

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

07 DVF

PRIORITY

Case No. ADJ6825656

EDDA ALMASIN,

Applicant,

vs.

LABOR FINDERS;
FARA;

Defendants.

**STIPULATED FACTS, OPINION ON
DECISION, ORDER**

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

STIPULATED FACTS

1. Edda Almasin, born December 1, 1940, while employed as a sign twirler, on February 14, 2009, by Labor Finders, sustained injury to her pelvis, left hip, left leg, right wrist and psyche arising out of and occurring in the course of the employment.
2. The employers' workers' compensation carrier was National Union Fire Insurance Company, administered by F.A. Richards and Associates on the date of injury.
3. Applicant's actual earnings at the time of injury were sufficient to produce indemnity rates of \$101.46 for both temporary disability and permanent disability.
4. As a result of the injury, the applicant incurred permanent and total disability of 100%, entitling her to benefits commencing on February 12, 2011 at the rate of \$101.46 per week, subject to annual increases in accordance with Labor Code Section 4659(c), payable for the remainder of her life.
5. A Findings and Award issued in this case on June 1, 2012 in which WCJ Pulley found the applicant to be 100% disabled.

6. The parties executed a Compromise and Release in this case settling future medical which was approved by WCJ Stajduhar on July 10, 2014.

OPINION ON DECISION

WCJ Pulley issued a Finding and Award in this case on June 1, 2012 in which she found the applicant to be 100% disabled. In July 2014, the parties presented a Compromise and Release to WCJ Stajduhar which was ordered approved. On September 5, 2014, the applicant filed a Petition for Costs in which they requested the court approve reimbursement of \$13,146.00 expended by applicant's counsel for a life care plan. Defendant timely objected.

The subject life care plan is dated November 2011. Nonetheless, it does not appear applicant's counsel served it on anyone until they filed their cost petition in September 2014—nearly three years after it had been prepared and after this case had been finally resolved by Compromise and Release. It appears the applicant did not offer the plan at time of trial. They also apparently did not serve it on the defendant or adjuster while negotiating settlement. They did not provide it to CMS for evaluation in determining an appropriate Medicare set-aside. They did not present it to this WCJ at the time they presented their Compromise and Release for approval. In spite of this, applicant's counsel asserts they relied on the life plan in negotiating settlement in this case. This WCJ notes for the record that the life-care plan sets forth the "estimated grand total of medical/psychological care throughout Ms. Almasin's lifespan" to be \$3,481,393; however, they settled this case by way of Compromise and Release for \$94,000. At the time of presenting the settlement to this WCJ on a walk-through basis, applicant's counsel represented the settlement was adequate. Had applicant's counsel disclosed the life care plan to this WCJ at the time of settlement, it is likely the matter would have been held over for further proceedings regarding adequacy.

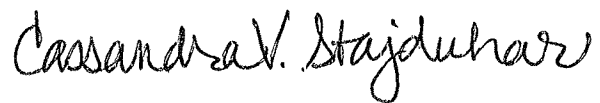
Labor code section 5811 allows costs as between the parties as the appeals board deems reasonable. In this case, I find it patently unreasonable that applicant's counsel failed to timely disclose the existence of the life plan to the WCAB or to the defendant. Further, it is clear that applicant's counsel was well aware of the outstanding cost at the time of their settlement of this case by way of Compromise and Release; however, applicant's counsel failed to disclose this cost at the time of settlement. Finally, this WCJ notes that back in 2012, WCJ Pully requested applicant's counsel prepare and submit a detailed accounting of their time expended in this case. In reviewing this document filed with the court, it appears the only attorney time recorded with respect to the life care plan totals 1.3 hours. Apparently, none of this time was spent reviewing the life plan. Two brief telephone calls to the life care planner were made in November 2011 (11/10/11 at 0.3 & 11/17/11 at 0.2). There was an entry

for "file review regarding issues with life care planner" for 0.5 on 11/18/11. Finally, a "phone call to life care planner requesting final report" is documented on 03/15/12. Interestingly, a final full payment was made to the life planner in a check dated 12/28/2011 but there is no attorney time recorded reviewing the life plan between that date of payment and the trial in March 2012.

ORDER


In light of the foregoing, applicant's Petition for Costs for reimbursement of payment for a Life Care Plan is **DENIED**.

DATE: April 29, 2015



Cassandra V. Stajduhar
WORKERS' COMPENSATION JUDGE

Service by mail on interested parties shown on the
Official Address Record

Date: 04/30/2015 By: 

OFFICIAL ADDRESS RECORD

Case Number: ADJ6825656

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I am over age 18, not a party to this proceeding, and am employed by the State of California, DWC, Pomona District Office of the WCAB, located at 732 Corporate Center Drive, Pomona, CA 91768.

On 04/30/2015 I deposited in the United States mail at 732 Corporate Center Drive, Pomona, CA 91768, a sealed envelope/e-mail containing a copy of **STIPULATED FACTS, OPINION ON DECISION, ORDER**, with postage fully paid, addressed to the party or parties with check mark (√) above. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: 