

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

Case No. ADJ 2915692

Etty Fashandi, (Deceased),

Applicant,

vs.

Hitachi Chemical Diagnostics Inc. and
Broadspire, A Crawford Company on behalf of
Sampo Japan Insurance Company of America,

Defendants.

FINDINGS AND ORDERS

The above-entitled matter having been heard by and submitted for decision to Terri Ellen Gordon, Workers' Compensation Judge, said Judge now makes her decision as follows:

FINDINGS OF FACT

1. The stipulations as set forth in the minutes of hearing on March 5, 2012 are affirmed and adopted herein.
2. Etty Fashandi (deceased), born August 25, 1950 was employed on March 6th, 2008, as a process engineer scientist at Mountain View, California, by Hitachi Chemical Diagnostics, Inc., and claims to have sustained injury arising out of and in the course of employment resulting in death. At the time of injury, the employer's workers' compensation carrier was Sampo Japan Insurance Company of America, administered by Broadspire, a Crawford Company.
3. Applicant's claim was timely denied.
4. Defendants need not present witnesses with respect to their affirmative defenses on the first day of trial.
5. There are no known AOE/COE reports.
6. Defense witnesses and exhibits may be disclosed at a later time with discovery to remain open.
7. No attorney fees have been paid.

8. Ety Fashandi (Deceased) ("Applicant") did not sustain injury arising out of and in the course of employment resulting in death.

ORDER ADMITTING DOCUMENTARY EVIDENCE

It is ordered that Applicant's Exhibit 1 be received into evidence.

ORDER

IT IS ORDERED that Applicant take nothing as a result of the Application filed in the above-entitled case:

a. Applicant did not sustain injury arising out of and in the course of employment, as set forth in Finding of Fact Nos. 1 through 8 herein.

DATE: 5/3/2012

Terri Ellen Gordon

Terri Ellen Gordon
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served by mail on all parties listed on the Official Address record on the above date.

ON: 5/3/2012
BY: R. Oosterbaan

Etty Fashandi (Deceased)

vs.

**Hitachi Chemical Diagnostics Inc.,
and Broadspire, a Crawford
Company on Behalf of Sampo Japan
Insurance Company of America**

Judge: Terri Ellen Gordon

ADJ 2915692

Opinion on Decision

This matter was tried on March 5, 2012. The issue at trial was injury arising out of and in the course of employment resulting in death. All other issues were deferred. Testimony and documentary evidence were received and the case was submitted for decision on March 5, 2012.

Parviz Zowghi, Applicant's husband, testified at trial. He explained that his late wife had worked for Hitachi, a medical diagnostic company, for about fourteen (14) years as a Process Engineer Scientist. Her work involved the making of medicines. She was happy and successful during the initial years of her employment and received annual promotions and raises. She was initially hired as a Senior Scientist in 1994 and had been promoted to Manager of Process Engineering as of 2000. In 2006 and 2007, Hitachi started to give his wife a hard time by not giving her annual evaluations and later had a part-time consultant with less experience and education evaluate her. Applicant complained and was upset when the employer representative shook his finger at her. Hitachi also hired two new managers (with less experience and education) who took over the supervision of five of the seven scientists she had previously managed, held meetings without her, and took credit for her work. Applicant worked day and night and often on the week-end. In January or February 2008, Hitachi reduced Applicant's salary by half and gave her a new job title with more responsibility. She could not sleep, her life was too hard at work, and she became sick. She was diagnosed with

cancer at the end of 2008 and started treatment in January 2009. Mr. Zowghi's late wife filed this claim and asked him to continue on with it and obtain justice. He believes Hitachi's treatment of his late wife caused her to be sick.

Applicant's Exhibit 1 is a seventeen (17) page document prepared by Applicant reflecting her fourteen-year employment history with Hitachi and letters to individuals within the company. It describes her initial hire as a Senior Scientist in 1994, her salary increases and promotions up to Manager of Process Engineering in 2000 along with her job responsibilities, her employer's failure to provide her with a performance appraisal for 2005, and her complaints and concerns about not receiving an appraisal. Exhibit 1 also reflects that the staff she supervised was transferred to other labs and departments and that although she put in longer hours and worked many week-ends, she was left out of meetings and others received credit for her work. She received a review in August 2007 and a demotion to Process Engineer. Applicant was very upset, contacted her prior boss about the situation, and received negative feedback from the president about her conduct. In March of 2008, her job title changed to Process Engineering Scientist; she had more responsibilities but her salary went from \$95,000 to \$50,000. She was shocked, felt embarrassed, sad, depressed and very sick, and could not sleep. Applicant contacted her prior supervisor, the prior CEO, and the president but nothing was done. When she spoke to the president, he pointed his finger and screamed at her. She almost fainted and felt humiliated, hurt, insulted, depressed, nauseated, and not at all well. She started seeing a doctor regularly.

Richard Levy, M.D., the agreed medical examiner in this case, interviewed Parviz Zowghi on March 11, 2011, reviewed Applicant's seventeen (17) page statement and various medical records, and conducted medical research. He authored two reports dated March 23,

2011 and July 20, 2011. The July 20, 2011 report reflects his impressions that Applicant was diagnosed with post-traumatic stress disorder as of March 2008 and primitive neuroectodermal tumor (PNET) in January 2009. That report further reflects Applicant underwent chemotherapy and radiation in 2009 and succumbed to her tumor in August 2009. In his July 20, 2011 report, Dr. Levy opined that it is more medically probable than not that the tumor had already established itself with symptoms and progression prior to her diagnosed post-traumatic stress disorder, anxiety, and panic attacks. He further opined there is no clear link between tumor development and stress nor any clear well controlled study substantiated by consistent credible medical literature linking the progression of Applicant's tumor, cancer, or any form of cancer to stress. Noting he was unable to either quantify Applicant's stress and its potential relationship to immune function, or to state with any degree of medical certainty that stress either interfered with the chemotherapy or promoted progression of the underlying obviously very aggressive cancer, Dr. Levy concluded that there is no clear linking of cumulative stress trauma, if in fact present, to the development or progression of Applicant's cancer and no clear link that it had any contribution whatsoever.

Injury AOE/COE

After considering the testimony of Parviz Zowghi, the seventeen (17) page document prepared by Applicant, and the two medical reports of Richard Levy, M.D, I find Applicant did not meet her burden on the issue of injury arising out of and in the course of employment resulting in death. While the testimony of Mr. Zowghi was sincere and heartfelt, and the document prepared by Applicant reflects her summary of employment issues with Hitachi, neither constitutes substantial medical evidence. In Braewood Convalescent Hospital v. WCAB

(Bolton) (1983) 48 CCC 566, the Court wrote:

The term “substantial evidence” means evidence “which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion It must be reasonable in nature, credible, and of solid value....” (*Insurance Co. of North America v. Worker’s Comp. Appeals Bd.* (1981) 122 Cal. App. 3d 905, 910, italics in original, quotation marks omitted; *Estate of Teed* (1952) 112 Cal. App.2d 638, 644.)

As the AME in this matter, Dr. Levy reviewed and considered relevant information and medical records before concluding that there is no clear linking of cumulative stress trauma, if in fact present in this matter, to the development or progression of Applicant’s cancer and no clear link that it had any contribution whatsoever. Based on the medical reports of Richard Levy, M.D, I find Applicant failed to meet her burden on the issue of injury arising out of and in the course of employment resulting in death.

Attorney’s fee

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

5/3/2012

Terri Ellen Gordon
Terri Ellen Gordon
Workers Compensation Judge
Workers’ Compensation Appeals Board