

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. ADJ6661767

ADALBERTO MARTIN,

Applicant,

v.

BYCOR GENERAL CONTRACTORS,
INSURANCE COMPANY OF THE WEST,

Defendant.

FINDINGS AND ORDER

LAW OFFICE OF BILJANA KOVACEVIC

By: Biljana Kovacevic
Attorney for applicant

LAW OFFICE OF BRADFORD & BARTHEL

By: Garrett Kuehn
Attorney for defendant

The above entitled matter having been heard and regularly submitted, the Honorable **CHARLES W. ELLISON II**, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

1. Adalberto Martin, born November 26, 1960, while employed on July 11, 2008 as a drywall worker, occupational group 380 at San Diego, California, by Bycor General Contractors, then insured as to workers' compensation liability by Insurance Company of the West, sustained injury arising out of and in the course of employment to his back.
2. Based on the medical reporting submitted, applicant has not sustained any new and further disability.
3. Applicant is not entitled to treatment for claimed diabetes at this time.

ORDER

IT IS ORDERED that applicant's petition for new and further disability be dismissed.

DATED: October 27, 2014



CHARLES W. ELLISON II
WORKERS' COMPENSATION JUDGE

Served by mail on all persons shown
on the official Address Record.

Dated: 10/27/14

BY: _____

T. Dao

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OPINION ON DECISION

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NEW AND FURTHER DISABILITY

Based on the credible and substantial medical report of applicant's treating physician, Eric Korsh, M.D., dated February 5, 2014, as compared to applicant's prior stipulated level of permanent disability, which was based on the October 28, 2011 report of James McSweeney, M.D. setting forth a whole person impairment (WPI) of 31 %, and the credible and substantial medical report of Dr. McSweeney, dated January 9, 2014 setting forth the opinion that applicant has no new and further disability, it is found that applicant has not sustained any new and further disability.

NEED FOR TREATMENT

Both Dr. Korsh and the Panel Qualified Medical Evaluator, James McSweeney, M.D. provide for future medical care and for potential future surgery. Neither physician notes a present need for such surgery in their respective reports dated February 5, 2014 and May 21, 2014.

No medical evidence was submitted as to applicant's claim of an underlying diabetic condition. Applicant did testify that he takes pills for diabetes.

The issue is not whether he is diabetic, but whether at this time, defendant needs to provide medical treatment for his claimed non-industrial diabetic condition. Such treatment may need to be addressed but only at the time that any further specific medical treatment and/or surgical procedure would be undertaken, and then, only to the extent such treatment may be needed for the duration of a period prior to, including the treatment/surgery and post-treatment/surgery recovery, subject to such a medical determination.

Since neither Dr. Korsh nor Dr. McSweeney set forth a present need for surgery, it is found that defendant is not presently responsible to provide medical treatment for applicant's claimed diabetes.

DATED: October 27, 2014



CHARLES W. ELLISON II
WORKERS' COMPENSATION JUDGE

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

10-27-2014

OFFICIAL ADDRESS RECORD

FINDINGS AND ORDER WITH OPINION ON DECISION

Case Number: ADJ6661767

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CONTRACTORS

INSURANCE CO OF Insurance Company, PO BOX 11474 PLEASANTON CA 94588
THE WEST

PLEASANTON

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PHOTOCOPY COVINA

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