

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

RAC

Case No(s). **ADJ7083586**

**JOSE S. PACHECO (DECEASED); MARIA  
ELENA PACHECO,**

*Applicant,*

vs.

**HAWKER PACIFIC AEROSPACE; LIBERTY  
MUTUAL,**

*Defendant(s).*

**FINDINGS OF FACT  
AND ORDER**

**LAW OFFICES OF MARK POLAN**

By: Mark Polan, Esq.; Jose Zetino, Esq.  
Attorneys for Applicant

**BRADFORD & BARTHEL**

By: Ronald Cher, Esq.  
Attorneys for Defendant

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The above entitled matter having been heard and regularly submitted, the Honorable Shiloh Rasmusson, Workers' Compensation Administrative Law Judge, now decides as follows:

**FINDINGS OF FACT**

1. Jose S. Pacheco (deceased), born 7/6/1944, while employed on CT 06/01/1996-06/02/2008, as a machinist at Sun Valley, California by Hawker Pacific Aerospace, administered by Liberty Mutual, claims to have sustained injury arising out of and in the course of employment to the internal system (leading to death).

2. Applicant Maria Elena Pacheco was the spouse of Jose S. Pacheco as of the date of death.
3. Mr. Pacheco's earnings at the time of injury were \$876.00 per week, sufficient to produce a weekly temporary disability indemnity rate of \$584.00 and a weekly permanent disability indemnity rate per the Labor Code.
4. Applicant has not sustained her burden of establishing injury AOE/COE.

**ORDER**

**IT IS ORDERED** that applicant take nothing by way of the application filed herein.

Dated: 11/24/2014



SHILOH ANDREW RASMUSSON

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Filed and Served by mail on above date on all parties/liens on the Official Address Record.

By: Viregil Alberto

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FINDINGS AND AWARD

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Division Of Workers' Compensation  
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CASE NUMBER ADJ7083586

<b>JOSE S. PACHECO (DECEASED); MARIA ELENA PACHECO, APPLICANT</b>	v.	<b>HAWKER PACIFIC AEROSPACE; LIBERTY MUTUAL, DEFENDANT</b>
DATE OF INJURY:		CT 06/01/1996-06/02/2008
WORKERS' COMPENSATION JUDGE:		SHILOH A. RASMUSSEN
DECISION DATE:		NOVEMBER 24, 2014

**OPINION ON DECISION**

**BACKGROUND**

Applicant Maria Elena Pacheco, spouse of Jose S. Pacheco, claims a death benefit following the death of Mr. Pacheco on 10/17/2008. Applicant alleges Mr. Pacheco was exposed to chemical toxins at work that contributed, aggravated or accelerated his death.

The applicant obtained a medical-legal report from Marvin Pietruszka, M.D. (Ex. 1). The parties also obtained multiple reports from QME Michael Sachs, D.O., and also took the QME's deposition. (Exs. A-C, E).

The matter was heard at trial on 11/13/2014, with testimony adduced solely from the applicant, under both direct and cross-examination. Applicant relies on the reporting of Dr. Pietruszka, and further argues that the medical evidence from Dr. Sachs does not rule out Mr. Pacheco's industrial exposures as a partial cause of his death, and that partial causation is sufficient to award a death benefit to the applicant. Defendant argues that the medical reporting of Dr. Sachs, to a reasonable medical probability, rules out industrial exposure as a source of Mr. Pacheco's liver cancer, the disease to which Mr. Pacheco eventually succumbed. The matter was submitted for decision on 11/13/2014, and this decision follows.

### **REPORTING OF DR. PIETRUSZKA - NOT SUBSTANTIAL MEDICAL EVIDENCE**

Applicant relies on the 03/24/2010 report of Marvin Pietruszka, M.D., in support of a finding of injury AOE/COE. Therein, Dr. Pietruszka notes that applicant was exposed to chromium, nickel, beryllium, copper, cadmium and cyanide. (Ex. 1, p.2). Dr. Pietruszka notes medical literature linking certain occupations to higher risks of developing cancer, including a 178% increase in "excess mortality" for workers in the metal polishing and plating industry, and a 400% increase risk of developing cancer for workers in the die-casting and electroplating industries.

However, Dr. Pietruszka does not describe the source of his information about the chemicals to which the applicant was exposed, or how he determined the frequency or concentration of such exposures. It does not appear that Dr. Pietruszka was provided with the MSDS, or with the voluminous records that were provided to QME Dr. Sachs. It appears that Dr. Pietruszka has not reviewed the majority of the available records in this matter, and has not documented the source of his assertions that Mr. Pacheco was exposed to toxic chemicals, or adequately explained his apportionment analysis, or demonstrated an awareness of the exact nature of Mr. Pacheco's job duties. Consequently, the report of Dr. Pietruszka may not be relied upon as substantial medical evidence in this matter.

### **INJURY AOE/COE**

Applicant is correct in asserting that a statutory death benefit may be awarded even if an employee's industrial injury aggravates or accelerates a nonindustrial condition, resulting in the death of the employee. (*Barrett Business Services, Inc. v. WCAB (Bereta)* (2009) 74 Cal. Comp. Cases 287); *Lumberman's Mutual Casualty Company v. WCAB (Canington)* (1997) 62 Cal. Comp. Cases 527; *Pacific Gas & Electric v. IAC (Drew)* (1961) 26

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Cal. Comp. Cases 130). However, the burden of proof of establishing this relationship remains with the party with the affirmative of the issue. (Labor Code 3202.5)<sup>1</sup>.

The parties have obtained three reports from QME Dr. Sachs. Dr. Sachs initially opined in his 01/11/2011 report:

**Based on the above data, it is medically probable that primary cause of Mr. Pacheco's biliary tract cancer was not industrial exposure but rather chronic hepatitis, cirrhosis, and gallbladder disease. A supplemental report will be issued regarding the extent, if any, of occupational exposure contributing to the cause of death. (Ex. A, p.42).**

After a review of the Material Data Safety Sheets (MSDS), however, Dr. Sachs noted:

**Mr. Pacheco has a remarkable list of risk factors for the development of hepatobiliary carcinoma. The additional records do not include any description of job activity or the extent of any or type of exposure that may have occurred. One report states that he was exposed to plating materials. His wife mentioned that clothing had been appeared to have been covered with oil. Mr. Pacheco was described by Dr. Pietruszka as being a machinist for 15 years and had "worked with" several chemicals.**

*There was no mention of exposure to fumes from heated or melting material or dust from grinding. Furthermore, the review of the MSDS information notes no particular evidence of hepatobiliary carcinoma being associated with any of the products that were listed, even if exposed chronically on an overexposure basis or more acute overexposure, neither of which was described in any of the records that were available for review.*

**As Mr. Pacheco had very significant non-occupational risk factors for the development of hepatobiliary cancer, and as there is no data to indicate any occupational exposure of a sufficient duration or intensity of any substance that has been shown to cause hepatobiliary cancer, it is medically probable that Mr. Pacheco's cancer was completely unrelated to any occupational exposure. Further data in regard to occupational**

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<sup>1</sup> The notable exception being so-called "mysterious death" cases. However, the Neutral Risk Doctrine is not raised as an issue herein.

**exposure although helpful would not lead to any cogent association with his terminal cancer based on the reviewed MSDS. (Exhibit B, p.5, *emphasis added*).**

Thus, Dr. Sachs noted that the chemicals listed in the MSDS were not associated with applicant's cancer, irrespective of the exposure levels.

Dr. Sachs' deposition was taken on 02/28/2013. Therein, Dr. Sachs noted:

**In other words, if one were to be able to document that he did have chronic overexposures, there could be some apportionment in regard to his liver cancer and his liver disease; but otherwise, it's just speculative when you have a gentleman who's got definite causes for having his problem, and only speculation about these other causes, I think it still stays medically probable that the cause was his cirrhosis and from hepatitis C. (Ex. E at 31:15-23).**

...

**In this case, we have a gentleman with known, well-documented exposure to diseases that can cause liver cancer, and I would say that it is quite accurate to say it's medically probable that these were the causes of his liver cancer. (Id. at 32:20-24).**

After additional record review, Dr. Sachs reaffirmed his previous opinion in a report dated 12/27/2013:

*There was no data in the reviewed records that would indicate any occupational relationship to the finding of a cholangiocarcinoma. Rather, Mr. Pacheco had well known risk factors for the development of a cholangiocarcinoma and liver cancer, although in most cases of cancer the etiology cannot be clearly determined. In this case there is a strong association between the development of the cancer and the history of hepatitis C and cirrhosis. As noted above, there was no further data regarding any possibility of an occupational association. There was rather such a strong association with known risk factors for cancer, and the chronic diseases that Mr. Pacheco had prior to the development of liver and biliary tract cancer, namely hepatitis C and cirrhosis. The*

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medical probability is great that these conditions were the precursors for the development of biliary tract cancer rather than any speculative occupational association. This has been reviewed in previous reports, again to which the reader is referred. There is then no change from the previous reports. (Ex. C, pp.43-44, *emphasis added*).

In summary, Dr. Sachs has opined as to the causation of applicant's cholangiocarcinoma and liver cancer, to a reasonable medical probability. Further, Dr. Sachs has noted that none of the records submitted for review identify any relationship between applicant's workplace exposures and the cancer, irrespective of the concentration or length of exposure.

Thus, the medical evidence in the record does not support any causative link between applicant's work activities and his ensuing non-industrial medical conditions. The applicant having failed to sustain her burden of establishing injury AOE/COE, no benefits are awarded herein.

All other issues are rendered moot by the above findings.

Dated: 11/24/2014

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By: Vergil Alberto



SHILOH ANDREW RASMUSSON

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

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


11-24-2014

**OFFICIAL ADDRESS RECORD/PROOF OF SERVICE  
FINDINGS OF FACT AND ORDER**

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BRADFORD BARTHEL TARZANA	Law Firm, 18801 VENTURA BLVD STE 200 TARZANA CA 91356, E- DOCS@BRADFORDBARTHEL.COM
DEL CARMEN MEDICAL CENTER	Lien Claimant - Other, 19234 VANOWEN ST RESEDA CA 91335
LIBERTY MUTUAL 29073 GLENDALE	Insurance Company, PO BOX 29073 GLENDALE CA 91209
MARIA PACHECO	Other Applicant, 10242 LEV AVENUE ARLETA CA 91331
MARK POLAN VAN NUYS	Law Firm, 14501 CALVERT ST VAN NUYS CA 91411
PLATINUM COPY	Lien Claimant - Other, P O BOX 353 VAN NUYS CA 91408

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