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

DORA RIOS FLORES, *Applicant,* vs. F&T FARMS AND WAUSAU BUSINESS INSUANCE COMPANY, adm. BY LIBERTY MUTUAL INSURANCE COMPANY, *Defendants.*	Case No. ADJ8358500 FINDINGS OF FACT, ORDER, AND OPINION ON DECISION

The above-entitled matter having been heard by and submitted for decision to Geoffrey H. Sims, Workers' Compensation Administrative Law Judge, Findings of Fact, Order, and Opinion on Decision are made as follows:

FINDINGS OF FACT

1. Applicant, Dora Rios Flores, while employed as a sorter by F&T Farms (Employer), claimed cumulative trauma injuries to her back, hip and foot, during the period February 3, 2011 through February 3, 2012.
2. Applicant was laid off of work on February 3, 2012; however, she never treated for her alleged injuries prior to that date.
3. Applicant claims to have notified her supervisor of back pain, however, she signed the "Exit Interview" form indicating there were no on-the-job injuries.

4. Applicant never reported her claim of injury until she filed her claim on May 24, 2012.

5. Employer, through its Workers' Compensation carrier, The Travelers Insurance Company, timely denied this post-termination injury claim.

6. Applicant did not seek any medical treatment for her alleged injuries until after she was laid off on February 3, 2012.

7. Applicant failed in her burden of proof to prove-up her injuries as arising out of, and in the course of, employment.

ORDER

IT IS ORDERED THAT: The Applicant takes nothing hereunder, as set forth in Findings of Fact.

IT IS FURTHER ORDERED THAT: All other issues remain reserved.

OPINION ON DECISION

The limited issues before the Court are: (1) injury arising out of, and in the course of, employment; (2) attorney's fees. Issues relating to Temporary Disability, Permanent Disability, future medical treatment, self-procured medical treatment are ordered deferred.

At the MSC, Applicant designated the primary treater's report of Edward Opoku, M.D., dated May 28, 2013 as her only piece of evidence. The report was received for identification purposes only. For purposes of this Findings of Fact and Order, the exhibit will be entered into evidence, without objection.

Employer previously designated six exhibits, all of which will be discussed below and were

entered into evidence, without objection.

BACKGROUND

Applicant worked as a sorter for F & T Farms (Employer). Pursuant to her deposition testimony, she worked six days per week, eight to 12 hours per day and was paid $8.00 per hour. She was laid off on February 3, 2012, for lack of work. Applicant claimed repetitive stress injuries to her back, hip and foot arising from this work, during a period of injurious exposure spanning February 3, 2011 through her last day of work, February 3, 2012. Applicant has not worked since she was laid off by Employer.

TESTIMONY

Applicant did not testify as to the underlying facts of her alleged injury, nor as to any reporting of injury made to Employer. Her testimony was limited to her application for State Disability Insurance (SDI) benefits and that representatives of Employment Development Department (EDD) requested a copy of her doctor's report in order to open the claim.

DOCUMENTARY EVIDENCE

As noted above, Applicant submitted Dr. Opoku's May 28, 2013 Permanent and Stationary (P&S) report. No effort was made to authenticate this document, nor was any foundation laid by either party as to this report. Therefore, this report stands unchallenged, except as noted below.

Employer submitted six documents for the Court's consideration. Likewise, though, no

testimony was provided establishing foundation and authenticity for these exhibits. These also went unchallenged by Applicant.

Employer's Exhibit A is entitled "Exit Interview." However, it refers to "Campos Bros. Farms", an entity that is not a named party in this case. Without any testimonial foundation, it is impossible to fathom what this document is intended to show or prove although it is appears to show that on the date, Applicant was laid-off (February 3, 2012) the "job ended."

Employer's Exhibit B is more illuminating. This document shows that Applicant certified "that I have reported to the company all on-the-job injuries and illnesses that I have incurred and of which I am aware."

Employer's Exhibit F is the Agreed Medical Evaluation (AME) report of Alice Martinson, M.D. Dr. Martinson's report shows that she took a thorough and reasonable evaluation of the Applicant, and considered all her ailments and complaints. Under "Causation", Dr. Martinson makes her most significant finding in regard to this case:

> "**I conclude that there is no evidence of physical abnormality that could have been caused by the cumulative effects of her employment at F&T Farms.** All of her diagnoses above are non-industrial in nature." (*Supra*, at page 6. Emphasis added.)

Dr. Martinson's report stands unchallenged. Applicant never attacked the substantiality of the AME report.

DISCUSSION

It is long-held law in California that a moving party holds the affirmative, and has the burden of proof to produce evidence sufficient to allow a judge to make a reasoned ruling. (Labor Code §§ 3202.5;

5705.) The failure to present evidence – documentary and/or testamentary – to support a claim of injury leaves that claim uncorroborated.

Where no evidence is presented to support a claim of injury, the Court is left with only testimonial evidence. But here, Applicant failed to provide even testimonial evidence describing how her injury happened, what treatment she received prior to being laid off of work, what efforts she made to report her injury, etc. In the same turn, Employer failed to present any testimonial evidence putting forth training provided regarding injury reporting, procedures to follow in the event of an injury, etc.

But as noted above, it is Applicant's burden of proof to present evidence that the injury happened, and efforts made to report said injury. Then the burden shifts to the Employer to refute that the injury happened, or that any reporting of said injury was made.

In the event of a lack of evidence, the trial judge is left to render a decision based solely on the documentary evidence.

As mentioned above, Applicant's only evidence that was taken in for identification purposes only was Dr. Opoku's "permanent and stationary" report issued May 28, 2013, more than eighteen months after Applicant was laid off by Employer. This report, which describes lower back pain that is "sharp, burning and stabbing", that is "aggravated by prolonged positioning" and is resulting in Applicant feeling "frustrated by her injury, and she is experiencing anxiety, depression and difficulty sleeping brought on by her chronic pain . . ." (P&S Report, Edward Opoku, M.D., 05/28/2013, Applicant's Exhibit 1, at page 4.)

However, as mentioned, this report was authored fifteen months after her last day of work. While Dr. Opoku mentions reviewing reports of a Dr. Sanchez (issued in March 2012) and a functional capacity assessment evaluation (apparently administered in September 2012), none of these reports were

offered by Applicant. It is notable that none of these reports were authored prior to her last date of work. Therefore, these reports – even if they had been offered into evidence – would be susceptible to being viewed as self-serving as they were not contemporaneous with the alleged prior of injurious exposure nor prior to her last day of work.

In contrast, Employer presented evidence which clearly shows that Applicant was interviewed on her last date of employment (Defense Exhibit B). Applicant had the opportunity to attack this exhibit, as no one challenged the authenticity of this report, but Applicant never testified to her exit interview. She never challenged the authenticity of the signature at the bottom of the page. And there was no objection raised as to the admissibility of the exhibit when it was admitted into evidence. Therefore, this exhibit stands unchallenged.

Dr. Martinson authored a comprehensive and thorough report, but Applicant chose to not raise any substantiality arguments against its admissibility pursuant to Title 8, CCR § 10606. Dr. Martinson's report stands unchallenged and conclusively comes to the opinion that all of Applicant's ailments and complaints are non-industrial in origin (Employer's Exhibit F, at page 6.)

The law requires that written notice be made on an employer within thirty (30) days after the occurrence of the injury causing disability. (Labor Code § 5400.) The only exception here is where the employer had knowledge from a collateral source. (Labor Code § 5402.) While Applicant made reference in her deposition to speaking with her supervisor, a woman named Sanjuana, about pain (Employer's Exhibit E, at pages 35:25-38:2), there was no in-court testimony to that effect. Nor was any showing provided that would excuse Applicant from testifying on this issue. Therefore, there was no opportunity for the undersigned, as the trier of fact to assess the credibility of the Applicant as a witness on her own behalf. Ordinarily, where there is no documentary evidence supporting a claim of injury, the

Court is left with only observing the witness on the stand and evaluate their testimony in conjunction with the documentary evidence in the case is to be given "great weight". (*Garza v. WCAB* (1970) 3 Cal.2d 312, 319.) Here, Applicant did not testify in any form that was beneficial to supporting her case. Therefore, the Court is left with the documentary evidence only and, here, Applicant's sole exhibit, Dr. Opoku's P&S report rendered fifteen months after she last worked for Employer, is insufficient.

Without evidence that Applicant received treatment contemporaneous to the alleged date of injury, or at a minimum prior to her last date of work, the weight of the evidence – most notably Dr. Martinson's conclusions – clearly shows that Applicant's medical condition did not derive from the workplace.

Further, it is long-standing law in California that where the parties select an AME, as here with the selection of Dr. Martinson, they do so with the idea that they are using that medical-legal evaluator's expertise and neutrality to arrive at reasoned and rational decisions that become binding on both parties. Prior courts have held that the opinions of the AME should ordinarily be followed unless there is good reason to find that opinion unpersuasive. (*Power v. WCAB* (1986) 179 Cal.App.3d 775 [224 Cal.Rptr. 758; 51 CCC 114]; *Anna Siqueiros v. WCAB* (1995) 60 CCC 150.)

Therefore, it is the finding of this Court that Applicant has failed in her burden of proving up her claimed injury and, as such, the Applicant shall take nothing hereunder.

03/25/2014

GEOFFREY H. SIMS
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served on parties as shown on
Official Address Record.
By: C. Cook 03/25/2014

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

03-25-2014

OFFICIAL ADDRESS RECORD

FINDINGS OF FACT, ORDER AND OPINION ON DECISION

Case Number: ADJ8358500

ADVANCE PAIN MANAGEMENT GROUP	Lien Claimant - Other, POBOX 8000 NORTHRIDGE CA 91327
BONIFACE ONUBAH MD	Lien Claimant - Other, 19528 VENTURA BLVD 411 TARZANA CA 91356
BRADFORD BARTHEL FRESNO	Law Firm, 1300 E SHAW AVE STE 171 FRESNO CA 93710, E-DOCS@BRADFORDBARTHEL.COM
CA INJURY SOLUTION	Lien Claimant - Other, PO BOX 101231 PASADENA CA 91189
COMET RADIOLOGY	Lien Claimant - Other, 420 E 3RD STREET STE 604 LOS ANGELES CA 90013
COMP HEALTHCARE PARTNERS CHATSWORTH	Law Firm, PO BOX 5195 CHATSWORTH CA 91313, AR@PROVIDERREMEDY.COM
DORA FLORES	Injured Worker, 11344 S BRAWLEY AVE CARUTHERS CA 93609
DOWNTOWN LA AMBULATORY MEDICAL CENTER	Lien Claimant - Other, 420 E 3RD STREET STE 604 LOS ANGELES CA 90013
F AND T FARMS	Employer, 15516 S WALNUT CARUTHERS CA 93609
F AND T FARMS	Employer, 15516 S WALNUT CARUTHERS CA 93609
FUNDING SOLUTION SERVICES	Lien Claimant - Other, 19528 VENTURA BLVD STE 411 TARZANA CA 91356
IGEN MEDICAL	Lien Claimant - Other, PO BOX 101231 PASADENA CA 91189
KHISHAVEH ASSOCIATES RIVERSIDE	Lien Claimant - Other, 5369 ARLINGTON AVE RIVERSIDE CA 92504

LIBERTY MUTUAL BEAVERTON	Insurance Company, PO BOX 4555 PORTLAND OR 97208
MOBILE RADIOLOGICAL	Lien Claimant - Other, PO BOX 8000 NORTHRIDGE CA 91327
SOS LIEN SERVICES LOS ANGELES	Law Firm, 420 E 3RD ST STE 604 LOS ANGELES CA 90013, SCHLOMO00@YAHOO.COM
SUN LIFE FUNDING TUSTIN	Law Firm, 360 E FIRST ST STE 26 TUSTIN CA 92780 , (714)5426550
THE NIELSEN FIRM LOS ANGELES	Law Firm, 3250 WILSHIRE BLVD STE 1510 LOS ANGELES CA 90010
UNITED HEALTH SERVICES	Lien Claimant - Other, 20929 VENTURA BLVD STE 47385 WOODLAND HILLS CA 91364
UNIVERSAL MGMT SOLUTIONS TARZANA	Law Firm, 19528 VENTURA BLVD STE 411 TARZANA CA 91356, LIDIAPRHC@GMAIL.COM
WAUSAU BEAVERTON	Insurance Company, PO BOX 4555 PORTLAND OR 97208
ZEE MED MANAGEMENT	Lien Claimant - Other, 360 E 1ST ST STE 26 TUSTIN CA 92780

Served on all parties by: C. Cook 03/25/2014