

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

Case No. ADJ8458607

GENARO MIRAMONTES,

Applicant,

vs.

**RIVERDOG FARMS;
CRUM FORSTER ORANGE;**

Defendants.

**FINDINGS AND ORDER
And OPINION ON DECISION**

The above entitled matter having been heard and regularly submitted, the Honorable Adoralida Padilla, Workers' Compensation Judge, now decides as follows:

FINDINGS OF FACT

1. Applicant, GENARO MIRAMONTES, born 05/14/1993, while employed on 04/24/2012, as a laborer, in Guinda, California, by Timothy Mueller and Katherine Campbell dba River Dog Farm, sustained an injury arising out of and arising in the course of employment to the back, and claims to have sustained an injury psyche and left lower extremity;

2. The employer's workers' compensation insurance carrier on the date of injury was U.S. Fire Insurance Company adjusted by Crum & Forster;

3. Applicant's claim of injury to the psyche is barred by Labor Code Section 3208.3(d) as Applicant was not employed for six months or longer;

4. Applicant's injury, while sudden, was not an extraordinary employment condition, and therefore the claim of injury to the psyche is further barred by Labor Code Section 3208.3(d);

5. Applicant's Petition for a QME Panel in psychology is denied;

6. All other issues remain specifically deferred.

ORDER

ORDER IS MADE in favor of Defendant and against Applicant as follows:

- 1) Liability for injury as set forth in Findings Nos. 1 through 4;
- 2) Discovery as set forth in Findings No. 5;
- 3) All other issues as set forth in Findings No. 6.

DATE: 05/22/2015



ADORALIDA PADILLA
WORKERS' COMPENSATION JUDGE

OPINION ON DECISION

PSYCHIATRIC INJURY

Pursuant to Labor Code Section 3208.3(d), no psychiatric claim will be allowed unless Applicant has worked for the employer for a period of six months, with the six months not needing to be continuous. Here, it is clear that Applicant was employed with River Dog Farm for a period of about two months. On this basis, Applicant's claim of psychiatric injury must fail.

It is well established that there is an exception to the "6-month" rule, and that is if the psychiatric injury is a result of a sudden and extraordinary employment condition. Traditionally, examples of "sudden and extraordinary" included workplace violence, gas main explosions, and other similar events. Recently, the definition of "sudden and extraordinary" has begun to slowly expand.

Here, we have undisputed facts that Applicant was employed at River Dog Farm. His primary duties were in irrigation, but the irrigation crew would also be sent out to perform weed abatement on the farm. The farm was a large parcel of approximately 450 acres, located in a rural area. The employer testified that the area is surrounded by "wilderness." The farm is in an area where there are wild pigs, deer, all manner of rodents, and ground squirrels.

There is no dispute that Applicant stepped into or fell into a large hole which was surrounded or possibly covered by tall grass, and that the hole was a squirrel den.

There is a factual dispute over whether anyone else at the farm has ever stepped into a squirrel hole. Applicant testified that he never saw the hole as it was covered with grass, and that he never heard of anyone else encountering such a hole, or falling into a hole. Applicant also testified that he had not encountered any other holes other than the one he had stepped into.

The employer's testimony is quite different. The employer testified that there are "hundreds of holes" found on the farm as the squirrels make burrows to live in. Mr. Mueller further testified that the holes can be 9 inches in diameter and up to a foot deep, with most holes being much smaller. The employer credibly testified that holes are common at the farm, that the holes are not hard to see, and that the holes get stepped into all the time. However, the employer was not aware of any other employees being injured from stepping into a hole.

Turning to the current state of the law: In 1989, in response to a large increase in psychiatric claims, the Legislature adopted Labor Code Section 3208.3, with the intent to establish a new and higher threshold of compensability for psychiatric injuries. The "6-month rule" was added in 1991, and the "sudden and extraordinary employment condition" was also added.

While most accidents are unexpected and meet the "sudden" requirement, meeting the "extraordinary" requirement tends to be the subject of much litigation. A 2006 case, Matea v. WCAB (2006) 71 CCC 1522, grappled with this definition of "sudden and extraordinary." The Court defined "extraordinary" as "going beyond what is usual, regular, common or customary" and "having little or no precedent and usually totally unexpected."

While Applicant did testify that he was surprised when he fell into the hole, and had not been warned about squirrel holes, I find the employer's testimony more persuasive than Applicant's testimony. Here, the employer has established that there are "hundreds" of squirrel holes on the farm and that that workers step into squirrel holes frequently. I find that the incident was not unusual, uncommon or unexpected and therefore Applicant has not met his burden of proof pursuant to Labor Code Section 3208.3(d).

PETITION FOR QME PANEL IN PSYCHOLOGY

As there is no basis for a psychiatric claim, Applicant is not in need of a psychological QME evaluation. As such, Applicant's Petition for QME Panel is hereby denied.

ALL OTHER ISSUES

All other issues remain specifically deferred.

DATE: 05/22/2015



ADORALIDA PADILLA
WORKERS' COMPENSATION JUDGE

Served:
Date: 5-22-2015
Copy served by mail on all parties as are listed
on the current Official Address Record Attached.

By: *Helen M. Garza*

05-22-2015

OFFICIAL ADDRESS RECORD

Case Number: ADJ8458607

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