not. The next morning, the truck was found to have a cut one of the tires. Applicant was terminated for cause.

Applicant states that, at the termination interview, he showed the hernia to three people in supervisory positions. Applicant testified that nothing was done. He stated he was not given a claim form. He was not referred for treatment.

Applicant further testified that he was unemployed for three months. He then obtained a job as a driver.

Defendant offered the testimony of three witnesses. All three of the witnesses were found to be credible. Testimony of these witnesses supports the defense claim that applicant reported his alleged hernia problem after he had been terminated.

Testimony from transportation manager Jesus Velasco was that the applicant failed to do a proper inspection of his truck after completing a run. He testified that applicant submitted a form indicating that he did the inspection. Video evidence did not support applicant statement. There was, in fact, no inspection. Mr. Velasco testified that applicant ultimately admitted this fact. Applicant's position was terminated.

Mr. Velasco testified that, after the termination, applicant stated that he had a hernia. He lifted his shirt to show the persons attending the meeting in the human resources department. No visual evaluation was conducted.

Mr. Velasco testified that he and the applicant left the human resources department and went to Mr. Velasco's office to obtain workers compensation forms. Mr. Velasco stated that he did not have the correct forms. He left the office

to get them. He came back in 5 minutes. Applicant had left. Mr. Velasco stated that he never examined the applicant's stomach.

The second employer witness was Gabriel Uribe. This gentleman testified that he was applicant's direct supervisor. He stated that he was present when the applicant was terminated along with Mr. Velasco and another employee, Gonzalo Ventura. Mr. Uribe testified that the applicant was terminated prior to any report of a work related hernia claim. This witness was told by human resources director Gonzalo Ventura that Worker's Compensation paperwork needed to be prepared and that applicant would need a referral to a clinic. Mr. Uribe testified that he never received any prior claim or report of stomach/hernia injury.

Defendant's third witness was human resources director Gonzalo Ventura. He testified that he would conduct safety meetings. Drivers were told to report any injury immediately to a supervisor or manager.

Mr. Ventura said that applicant failed to do a post-trip inspection. Based upon this failure, the truck was not usable the next day. Mr. Ventura testified that applicant originally stated that he had done the post-trip inspection. He said that applicant falsified documents. Finally, he stated that applicant complained of a hernia injury only after he was told of his termination. He stated that he never examined the applicant stomach/abdomen.

Defendant submitted designated portions of subpoenaed records from Dr. Pablo Limbo (Exhibit B). Contained therein is a medical examination report for commercial driver fitness determination dated February 9, 2011. Item number 7 on page 4 states that applicant has no abdominal abnormalities (i.e. hernia). This examination was eight months prior to applicant's termination. This evaluation contradicts the statement of Dr. Moussa Moshfegh in his report dated June 27, 2014 (Exhibit 1) wherein the doctor states that applicant sustained a hernia injury in November of 2010 while pushing and straining. This doctor further states that a report was made and medical treatment was not offered. The report goes on to state that applicant noticed a lump in the abdominal area that gradually enlarged.

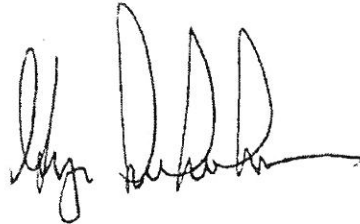
Again, this Court notes that the fitness for duty medical evaluation of February 9, 2011 does not substantiate the history as taken by Dr. Moshfegh. Although Dr. Moshfegh notes the existence of an umbilical hernia, medical reporting herein casts substantial doubt on whether that hernia was present at the time applicant was terminated by Jacmar.

Because of the inconsistencies of applicant's testimony and the contradictions in the medical record, it is the finding of this Court that the applicant did not sustain injury AOE/COE in the form of a hernia.

AFFIRMATIVE DEFENSE: LABOR CODE 3600 (a) (10)

Based upon the findings of this Court that the applicant did not sustain a hernia injury arising out of and in the course of employment, this Court finds that the affirmative defense of Labor Code section 3600 (a) (10) is moot.

April 10, 2015

A handwritten signature in black ink, appearing to read "George A. Schulman", written over a horizontal line.

**GEORGE A. SCHULMAN
WORKERS' COMPENSATION JUDGE**

Filed and Served by Mail
On: April 13, 2015
On: all parties as shown on the
Official Address Record

By: *Adrian B...*