

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

Case No. ADJ10300458

MD MAHEDE HASAN,

*Applicant,*

vs.

UNIVERSAL CITY NISSAN INC;  
INS CO OF THE WEST WOODLAND HILLS;

*Defendants.*

**FINDINGS AND ORDER**

NIZINSKI & ASSOCIATES  
By: Mikhail Baklan, Esq.  
Attorneys for Applicant

GREENUP, TURCHIN, HARTSTON, & ROSENFELD  
By: Steven M. Resenfeld, Esq.  
Attorneys for Defendatn

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


**FINDINGS OF FACT**

1. MD Mahede Hasan, Applicant, born \_\_\_\_\_ while employed on 2/8/16 as a car salesman at Los Angeles, California, by Universal City Nissan, did not sustain injury arising out of and in the course of employment.
2. The injury sustained by the Applicant was due to horseplay.
3. The horseplay was not condoned by the employer.

**ORDER**

IT IS ORDERED that MD Mahede Hasan take nothing against Insurance Company of the West.

DATE: 6/16/16

  
\_\_\_\_\_  
**Debra Keyson**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Served by mail on all parties listed on the  
Official Address record on the above date  
BY: ~~4. 7. 2016~~

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

CASE NUMBER: ADJ10300458

MD MAHEDE HASAN

-vs.-

UNIVERSAL CITY NISSAN  
INC;  
INS CO OF THE WEST  
WOODLAND HILLS;

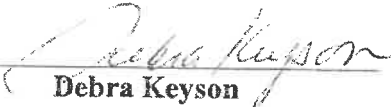
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE: Debra Keyson

DATE: June 16, 2016

OPINION ON DECISION

Based upon the testimony of the Applicant and the defense witnesses, it is found that the injury sustained by the Applicant was due to horseplay and is, therefore, not compensable as not being proximately caused by employment. There is substantial evidence to support the finding that the horseplay was not condoned by the employer.

DATE: 6/16/16

  
Debra Keyson  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION

06-15-2016

PROOF OF SERVICE

Case Number: ADJ10300458

GREENUP TURCHIN      Law Firm, 15060 VENTURA BLVD STE 100 SHERMAN OAKS CA 91403  
SHERMAN OAKS

INS CO OF THE WEST      Claims Administrator, PO BOX 85563 SAN DIEGO CA 92186,  
WOODLAND HILLS      MMUELLER@ICWGROU.P.COM

MD MAHEDE HASAN      Injured Worker, 6300 LANKERSHIM BLVD APT 105 NORTH  
HOLLYWOOD CA 91606

NIZINSKI ASSOCIATES      Law Firm, 14622 VICTORY BLVD FL 2 VAN NUYS CA 91411,  
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UNIVERSAL CITY      Employer, 3550 CAHUENGA BLVD WEST LOS ANGELES CA 90068  
NISSAN INC

Findings & Order and Opinion on Decision served by mail on all parties as listed  
above on: 6/16/16 by: *M. T. [Signature]*

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STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION  
WORKERS' COMPENSATION APPEALS BOARD

	)	CASE NO. ADJ10300458
MD MAHEDE HASAN,	)	
	)	VNO District Office
Applicant,	)	
	)	
vs.	)	MINUTES OF HEARING
	)	AND
UNIVERSAL CITY NISSAN;	)	SUMMARY OF EVIDENCE
INSURANCE COMPANY OF THE WEST,	)	
	)	
Defendant(s).	)	

11 **LOCATION:** Van Nuys, California

12 **DATE AND TIME:** June 13, 2016; 9:19 a.m. to 11:42 a.m.  
1:39 p.m. to 2:19 p.m.

13  
14 **JUDGE:** The Honorable DEBRA KEYSON

15 **REPORTER:** Natasha M. Kaupanger-Swacker

16 **APPEARANCES:** Applicant present

(Continued on page 2.)

17  
18 **WITNESSES:** MD MAHEDE HASAN, Applicant  
JAVIER HURTADO  
LOUIS DAVID ORTEGA  
19 ANDREW ABRAHAM DAVILA  
20 GERMAN FLORES

21 **EXHIBITS:** (See pages 2-3.)

22 **DISPOSITION:** Applicant's counsel has provided the WCJ with  
23 a trial brief, which will be scanned into  
24 EAMS. Defendant will not be filing a trial  
25 brief. This matter is submitted for decision.

(87 pages est.)

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**APPEARANCES:** NIZINSKI & ASSOCIATES  
(Continued) By: Mikhail Baklan, Esquire  
Attorneys for Applicant

GREENUP TURCHIN HARTSTON & ROSENFELD  
By: Steven M. Rosenfeld, Esquire  
Attorneys for Defendant(s)

**ALSO PRESENT:** German Flores, Employer Representative

\* \* \* \*

S T I P U L A T I O N S   A N D   I S S U E S

**THE FOLLOWING FACTS ARE ADMITTED:**

- 1. Md Mahede Hasan, born \_\_\_\_\_, while employed on February 8, 2016, as a car salesman, at Los Angeles, California, by Universal City Nissan, claims to have sustained injury arising out of and in the course of employment to his right arm.
- 2. At the time of injury, the employer's workers' compensation carrier was Insurance Company of the West.
- 3. No benefits have been paid.

**THE ISSUES ARE AS FOLLOWS:**

- 1. Injury arising out of and in the course of employment.
- 2. Whether any injury arose from horseplay or is otherwise barred by Labor Code § 3600.

\* \* \* \*

E X H I B I T S

All exhibits are located in EAMS within ADJ10300458, unless otherwise indicated herein.

APPLICANT'S 1: (Admitted without objection.)

CD of something at the workplace, undated.

For EAMS identification purposes, June 13, 2016, the date of trial, will be entered as the Document Date.

1 DEFENDANT'S A: (Admitted without objection.)

2 Letter of Denial of Workers' Compensation Benefit from ICW  
3 dated April 5, 2016.

4 DEFENDANT'S B: (Admitted without objection.)

5 Excerpts from records from Providence St. Joseph's Medical  
6 Center, four pages in length.

7 For EAMS identification purposes, February 8, 2016, the date on  
8 the first page, will be entered as the Document Date.

9 DEFENDANT'S C: (Admitted without objection.)

10 Doctor's First Report of Occupational Injury from  
11 Jason Toth, M.D., at Burbank Occupational Medical Center  
12 dated February 9, 2016.

13 DEFENDANT'S D: (Admitted without objection.)

14 Excerpts from records from Kaiser Permanente in Panorama  
15 City dated February 11, 2016.

16 DEFENDANT'S E: (Admitted without objection.)

17 Records from Kaiser Permanente dated February 12, 2016.

18 DEFENDANT'S F: (Admitted without objection.)

19 Records from Kaiser Permanente dated March 10, 2016.

20 DEFENDANT'S G: (Admitted without objection.)

21 Letter from Javier Hurtado dated February 9, 2016.

22 \* \* \* \*

23 S U M M A R Y O F E V I D E N C E

24 MD MAHEDE HASAN,

25 Applicant herein, called as a witness on his own behalf,  
having been duly sworn, testified substantially as follows:

DIRECT EXAMINATION: (By Mr. Baklan)

Mr. Hasan worked at Universal City Nissan as a car  
salesman from July 2, 2015, until February 8, 2016, which was  
the date of his injury. His supervisors were Abraham, the

1 closer, and Mr. Flores, the desk manager. They worked as a  
2 team. The closer sat mostly in the office and was out in the  
lot as well. The desk manager would sit in his office most of  
the time.

3  
4 On February 8, 2016, at the time of the injury, there were  
no customers. He was sitting with Javier at a cement table at  
5 Altima Point. They were pushing back and forth with their  
hands, and Mr. Hasan started to get up and leaned on his left  
6 hand. He was pushing with his right, and he injured his right  
upper arm.

7 He stated that most of the salespeople played around a  
8 little bit because they worked long hours. He was on a team  
with Javier and Louis. Javier and Louis were playing and  
9 pushing each other at one point. Mr. Hasan said "Stop it"  
because there was a camera there and they could get in big  
trouble.

10  
11 The injury in question occurred at 7:00 or 7:30 p.m.  
There are long periods of time when there are no customers.  
12 This usually occurs in the evenings for an hour or two. They  
would play around during downtime. This occurred 15 or 20  
times.

13  
14 They would play around at Showroom Point and Altima Point.  
The manager's office is on the first floor and has clear glass  
15 looking out. There are lots of cameras. The manager has a  
monitor in his office. Mr. Hasan would go to the manager's  
16 office a lot of times. At one time, when Mr. Hasan lost his  
iPad, the manager said he could look on the feed from the  
security camera.

17  
18 On the day of the injury, five minutes before Mr. Hasan's  
injury occurred, Javier and Louis were playing around and  
19 pushing against each other very hard. Mr. Hasan stopped them.  
There was another time at Showroom Point when they were pulling  
20 out a chair when someone tried to sit or would push another  
person in the back. He had seen other people arm wrestling.

21 He had seen the closers play around. He saw Abraham play  
22 around with a salesman named Victor. Another closer played  
around with a salesperson, pushing him very hard, and the  
23 salesperson was screaming. When they had time, they played  
around all the time.

24 He worked 50, 60, or 70 hours a week. They got bored  
25 waiting for the customers, so they would start playing around,  
and it would make work more charming. No one told him to stop



1 playing around. No one got reprimanded for playing around, to  
2 his knowledge. He knows that the customers are around when  
3 they come into the showroom. They have 30 to 40 salespeople,  
4 and they are all over the lot.

5 The injury was reported. Louis called 911, and an  
6 ambulance came. The desk managers came over too.

7 He took a video with his cell phone before the date of the  
8 injury. On the video, he can see Javier, Cesar, George, and a  
9 fourth person. In the video, you can see the concrete table  
10 where he was injured. The people in the video are his  
11 coworkers; none are supervisors. This was the type of thing  
12 you would see when there was downtime. He took the video at  
13 work and sent the video to Javier and all the salespeople.  
14 They were all laughing.

15 **CROSS-EXAMINATION:** (By Mr. Rosenfeld)

16 He was arm wrestling with Javier Hurtado when he was hurt.  
17 The two of them were pulling against each other, and he heard a  
18 loud pop. He is not sure if the sound was from his arm or the  
19 table. When he heard a loud pop, he felt pain in his arm.

20 He saw a closer named Abraham engaged in some type of play  
21 five or six times. He saw him arm wrestling while standing up  
22 with Sina and Jose. He saw this two or three months ago in  
23 2015.

24 It was his understanding that it was perfectly acceptable  
25 with the company for salespeople to be pushing each other and  
to be picking each other up. It was his understanding that it  
was perfectly acceptable to be arm wrestling and carrying each  
other at work. They don't say anything.

When he saw Louis and Javier, he told them to stop or they  
could get in trouble by falling down and being injured on the  
concrete. He didn't mean they would get into trouble with the  
supervisor. He was concerned about their safety.

He did not send the video to any supervisors. He sent it  
to Javier, George, and Jesus.

When he was arm wrestling with Javier, he felt pain in his  
arm and started crying. He told them that his arm was broken  
or displaced. They called 911.

He was asked about his Application for Adjudication of  
Claim, which states that he suffered a fracture when the table

1 he was leaning on collapsed. Mr. Hasan answered that the table  
2 wobbled and he lost control when he pushed his hand on the  
3 table. The table did not collapse; it wobbled. The umbrella  
had been removed. When he heard the pop, he is not sure if it

4 He doesn't remember if he told anyone at the hospital if  
5 he heard a pop in his arm. Exhibit B, which is records from  
6 Providence St. Joseph, indicates that he stated he was using  
7 his right arm to grab the hand of a colleague and it was  
8 horseplay and his elbow was resting on the table. It states  
that he was grappling and pushing against another person when  
he felt a pop and a very strong pain in his right upper arm.  
Today, Mr. Hasan stated that this does not refresh his memory.

9 When he went to Burbank Occupational Center, the history  
10 stated that he was horsing around with a colleague on a  
11 concrete table that tilted, resulting in him hitting his distal  
12 right arm. He can't recall telling this to the doctors at  
13 Burbank Occupational.

14 He went to Kaiser on February 11, 2016. Exhibit D shows a  
15 history that the applicant had a trip and fall at work after a  
16 concrete table fell. Today, Mr. Hasan said this is not what he  
17 told the doctors.

18 No one told him that he may not be compensated if he said  
19 he was injured while arm wrestling.

20 He never saw Mr. Flores horsing around. He doesn't know  
21 what would happen if Mr. Flores saw him horsing around. There  
22 were meetings on Fridays, and they discussed how to sell the  
23 cars. There were no discussions about how they were to behave  
24 at work.

25 He knows that there was a camera near Altima Point which  
would show what happened on the date of injury because there  
was a monitor in the office that he saw many times.

He did not tell anyone at Kaiser that the mechanism of  
injury was from a fall and that the impact surface was a hard  
floor. He was shown another exhibit from Kaiser which states  
that when he pushed down on the table, the table moved, and he  
slipped and fractured his right upper arm. Today, he said he  
never said this to anyone.

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1 **REDIRECT EXAMINATION:** (By Mr. Baklan)

2 After he showed the video to Javier and his coworkers of  
3 them fooling around, they asked him for a copy.

4 When he went to Kaiser, they only asked him one time what  
5 happened on the date of the accident, and he always said the  
6 same thing.

6 **REXCROSS-EXAMINATION:** (By Mr. Rosenfeld)

7 Kaiser reports are not exactly the same because the first  
8 doctor asked how it happened, and then each time he saw another  
9 doctor, they asked how it happened. He always told them how he  
10 broke his arm. He thinks he told them he was arm wrestling and  
11 injured his arm.

10 \* \* \* \*

11 **JAVIER HURTADO,**  
12 called as a witness by the defendant, having been duly  
13 sworn, testified substantially as follows:

13 **DIRECT EXAMINATION:** (By Mr. Rosenfeld)

14 Mr. Hurtado has worked for a year and a half as a sales  
15 consultant or car salesman. He is friends with Mr. Hasan. On  
16 February 8, 2016, he was working with Mr. Hasan, and it was a  
17 slow day. The salesmen would sometimes horseplay and do a  
18 little pushing and shoving and arm wrestling when the customers  
19 weren't around. On the day of the injury, they were joking  
20 around.

21 They are young men in their 20s and early 30s who stuck  
22 together. He was arm wrestling with Mr. Hasan on  
23 February 8, 2016, at Altima Point. They were sitting at a  
24 cement patio table. At this time, a camera was not yet  
25 installed. A camera has been installed showing the area of the  
lot. If there had been a camera installed at the time of the  
injury, it wasn't facing that direction because the camera was  
behind the cars. He doesn't know exactly when it was  
installed. It did not show the particular table where they  
were sitting.

23 He was not trying to hurt Mr. Hasan on that day. They  
24 were just playing around. He heard a snap. At first,  
25 Mr. Hasan was shocked, and then he grabbed his arm and realized  
it was his arm that had snapped. It was loud enough to hear.  
The top of the table did not fall off when this happened.

1 Mr. Hasan did not fall to the ground. Louis called 911.

2 Abraham Davila is the closer. He has not seen him engage  
3 in horseplay. They make jokes and tease each other, but he has  
4 never seen him put his hands on someone to push and shove. In  
5 his position, he wouldn't expect him to do that.

6 Mr. Hurtado would not engage in horseplay when there was a  
7 supervisor around because they would not allow them to do that  
8 at all. It is a large, busy dealership, and they are serious  
9 about their reputation. Mr. Flores is his manager. Mr. Flores  
10 would not find it to be acceptable that salespeople were arm  
11 wrestling and carrying each other around.

12 He wrote a statement of how the injury occurred on  
13 February 9, 2016, which is Exhibit G. After a few days or  
14 weeks, an investigator came out. Mr. Hurtado did not tell the  
15 investigator that he was arm wrestling because he was afraid he  
16 would get into trouble with the management. He regrets that he  
17 didn't tell him the truth.

18 Since Mr. Hasan's arm was hurt, they have not been  
19 engaging in pushing or shoving. After the injury, there was a  
20 meeting, and he was told by the general manager to not engage  
21 in any horseplay or arm wrestling and that that had to stop.  
22 The company got rid of the table.

23 **CROSS-EXAMINATION:** (By Mr. Baklan)

24 He is still employed at Universal City Nissan. He is  
25 still friends with Mr. Hasan. One night they had a get  
together at his place. Just the young guys engage in horseplay  
at work. They would horseplay if it was slow or just to kill  
time. There were times when there were no customers at all.  
Downtime is Monday through Thursday, except from 10:00 to 12:00  
and sometimes in the evenings.

When they would tease each other and arm wrestle, you  
could say it brings the guys closer together and makes them a  
better team.

He has seen techs installing the camera, but he doesn't  
recall when it occurred. It could have been before the date of  
the injury. There could have been a camera showing the table  
at the time of the injury. The one he is thinking of is newer.  
He would go into the manager's office once or twice a day. He  
would see the displays of what the security cameras were  
showing. In his opinion, it would be easy to see what was  
happening on the premises.

1 He would tease Abraham, and Abraham would tease him.  
2 There was nothing physical. He would never carry Louis. He  
3 has never seen anyone carry him. The video taken by Mr. Hasan  
4 shows Mr. Hurtado, George Dominguez, Cesar, and Jesus. The  
5 video shows what he means by the word "horseplay." In the  
6 video is the table where Mr. Hasan was injured.

7 Mr. Hurtado has carried someone before while horseplaying.  
8 He has been written up for horseplay. Even though he knew it  
9 was not acceptable, he still did it. They tried not to  
10 horseplay when managers were around. The closer would not hang  
11 out with them when they horseplayed.

12 He doesn't recall if anyone else got in trouble for  
13 horseplay except when Sina and another salesman were  
14 horseplaying and they also got written up. This was months  
15 before the incident with Mr. Hasan.

16 They would have Friday meetings to keep them motivated and  
17 stay on point. He does not recall telling the investigator he  
18 was not written up. If it is in the audio, then he did.

19 **EXAMINATION BY THE COURT:**

20 He did not see the table tilt, but it may have. He didn't  
21 see it. The umbrella wasn't in place. When they sit down, the  
22 table wobbles a little bit.

23 **REDIRECT EXAMINATION:** (By Mr. Rosenfeld)

24 If they push on the table, they can get it to wobble. It  
25 may have been wobbling when they were arm wrestling, but he  
does not remember this.

\* \* \* \*

LOUIS DAVID ORTEGA,  
called as a witness by the defendant, having been duly  
sworn, testified substantially as follows:

**DIRECT EXAMINATION:** (By Mr. Rosenfeld)

Mr. Ortega was hired as a sales consultant in January  
2016. He just got promoted to Sales Internet Manager. He was  
working on the day Mr. Hasan was hurt. He didn't see anything.  
He was on his cell phone, and he heard a snap. He got up and  
looked, and Mr. Hasan had broken his arm and was in pain. He  
called 911.

1 He was 10 to 15 feet away from where the incident  
2 occurred. Fifteen or 20 minutes before the injury, Mr. Hasan  
3 and Javier were pulling back and forth for about ten seconds or  
4 so. They were playing around, which was not something they  
5 regularly did there. He had only been working there for  
6 approximately three weeks at that time. He had never seen  
7 people goofing around or carrying each other. No managers  
8 would be involved in that activity. He had never played around  
9 himself until that day, and it never happened again. They were  
10 there to work, not to play around. If a manager had been  
11 there, they would have been sent home or written up.

12 He has never seen Abraham engage in horseplay with him or  
13 anyone in front of him. He is mostly in the office.

14 **CROSS-EXAMINATION:** (By Mr. Baklan)

15 A closer gets involved to help you close the deal. The  
16 closer sits inside the showroom. Sometimes he would walk  
17 around the lot for ten minutes or so.

18 Javier reminded him what had happened that day. They were  
19 talking or laughing about something and fooling around. They  
20 were saying to each other, "Let me see your hand and see if you  
21 are strong enough to pull someone forward." Javier never told  
22 him about fooling around with anyone else. There are four  
23 closers and four managers from Monday through Thursday. He  
24 knows there are security cameras because you can see them in  
25 front of the building and at the used car lot. There was also  
one around the location where they worked in the lot.

\* \* \* \*

17 **ANDREW ABRAHAM DAVILA,**  
18 called as a witness by the defendant, having been duly  
19 sworn, testified substantially as follows:

20 **DIRECT EXAMINATION:** (By Mr. Rosenfeld)

21 Mr. Davila is an assistant sales manager or closer and has  
22 worked for three years for Universal City Nissan in that  
23 capacity. He spends most of his time on the sales floor where  
24 the deals are being negotiated. His shift is typically ten  
25 hours. He spends nine hours, 30 minutes indoors. The rest of  
the time, he would check out the lot or have lunch.

26 He has never engaged in pushing or shoving with the sales  
27 staff. He talks to them and shakes their hands. There is no  
28 arm wrestling or picking them up or carrying them around.

1 There is no roughhousing. He has not seen the sales staff do  
2 arm wrestling. It would not be acceptable to see them arm  
3 wrestling. If he did, he would write them up and send them  
4 home. He has not observed any roughhousing, any pushing or  
5 pulling. It would be unacceptable. He would report it and  
6 stop it.

7 He does not spend much time at Altima Point. He walks by  
8 for a minute and makes sure the lot is clean and the clients  
9 are being helped.

10 **CROSS-EXAMINATION:** (By Mr. Baklan)

11 It is rare if there are no customers. There is always  
12 something to do as a sales manager. It gets busier in the  
13 evenings, even on weekdays.

14 There are security cameras on the premises. The general  
15 manager, Steve, and Andres, the bookkeeper, have access to the  
16 cameras. The desk managers could get access. Everything could  
17 be recorded.

18 \* \* \* \*

19 **GERMAN FLORES,**

20 called as a witness by the defendant, having been duly  
21 sworn, testified substantially as follows:

22 **DIRECT EXAMINATION:** (By Mr. Rosenfeld)

23 Mr. Flores works as a desk manager for Universal City  
24 Nissan and has had that position for five years. In February,  
25 there was a camera pointed at Altima Point showing the general  
area. It was not very clear. You could get a general idea and  
could zoom in if you wanted to. They just upgraded the  
cameras, and it is easier to see what is going on in the  
general area.

He was not aware that this behavior was going on before  
the date of the injury. That type of behavior is not  
tolerated.

His typical shift is 10 to 12 hours in length. He is in  
the sales tower for 90 to 95 percent of the time. He does walk  
through the dealership to see what is going on. The first time  
he saw employees carrying each other around was when he saw the  
video. They are supposed to focus on the customer. If not,  
they are supposed to be making phone calls and following up  
with the customers.

1 He has never participated in pulling, pushing, or carrying  
2 members of the sales staff. He holds mandatory meetings with  
3 the sales staff on Fridays. It is a one-hour meeting. During  
4 the week, they go over things for a few minutes each day.

5 He has discussed with the staff how they should be  
6 behaving in the lot. They are not allowed to horseplay in the  
7 lot. After Mr. Hasan was hurt, they had a general meeting, and  
8 he stated that that behavior would not be tolerated.

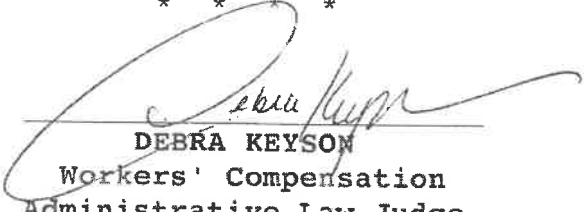
9 He knows Mr. Hasan. He is a good and pleasant employee.  
10 He has nothing against him.

11 **CROSS-EXAMINATION:** (By Mr. Baklan)

12 Almost all of the cameras got upgraded. The business  
13 started in 1977. The cameras were functional, but the pictures  
14 were not clear. There was one monitor for several desks. He  
15 never personally zoomed in on anything. Four managers could  
16 see the TV at the same time Monday through Thursday. There  
17 were five managers on Friday and six on Saturday.

18 He has never written anyone up for horseplay. He has  
19 worked for the company for 17 years. They don't talk about  
20 horseplay every Friday. They sometimes talk about horseplay  
21 during the week.

22 [The parties rest.]

23 \* \* \* \* \*  
24   
25 DEBRA KEYSON  
Workers' Compensation  
Administrative Law Judge

26 MINUTES AND SUMMARY COMPLETED AND RETURNED TO JUDGE ON:  
27 Date: June 15, 2016 By: Natasha Kaupanger-Swacker



STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION

06-15-2016

PROOF OF SERVICE

Case Number: ADJ10300458

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SHERMAN OAKS

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VAN NUYS      NIZINSKILAW@YAHOO.COM

UNIVERSAL CITY      Employer, 3550 CAHUENGA BLVD WEST LOS ANGELES CA 90068  
NISSAN INC

6-13-16 Minutes of Hearing and Summary of Evidence  
filed and served by US Mail or e-mail on counsel and parties above.

Date: 6-15-16

By: Natasha M. Kaupanger-Swacker

*Natasha M. Kaupanger-Swacker*

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4  
5 WORKERS' COMPENSATION APPEALS BOARD  
6 FOR THE STATE OF CALIFORNIA

7 MAHEDE HASAN

) CASE NO: ADJ10300458

8 Applicant,

9 vs.

) DEFENDANT'S ANSWER TO PETITION  
) FOR RECONSIDERATION

10 UNIVERSAL CITY NISSAN, INC/ICW  
11 GROUP

12 Defendant.  
13  
14

15 COMES NOW, Defendant Insurance Company of the West in answer to a Petition for  
16 Reconsideration from counsel for the applicant dated July 1, 2016 and served by mail on July 5,  
17 2016. Defendant has also received a report and recommendation from the Honorable Debra  
18 Keyson dated July 7, 2016 and served by mail on the same date.

19 Defendant generally agrees with the report and recommendation of Judge Keyson, setting  
20 forth the clear conclusion that applicant was injured while arm wrestling with a co-worker named  
21 Javier Hurtado, and that there was no significant evidence that the employer condoned such  
22 behavior.  
23

24 The Applicant would quibble over whether or not the injury occurred while arm  
25 wrestling. On Page 6, Lines 3 – 7 of the Minutes of Hearing/Summary of Evidence of the  
26 6/13/16 Trial (“MOH/SOE”), the applicant confirms testimony that he was arm wrestling, but  
27 also that him and another employee were "pulling against each other." The Petition for  
28

1 Reconsideration then indicates that this description "hardly resembles the type of activity done  
2 while actually arm wrestling." On cross-examination, the applicant testified "he was arm  
3 wrestling with Javier Hurtado when he was hurt." MOH/SOE 5:10 – 11. He also testified "when  
4 he was arm wrestling with Javier, he felt pain in his arm and started crying. He told them that his  
5 arm was broken or displaced." MOH/SOE 5:22 – 24. Javier Hurtado testified that he was arm  
6 wrestling with the applicant. MOH/SOE 7:18 – 19. It is unclear to defendant how any  
7 conclusion could be reached that the applicant and Mr. Hurtado were engaged in any activity  
8 other than arm wrestling.  
9

10  
11 The only evidence that the employer would condone such behavior is from the applicant.  
12 Even that testimony is highly questionable as, on direct testimony, the applicant testified to  
13 observing co-workers Javier and Luis pushing each other. The applicant told them to "stop it"  
14 because there was a camera there and they could get in big trouble. MOH/SOE 4:8 – 10. On  
15 cross-examination, the applicant tried to back away from that statement, indicating he was  
16 actually concerned about them getting hurt, not getting in trouble. Defendant maintains this  
17 testimony was self-serving and unreliable. MOH/SOE 5:18 – 20.  
18

19 Co-workers Javier Hurtado and Luis David Ortega testified to engaging in horseplay with  
20 other employees, but never when there was a supervisor to observe. MOH/SOE 8:4 – 7; 10: 4 –  
21 6.  
22

23 Mr. Hurtado provided un rebutted testimony that two other employees had been given  
24 warnings for horseplay. MOH/SOE 9:7 – 9.

25 There are reasons to doubt the credibility/reliability of the applicant. According to  
26 medical reporting from Kaiser dated February 11, 2016, he reported to the doctors that he tripped  
27 and fell after a concrete table had fallen. Defense Exhibit D; MOH/SOE 6:11 – 13. He told a  
28

1 different facility that a concrete table had tilted, resulting in him hitting his right arm.  
2 MOH/SOE 6:8 – 11. The applicant testified he either could not recall making these statements,  
3 or disputed that this is what he told the doctors. MOH/SOE 6:10, 12 – 13. The most accurate  
4 description of what took place appears to be the initial visit at Providence Saint Joseph, where  
5 the medical reporting indicates the applicant was engaged in horseplay, was grappling and  
6 pushing against another person when he felt a pop and a very strong pain in his right upper arm.  
7 Defense Exhibit B; MOH/SOE 6: 5 – 8. Even here, the applicant tried to back out from some of  
8 that testimony, indicating that he could not recall what he told the doctors. MOH/SOE 6:7 – 8.  
9

10  
11 The Application for Adjudication in this matter raises significant issues about the  
12 credibility of the applicant. The claimed injury on the Application is a fracture suffered when a  
13 table collapsed. This is an undeniably false statement of how the injury occurred, as even the  
14 applicant confirmed the table did not collapse. MOH/SOE 6: 2. Javier Hurtado also confirmed  
15 the table did not collapse. MOH/SOE 7: 25.  
16

17 The applicant is a young man who suffered an unfortunate injury while arm wrestling  
18 with a co-worker. There was credible testimony that these activities were not condoned by the  
19 employer, placing the applicant outside of the workers' compensation bargain.  
20

21 Based on the foregoing, defendant respectfully requests the Petition for Reconsideration  
22 be denied.

23 DATED: July 15, 2016

24 Respectfully submitted,

25 **GREENUP, HARTSTON & ROSENFELD, LLP**

26   
27 Steven M. Rosenfeld  
28

VERIFICATION  
(CCP 446 and 2105.5)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

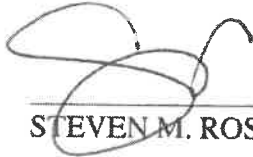
RE: HASAN, MAHEDE V. UNIVERSAL CITY NISSAN, INC; ICW GROUP  
ADJ10300458

I, Steven M. Rosenfeld, declare that I am attorney of record for Defendant ICW Group in the above-entitled action. I have read the forgoing document entitled:

**DEFENDANT'S ANSWER TO PETITION FOR RECONSIDERATION**

and know the contents thereof based upon my own knowledge unless otherwise stated upon information and belief, and as to those matters, I believe same to be true.

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct. Executed this 15<sup>th</sup> day of July, 2016, at Sherman Oaks, California.



---

STEVEN M. ROSENFELD

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is Greenup, Hartston & Rosenfeld, LLP 15060 Ventura Boulevard, Suite 100, Sherman Oaks, CA 91403.

On July 15, 2016, I served the foregoing document(s) described as: **DEFENDANT'S ANSWER TO PETITION FOR RECONSIDERATION; VERIFICATION** on the interested parties in this action by placing the original or a true copy thereof enclosed in a sealed envelope addressed as follows:

**WORKERS COMPENSATION APPEALS BOARD**  
6150 Van Nuys Blvd., Room 105  
Van Nuys CA 91401

Anthony Vigil  
ICW GROUP  
P.O. Box 85563  
San Diego, CA 92186

**NIZINSKI & ASSOCIATES**  
14622 Victory Blvd 2nd Fl.  
Van Nuys, CA 91411

XX (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Sherman Oaks, CA in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on July 15, 2016, at Sherman Oaks, CA 91403.

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Pauline Anguiano  
Type or Print Name

  
Signature

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**WORKERS' COMPENSATION APPEALS BOARD**  
**STATE OF CALIFORNIA**

**MD MAHEDE HASAN,**

*Applicant,*

vs.

**UNIVERSAL CITY NISSAN, INC;  
INSURANCE COMPANY OF THE WEST  
WOODLAND HILLS,**

*Defendants.*

Case No.: ADJ10300458  
(Van Nuys District Office)

**ORDER DENYING  
PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, and for the reasons discussed below, we will deny reconsideration.

Participants in horseplay are generally not entitled to workers' compensation unless the employer condoned the horseplay. (*Hodges v. Workers' Comp. Appeals Bd.* (1978) 82 Cal.App.3d 894, 901 [43 Cal. Comp. Cases 870].) In this case, after reviewing the evidence in the record and the trial testimony, the WCJ found that the injury sustained by applicant was due to horseplay and that the employer did not condone horseplay. The Appeals Board shows great deference to a WCJ's findings on credibility. "[W]here the findings are supported by 'ample, credible evidence' or 'substantial evidence,' they are entitled to great weight because of the referee's 'opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand. . .'" (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500].)

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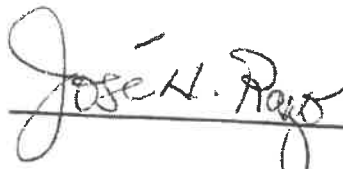
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For the foregoing reasons,


**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**



**JOSE H. RAZO**

**I CONCUR,**



**DEPUTY RICHARD L. NEWMAN**



**MARGUERITE SWEENEY**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**AUG 17 2016**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**EDD  
GREENUP HARTSTON  
MD MAHEDE HASAN  
NIZINSKI ASSOCIATES**



AUG 1 9

*PG/acw*

**HASAN, Md Mahede**