

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

ALEJANDRO VAZQUEZ,

Applicant,

vs.

AVITUS GROUP, HONG CHANG CORP;
GALLAGHER BASSETT, ZURICH;

Defendants.

Case No. ADJ12513168

FINDINGS & ORDER

LAW OFFICE OF Solimon & Rodgers, P.C.
By Frank Cabibi, Esq.
Attorney for Applicant

LAW OFFICE OF Greenup, Hartston & Rosenfeld
By Samantha R. Fritzel, Esq.
Attorneys for Defendant

Applications having been filed herein; all parties having appeared and the evidence and testimony having been heard on the record, the **Honorable Charles Bentley**, Workers' Compensation Administrative Law Judge ("WCJ"), finds and orders as follows:

FINDING OF FACT:

1. Applicant failed to sustain his burden of proving he sustained industrial injury to his head, mouth, leg, stress and psyche, arising out of and in the course of his employment with defendant Avitus; Hong Chang Corporation., on February 23, 2019.
2. Applicant is found to have been the initial physical aggressor under Labor Code Sec 3600(a)(7).

ORDER:

IT IS ORDERED that applicant takes nothing on this claim.

DATE: November 4, 2020



Charles Bentley
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

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

WCAB Case No. ADJ12513168

Alejandro Vazquez	vs.	Avitus / Hong Chang Corporation ; American Zurich Insurance
Date of Injury		February 23, 2020
Workers' Compensation Administrative Law Judge:		CHARLES S. BENTLEY
Date:		November 4, 2020

OPINION ON DECISION

INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT:

The following facts are not disputed. The Applicant was injured when he was involved in a physical altercation with a third party (not a co-worker). The applicant was injured during the altercation which required him to report the injury to his employer as he could not drive his truck because of the injury he received.

The question is whether the injury occurred in the course of employment and whether the Applicant's benefits are barred under Labor Code sec 3600(a)(7) if the applicant was the initial physical aggressor.

The applicant's testimony was unrebutted and is substantially as follows. The applicant arrived at his deliver stop and could not park his truck because of another drive blocking his way. Once the applicant was able to park his vehicle; he exited the vehicle to confront the other drive. The initial exchange of words is not part of the record. After saying what he had to say, the applicant turned to leave. At that time, the other driver said offensive things to the applicant. Rather than return to his truck, the applicant turned and went back to confront the other driver and said, "what's your problem?"

The other driver exited his truck and approached the applicant and said, "come on." The Applicant does not recall who made the first punch, but said he was acting in self defense. The Applicant was hit once but the other party was stepping on his foot which resulted in a broken foot.

It is clear that the applicant had several opportunities to deescalate the situation which he initiated. It is also undisputed that the Applicant approached the other driver first, and the applicant turned and reengaged with

ALEJANDRO VAZQUEZ

ADJ12513168
Document ID: -7021395381401419776

the other driver after the initial interaction. Therefore, by approaching the other driver and saying 'What's your problem?' The applicant initiated the contact and was the aggressor. Even though the applicant states he cannot remember who through the first punch, that is a self serving statement and is hard to believe. But what is apparent is that the applicant was not backing down or retreating from the altercation.

Furthermore, after the injury was reported the applicant was referred to medical treatment. The applicant testified that he told the doctor that he fell off of the truck rather than being truthful about being in the fight and having his foot stepped on. On cross-examination, the applicant testified that he told the doctor this because the truth would complicate issues and he would not get benefits. Therefore, while fraud has not been raised, it appears that the applicant has admitted to making a material misrepresentation of a fact for the purpose of obtaining workers compensation benefits. If the applicant is willing to make this false statement to the doctor, then he would also be willing to testify regarding the altercation in a way favorable to the applicant receiving benefits.

Therefore, given the circumstances of the applicant making the initial contact with the other driver, and by turning to confront the other driver and saying 'what's up?' It is concluded that the applicant not only left the course of his employment but was also the initial physical aggressor. The Applicant's statements that he does not recall who threw the first punch and, that he acted in self defense after his multiple aggressive acts, is not believable.

OTHER ISSUES:

All other issues are rendered moot by the finding that there was no injury arising out of and occurring in the course of employment. Jurisdiction over any valid liens or cost is reserved. There are no funds from which to award an attorney's fee.

DATE: November 4, 2020



Charles Bentley
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Service by mail on interested parties shown on the Official Address Record

Date: 11/4/2010 by: 
Keith Ruiz

ALEJANDRO VAZQUEZ

ADJ12513168
Document ID: -7021395381401419776

11-04-2020

OFFICIAL ADDRESS RECORD

Case Number: ADJ12513168

(√) ALEJANDRO VAZQUEZ Injured Worker, PO BOX 5155 WHITTIER CA 90607

AVITUS GROUP Employer, 3040 SATURN STREET STE 201 BREA CA 92821

EDD SDI CHINO HILLS Lien Claimant, PO BOX 60006 CITY OF INDUSTRY CA 91716,
DIEAMS222@EDD.CA.GOV

(√) GALLAGHER BASSETT 4040 SACRAMENTO Claims Administrator, PO BOX 2934 CLINTON IA 52733

(√) GREENUP HARTSTON LONG BEACH Law Firm, 444 W OCEAN BLVD STE 1530 LONG BEACH CA 90802

HONG CHANG CORP Uninsured Employer, 10135 PAINTER AVE SANTA FE SPRINGS CA 90670

(√) SOLIMON RODGERS POMONA Law Firm, 981 CORPORATE CENTER DR STE 100 POMONA CA 91768,
NOTICE@SOLIMONRODGERS.COM

(√) ZURICH LOS ANGELES Claims Administrator, PO BOX 968005 SCHAUMBURG IL 60196

I am over age 18, not a party to this proceeding, and am employed by the State of California, DWC, Pomona District Office of the WCAB, located at 732 Corporate Center Drive, Pomona, CA 91768.

On 11/4/2020 I deposited in the United States mail at 732 Corporate Center Drive, Pomona, CA 91768, a sealed envelope containing a copy of FINDINGS & ORDER: OPINION ON DECISION, with postage fully paid, addressed to the party or parties with check mark (√) above. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: 

ALEJANDRO VAZQUEZ

ADJ12513168
Document ID: -7021395381401419776