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State of California  
DIVISION OF WORKERS' COMPENSATION  
WORKERS' COMPENSATION APPEALS BOARD

CHANG HAM,  
  
*Applicant,*  
  
vs.  
  
HALLMARK CLEANERS; STAR  
INSURANCE COMPANY c/o ILLINOIS  
MIDWEST INSURANCE AGENCY,  
  
*Defendant(s).*

WCAB No. ADJ7345249  
Los Angeles District Office

FINDINGS AND ORDER

THE HONG LAW FIRM  
By: Robert Hong, Esq.  
Attorneys for Applicant

BRADFORD & BARTHEL  
By: Sophia Martinez, Esq.  
Attorneys for Defendant

\* \* \* \* \*

The above-entitled matters having been regularly heard and submitted, the Honorable Douglas A. Watkins, Workers' Compensation Judge, now makes his decision as follows:

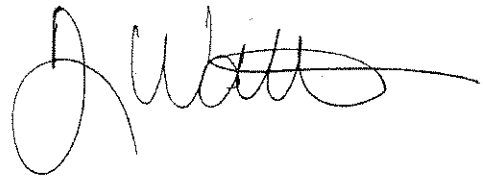
**FINDINGS OF FACT**

1. Applicant, CHANG HAM, born March 19, 1947, while employed during the period May 28, 2009 through May 28, 2010, as a spotter, at Santa Monica, California, by HALLMARK CLEANERS, did not sustain injury arising out of and occurring in the course of employment to the head, internal, chest, low back, legs, insomnia, psyche and vision.

2. Applicant's claim is barred, in part, by the Labor Code Section 3208.3(h) defense of lawful, nondiscriminatory good faith personnel action.

**ORDER**

**IT IS ORDERED** that Applicant take nothing by the filing of his Application for Adjudication of Claim.



DATED: August 19, 2011

DOUGLAS A. WATKINS  
WORKERS' COMPENSATION JUDGE

"A Petition for Reconsideration from this decision shall be filed only at the Los Angeles district office of the Workers' Compensation Appeals Board"

WCAB CASE NO.: ADJ7345249

CHANG HAM

vs.

HALLMARK CLEANERS; STAR  
INSURANCE COMPANY c/o  
ILLINOIS MIDWEST INSURANCE  
AGENCY

JUDGE:

DOUGLAS A. WATKINS

DATE OF INJURY:

MAY 28, 2009 – MAY 28, 2010

OPINION ON DECISION

It is stipulated that Applicant, Chang Ham, born March 19, 1947, was employed during the period May 28, 2009 through May 28, 2010, as a spotter, at Santa Monica, California, by Hallmark Cleaners, during which time he claims to have sustained injury arising out of and occurring in the course of employment to the head, internal, chest, low back, both legs, insomnia, psyche and vision.

BACKGROUND:

Applicant worked for Hallmark Cleaners from February 7, 2005 through May 28, 2010. He testified he worked 12 – 13 hours per day, 5 days per week, and 4 hours on Saturday. He stated he stood throughout his shift, lifted clothing weighing up to 20 – 35 pounds several times per day, and operated the machinery. He also said he was exposed to chemicals, including peroxide, Pyratex and Picrin, for 10 hours per day.

Defense witness Jasmine Curukcuyan testified Applicant was scheduled to work from around 5:30 or 6:00 a.m. until about 1:00 or 2:30 in the afternoon (i.e., up to 9 hours per day), though she also testified he was there until at least 3:30 p.m. on May 27, 2010, so it appears he may have worked more than 9 hours on occasion. She stated the heaviest load he would have to lift is 12 – 15 pounds. She did not dispute that Applicant stood during his shift (though he did have breaks), or that he was exposed to the chemicals alleged.

Jasmine became co-owner of the store with her husband, Yervant Edward Curukcuyan, and another man, Ara Ededon, on March 2, 2009. Ara supervised Applicant until May 10, 2010, when Jasmine began to directly supervise him.

Applicant claims he became stressed at work after Jasmine began supervising him. He claims she tried to change the way he did his work, criticized him repeatedly, belittled him, and yelled at him in front of other employees. Jasmine testified there were several complaints from customers regarding Applicant's work which she confronted him about, but she never shouted or screamed at Applicant, or belittled him.

Applicant claims he injured his back and lower extremity due to the physical requirements of the job, especially the long hours of standing. He contends the rest of his injuries were caused by exposure to the chemicals and/or the stress from dealing with Jasmine.

On May 28, 2010, Applicant fainted at work. He testified he felt lightheaded and fell forward onto his face. Jasmine testified she came to work around 6:50 a.m. that day, and found Applicant lying on the floor with his arms folded up on some pants that were rolled up, and his head on his arm. (Applicant stated that as he fell, he grabbed a pair of pants that were rolled up in a basket near him, and threw them onto the floor.) Jasmine testified that other employees also saw Applicant on the floor and assumed he was sleeping. Jasmine tried to wake Applicant, but when he didn't respond, she called paramedics. They were unable to revive Applicant, so he was transported to Santa Monica Hospital.

### **THE MEDICAL RECORD:**

The records from Santa Monica Hospital were submitted as Defendant's Exhibit C. Applicant was admitted around 7:18 a.m., drowsy and unresponsive. The initial notes state he appears in no apparent distress. After several hours he became alert and conscious. He complained of headaches and back pain. Applicant's brain CT scan, EKG and lumbar spine X-rays were normal. The chart notes state "Client was at work at a dry cleaning establishment when he laid on the floor and was unresponsive in a catatonic state. . . . he said a new owner took over three weeks ago and he has been under a great deal of stress, hasn't been able to eat, especially at work, and said his sense of taste is gone." The diagnoses from the attending physician were "AMS, resolved, Stress Reaction, Gastritis, Acute Low Back Pain."

Applicant obtained a primary treating physician's report from Alon Englanoff, M.D., dated June 9, 2010 (Applicant's Exhibit 2), which deferred comment on causation pending completion of diagnostic studies and specialty consultations.

Applicant also obtained an orthopedic consultation report from Kourosh Kevin Shamlou, M.D., dated August 30, 2010 (Applicant's Exhibit 1), which is addressed to Dr. Englanoff. The report states Applicant had a mechanical fall on May 28, 2010, as a result of which, he has pain in his neck, headaches, upper back and lower back. There is no report from Dr. Englanoff incorporating Dr. Shamlou's report or commenting on his findings.

Defendant submitted no medical reports, other than those contained in the records from Santa Monica Hospital.

### **INJURY AOE/COE & THE GOOD FAITH PERSONNEL ACTION:**

There is no medical evidence that Applicant sustained a cumulative trauma orthopedic injury from his job at Hallmark Cleaners. Dr. Shamlou found he injured his neck and

back as a result of the fall on May 28, 2010. It is not even clear Applicant did fall that day. His testimony that he got light-headed while he was standing up and fell to the floor, grabbing a rolled up pair of pants and throwing them to the floor under him as he went down is questionable, to say the least. According to Jasmine, several employees saw Applicant on the floor in a position that suggested he was sleeping, not that he had fallen down, and the photograph (Defendant's Exhibit D) supports that. Applicant's testimony is also inconsistent with the information in the Santa Monica Hospital records, apparently provided by Applicant himself, stating that he "laid on the floor" that day.

There is also no medical evidence that exposure to chemicals at work caused any of Applicant's symptoms.

There is no medical report showing Applicant sustained a compensable psychiatric injury due to his work. While the Santa Monica Hospital records show Applicant suffered stress and anxiety due to work, those records are not substantial evidence of an industrial psychiatric injury. A psychiatric injury is compensable if it is a mental disorder that causes disability or need for medical treatment, *and is diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition Revised (DSM-III) or other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.* Labor Code Sections 3208.3, 139.2. There is no report with such a diagnosis in this case.

Moreover, even if Applicant has a diagnosable psychiatric injury, the injury would not be compensable unless Applicant shows by a preponderance of the evidence that actual events of employment were predominant as to all causes of the psychiatric injury. Labor Code Section 3208.3(b)(1). There is no medical report addressing the predominant cause issue.

All we are left with, then, is the records from Santa Monica Hospital, which state Applicant was under stress from work and that he had an anxiety/stress reaction and gastritis as a result. He required medical treatment for those conditions, so Applicant has a prima facie claim for industrial injury. However, the issue is whether the lawful, nondiscriminatory good faith personnel action (good faith personnel action) defense of Labor Code Section 3208.3(h) bars his claim.

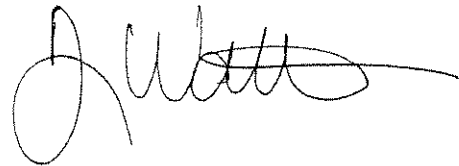
There are numerous cases holding that the good faith personnel action defense applies not just to psychiatric injuries but to stress-induced physical injuries as well. (See, *Lopez v. Workers' Comp. Appeals Bd.* (2001) 66 Cal. Comp. Cas. 284; *Lowenstein v. Workers' Comp. Appeals Bd.* (1999) 64 Cal. Comp. Cas. 461; *Blue v. Workers' Comp. Appeals Bd.* (2004) 69 Cal. Comp. Cas. 496; *Mack v. Workers' Comp. Appeals Bd.* (1998) 63 Cal. Comp. Cas. 769; *Price v. Workers' Comp. Appeals Bd.* (2000) 65 Cal. Comp. Cas. 970.)

On the other hand, there are cases holding that the good faith personnel action defense does not apply to non-psychiatric injuries. (See, *City of Cypress v. Workers' Comp. Appeals Bd. (Spernak)* (1996) 61 Cal. Comp. Cas. 612; *The May Company Dept.*

*Stores v. Workers' Comp. Appeals Bd. (Hull)* (2001) 66 Cal. Comp. Cas. 1378;  
*Verizon/GTE v. Workers' Comp. Appeals Bd. (Garth)* (2002) 67 Cal. Comp. Cas. 856.

The determining factor in the above cases appears to be whether the claimed injury is primarily psychiatric with physical manifestations, or whether it involves a discrete, diagnosable internal condition. In this case, the internal diagnoses – stress reaction and gastritis – are clearly physical manifestations of the alleged psychiatric injury. Therefore, the good faith personnel action defense is relevant.

As a factual matter, the testimony of Jasmine was more credible than that of Applicant. It is found that Jasmine did not belittle Applicant or scream at him in front of others. It is further found that Applicant's stress at work was entirely caused by Jasmine's comments and criticisms, which were given to him legitimately in her role as his supervisor. Those criticisms were lawful good faith nondiscriminatory personnel actions. Therefore, Applicant's claim is barred by Labor Code Section 3208.3(h).

A handwritten signature in black ink, appearing to read 'D. Watkins', with a long horizontal flourish extending to the right.

**DOUGLAS A. WATKINS**  
Workers' Compensation Judge

## OFFICIAL ADDRESS RECORD

Case Number: ADJ7345249

(√) BRADFORD BARTHEL TARZANA	Law Firm, 18801 VENTURA BLVD STE 200 TARZANA CA 91356, E- DOCS@BRADFORDBARTHEL.COM
(√) CHANG HYUNG HAM	Injured Worker, 156 S MERIDITH AVE #106 PASADENA CA 91106
(√) F AND A LIEN SERVICES POMONA	Law Firm, 861 E LA VERNE AVE POMONA CA 91767
HALLMARK CLEANERS AND LAUNDRY INC	Employer, 1907 WILSHIRE BLVD SANTA MONICA CA 90403
(√) HONG LAW LOS ANGELES	Law Firm, 3550 WILSHIRE BLVD STE 1750 LOS ANGELES CA 90010
MEADOWBROOK INSURANCE LAS VEGAS	Insurance Company, 1707 VILLAGE CENTER CIR STE 100 LAS VEGAS NV 89134, JOSEPH.SGRO@MEADOWBROOK.COM
(√) MEDILAB CORPORATION	Lien Claimant - Other, 412 W BROADWAY STE 210 GLENDALE CA 91204
(√) PHARMA RX GLENDALE	Law Firm, PO BOX 250580 GLENDALE CA 91225
(√) RMS MEDICAL GROUP	Lien Claimant - Other, 18062 IRVINE BLVD STE 206 TUSTIN CA 92780
(√) STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT	Lien Claimant - Other, PO BOX 513096 LOS ANGELES CA 90051
(√) WS PHYSICAL THERAPY NETWORK	Lien Claimant - Other, PO BOX 160 LOS ALAMITOS CA 90720

I am over age 18, not a party to this proceeding, and am employed by the State of California, DWC, Los Angeles District Office of the WCAB, located at 320 W. 4<sup>th</sup> Street, Los Angeles, CA., 90013,

On 08/22/11 I deposited in the United States mail at 320 W. 4<sup>th</sup> Street, Los Angeles, CA., 90013, 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: 