

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

Shauna De La Cruz

Applicant,

vs.

Vasinda's Around the Clock Home Health
and Seabright Insurance Company,
Defendants.

**Case No: ADJ 6893952 mf
ADJ 6893292**

**Orders Admitting Evidence
Findings of Fact & Award
Opinion on Decision**

Trial was held on May 15, 2014. The above-captioned matter was thereafter submitted for decision on June 6, 2014 to Robert K. Norton, Presiding Workers' Compensation Administrative Law Judge who admits evidence, rules, finds, awards, orders and opines as follows:

Orders Admitting Evidence

1. The reports of Spine & Orthopedic Center are designated as Applicant's Exhibits A. The report dated May 30, 2013 is received into evidence as Applicant's Exhibit A-1. The report dated April 4, 2013 is received into evidence as Applicant's Exhibit A-2. The report dated February 7, 2013 is received into evidence as Applicant's Exhibit A-3. The report dated January 17, 2013 is received into evidence as Applicant's Exhibit A-4. The report dated November 9, 2012 is received into evidence as Applicant's Exhibit A-5. The report dated September 26, 2012 is received into evidence as Applicant's Exhibit A-6. The report dated August 17, 2012 is received into evidence as Applicant's Exhibit A-7. The report dated August 10, 2012 is received into evidence as Applicant's Exhibit A-8. The report dated June 27, 2012 is received into evidence as Applicant's Exhibit A-9.
2. The reports of Marshall S. Lewis, M.D. are designated as Applicant's Exhibits B. The report dated September 23, 2011 is received into evidence as Applicant's Exhibit B-1. The report dated May 2, 2011 is received into evidence as Applicant's Exhibit B-2. The report dated February 7, 2011 is received into evidence as Applicant's Exhibit B-3. The report dated December 30, 2010 is received into evidence as Applicant's Exhibit B-4. The report dated November 9, 2010 is received into evidence as Applicant's Exhibit B-5. The report dated September 28, 2010 is received into evidence as Applicant's Exhibit B-6. The report dated August 17, 2010 is received into evidence as Applicant's Exhibit B-7. The report dated July 6, 2010 is received into evidence as Applicant's Exhibit B-8. The report dated May 25, 2010 is received into evidence as Applicant's Exhibit B-9. The report dated April 13,

2010 is received into evidence as Applicant's Exhibit B-10. The report dated March 2, 2010 is received into evidence as Applicant's Exhibit B-11. The report dated January 25, 2010 is received into evidence as Applicant's Exhibit B-12. The report dated October 30, 2009 is received into evidence as Applicant's Exhibit B-13. The report dated October 19, 2009 is received into evidence as Applicant's Exhibit B-14. The report dated September 14, 2009 is received into evidence as Applicant's Exhibit B-15.

3. The report of Jason Chiu, M.D. dated July 24, 2013 is received into evidence as Defendants' Exhibit A.
4. The Curriculum Vitae of Jason Chiu, M.D. is received into evidence as Defendants' Exhibit B.
5. Correspondence of Applicant's Attorney offered in evidence by Defendants is designated as Defendants' Exhibits C. The correspondence dated May 17, 2013 is received into evidence as Defendants' Exhibit C-1. The correspondence dated June 21, 2013 is received into evidence as Defendants' Exhibit C-2.
6. QME panel list number 1508062 is received into evidence as Defendant's Exhibit D.
7. A wage statement is received into evidence as Defendant's Exhibit E.
8. The transcript of Applicant's deposition dated January 15, 2010, having not been filed for consideration, is not received into evidence as Defendants' Exhibit F.
9. A Notice of Lien Claim dated December 3, 2009 is received into evidence as Lien Claimants' Exhibit 01.
10. Medical and Certification documents of the Employment Development Department are received into evidence as Lien Claimant's Exhibit 02.

Findings of Fact

1. Applicant Shauna De La Cruz, born June 29, 1979, while employed on June 25, 2009 as a Certified Nurses' Aid (Occupational Group 340) at Bakersfield, California by Defendant-employer Vasinda's Around the Clock Home Health sustained a specific industrial injury employment to her lumbar spine.
2. Applicant Shauna De La Cruz did not sustain a cumulative industrial injury to her neck, right shoulder, right hand, lumbar spine or left hip while

employed by Defendant-employer Vasinda's Around the Clock Home Health during the period from January 1, 2004 to August 20, 2009.

3. On June 25, 2009 and during the period from January 1, 2004 to August 20, 2009, Defendant-employer Vasinda's Around the Clock Home Health was insured for workers' compensation liability by Defendant-carrier Seabright Insurance Company.
4. On June 25, 2009, Applicant Shauna De La Cruz had average earnings of \$373.00 per week, entitling her to a compensation rate for temporary disability indemnity of \$248.67 per week.
5. Applicant Shauna De La Cruz was temporarily totally disabled as a result of her specific industrial injury of June 25, 2009 during the period from August 11, 2009 to February 6, 2011.
6. Applicant Shauna De La Cruz became permanent and stationary from the effects of her specific industrial injury of June 25, 2009 on February 7, 2011.
7. Applicant Shauna De La Cruz received State Disability Insurance benefits from Lien Claimant State of California: Employment Development Department during the period from September 14, 2009 to September 12, 2010 at the rate of \$244.00 per week, totaling \$12,688.00 for which reimbursement is due.
8. Defendant Seabright Insurance Company was notified that Lien Claimant State of California-Employment Development Department was paying State Disability Insurance benefits to Applicant Shauna De La Cruz on December 3, 2009.
9. Applicant Shauna De La Cruz did not sustain permanent partial disability indemnity as a result of her specific industrial injury of June 25, 2009.
10. Applicant Shauna De La Cruz is not in need of further medical treatment to cure or relieve her from the effects of her specific industrial injury of June 25, 2009.
11. Applicant Shauna De La Cruz received valuable legal services from Joseph Pluta, Esq., her attorney of record. Attorney's fees in the amount of \$2,319.02 have been earned.

Award
(ADJ 6893952)

**Award is made in favor of Applicant Shauna De La Cruz and against
Defendant Seabright Insurance Company of:**

A}. Temporary total disability indemnity at the rate of \$248.67 per week during the period from August 11, 2009 to February 6, 2011 in the total amount of \$19,325.21, less the sum of \$2,319.02 payable to Joseph Pluta, Esq. as awarded attorneys' fees, less the sum of \$12,688.00 payable in reimbursement to Lien Claimant State of California: Employment Development Department, balance to Applicant Shauna De La Cruz.

B}. This is not a continuing award of temporary total disability indemnity.

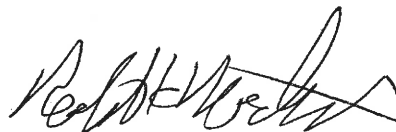
C}. The lien claim of State of California: Employment Development Department is allowed as specified herein. Defendant Seabright Insurance Company shall also pay interest on the awarded reimbursement at the lawful rate beginning December 3, 2009 and continuing until paid.

D}. The lien claim of Joseph Pluta, Esq. for attorneys' fees is allowed as specified herein. Commutation of permanent partial disability indemnity to the extent necessary to pay the approved attorneys' fees in a single lump sum is authorized.

Order
(ADJ 6893292)

Applicant Shauna De La Cruz shall take nothing further on account of her Application for Adjudication in case ADJ 6893292

DATE: July 25, 2014



Robert Norton

PRESIDING WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVED AS INDICATED ON THE ATTACHED SERVICE ROSTER

DATE: July 25, 2014 BY: *Tanner Palito*

Service Roster-Case Number: ADJ 6893952
Orders Admitting Evidence-Findings of Fact, Award & Order-Opinion on Decision

ACCUTOX	Lien Claimant - Other, 1317 N SAN FERNANDO BLVD 902 BURBANK CA 91504
ALPHA BILLING COLLECTION FRESNO	Law Firm, 438 E SHAW AVE STE 382 FRESNO CA 93710
AMR GROUP BURBANK	Law Firm, 120 S VICTORY BLVD STE 201B BURBANK CA 91502, DANHURT@WCOIL.COM
ANGEL ACUPUNCTURE	Lien Claimant - Other, 1317 N SAN FERNANDO BLVD 902 BURBANK CA 91504
BILLING DYNAMICS MOORPARK	Law Firm, PO BOX 115 MOORPARK CA 93020, BILLING@KIMSBILLING.COM
BRADFORD BARTHEL FRESNO	Law Firm, 1300 E SHAW AVE STE 171 FRESNO CA 93710, E-DOCS@BRADFORDBARTHEL.COM
BUENA VISTA MEDICAL SERVICES	Lien Claimant - Other, 23679 CALABASAS RD 800 CALABASAS CA 91302
CALIFORNIA IMAGING BEVERLY HILLS	Lien Claimant - Other, PO BOX 5355 BEVERLY HILLS CA 90209, BRYAN@AROBH.COM
GAITONDE PHYSICAL THERAPY	Lien Claimant - Other, 1317 N SAN FERNANDO BLVD 902 BURBANK CA 91504
GR MEDICAL MANAGEMENT CHATSWORTH	Law Firm, PO BOX 3459 CHATSWORTH CA 91313, INFO@GRMED.COM
HOOTY SERVICES LCC	Lien Claimant - Other, 3183 WILSHIRE BLVD STE 196C8 LOS ANGELES CA 90010
JOSEPH PLUTA BAKERSFIELD	Law Firm, 408 18TH ST BAKERSFIELD CA 93301
K RAD PAYMAN MD	Lien Claimant - Other, 5363 BALBOA BLVD STE 445 A ENCINO CA 91316
NORTH VALLEY DIAGNOSTIC SAN FERNANDO	Lien Claimant - Other, 317 S MACLAY AVE SAN FERNANDO CA 91340
PACIFIC ORTHOPEDICA MEDICAL GROUP	Lien Claimant - Other, 2619 F STREET BAKERSFIELD CA 93301
SHAUNA DE LA CRUZ	Injured Worker – 706 E 21 st Street, Bakersfield CA 93301

SPINE AND ORTHO CTR SANTA
BARBARA

Lien Claimant - Other, 401 E CARRILLO ST SANTA
BARBARA CA 93101

STATE OF CALIFORNIA
EMPLOYMENT DEVELOPMENT
DEPARTMENT

Lien Claimant - Other, PO BOX 32 FRESNO CA 93707

TEHACHAPI SURGERY CENTER

Lien Claimant - Other, 20960 SAGE LANE STE A
TEHACHAPI CA 93561

Opinion on Decision

Injury AOE-COE (ADJ 6893292): The expert opinion of the panel QME evaluator has been followed. Most likely, the alleged cumulative injury did not occur and Applicant's symptoms in the claimed bodily systems are best explained by her non-industrial problems. *Defendant's Exhibit A: Report of Jason Chiu, M.D. 7/24/2013 p. 19.*

Earnings: Applicant alleged average earnings of \$384.00 per week but did not provide any documentation thereof. At Trial, she was unable to recall her hourly rate of pay. *Minutes of Hearing 5/15/2014 p. 3 lines 9-10 (Issue #2); Summary of Evidence 5/15/2014 p. 5 lines 40-41.* The wage statement proffered by Defendants is most probably correct. Applicant's earnings according to that statement appear to yield average earnings of \$373.00 per week. *Defendants' Exhibit E: Wage Statement.*

Temporary Disability/Permanent and Stationary Date: The expert opinion of the panel QME is followed for the proposition that Applicant was permanent and stationary on February 7, 2011 when so declared in the contemporaneous treatment reports of Dr. Lewis. *Defendant's Exhibit A: Report of Jason Chiu, M.D. 7/24/2013 p. 19; Applicant's Exhibit B-3: Report of Marshall S. Lewis, M.D. 2/07/2011.* Temporary total disability indemnity has been awarded from Applicant's last day of work to this P&S date.

Permanent Disability/Further Medical Treatment: The expert opinion of the panel QME evaluator is followed for the proposition that the effects of the June 25, 2009 lumbar contusion had resolved by the permanent and stationary date leaving no permanent partial disability or need for industrial medical treatment. *Defendant's Exhibit A: Report of Jason Chiu, M.D. 7/24/2013 p. 19.*

Lien Claims: The Employment Development Department is entitled to reimbursement on any day where temporary total disability indemnity was due and State Disability Insurance benefits were paid. Lab.C. §4904{b}. When reimbursement is due, EDD is entitled to interest on the awarded

reimbursement at the lawful rate. UEIns.C. §2629.1{e}. Reimbursement and interest have been awarded as required.

Applicant has received valuable legal services from her attorney of record. Considering the responsibilities assumed, the care taken, the time involved and the results obtained, a fee of \$2,319.02 has been earned and is awarded.