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**WORKERS' COMPENSATION APPEALS BOARD
OF THE STATE OF CALIFORNIA**

FILED
10/8/15
DATE
BY

DION ARCADO,

Applicant,

vs.

**VALLEY FAST OIL AND LUBE and PRO
CENTURY INSURANCE administered by
ILLINOIS MIDWEST,**

Defendants.

ADJ9918060

FINDINGS AND ORDER

The above-entitled matter having been regularly heard and submitted for decision to **JAMES R. JOHNSON, Workers' Compensation Administrative Law Judge, now finds and orders as follows:**

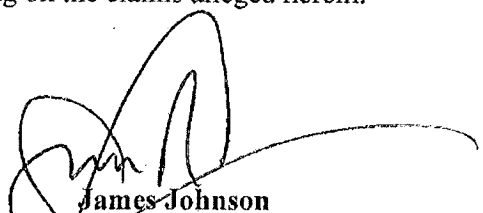
FINDINGS OF FACT

1. On December 30, 2014, the applicant, Dion Arcado, born November 19, 1981, while employed as a lube tech, by Valley Fast Oil and Lube, insured by Pro Century Insurance, administered by Illinois Midwest, did not sustain injury arising out of and in the course of employment to his low back.
2. All other issues are moot.

ORDER

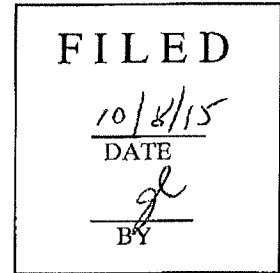
IT IS ORDERED that the applicant take nothing on the claims alleged herein.

10/8/15
Date


James Johnson
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

(See attached Proof of Service)

1 **Dion Arcado**
2 **ADJ9918060**



3
4 **OPINION ON DECISION**

5
6 On August 19, 2015, this case returned to calendar for a full day trial. At the trial the
7 parties stipulated that the applicant, Dion Arcado, born November 19, 1981, while employed as
8 a lube tech, by Valley Fast Oil and Lube, insured by Pro Century Insurance, administered by
9 Illinois Midwest, claims that on December 30, 2014, to have sustained injury arising out of and
10 in the course of employment to his low back.

11 At the trial the parties framed the issues to be decided as follows: injury arising out of
12 and in the course of employment, need for further medical treatment, statute of limitations, and
13 post-termination defense.
14

15 At the trial all of the offered exhibits were accepted into evidence except for defendant's
16 offer of an affidavit from an investigator who was not present in court to testify. The applicant's
17 objections were overruled to the defendant calling as witnesses the applicant's stepmother and
18 Edgar Melendez. After testimony from the applicant, and four witnesses called on behalf of the
19 defendant, the case was submitted for decision.
20

21 Pursuant to the Labor Code, the applicant has the burden of proving by a preponderance
22 of the evidence that he sustained an injury arising out of and in the course of employment.
23 "Preponderance of the evidence" means that evidence that, when weighed with that opposed to
24 it, has more convincing force and a greater probability of truth. When weighing the evidence,
25 the test is not the relative number of witnesses, but the relative convincing force of the evidence.
26 (See, Labor Code sections 3202.5 and 5705).
27
28

1 At the trial the applicant testified that on December 30, 2014, he was coming around a
2 corner when he slipped and fell injuring his left buttocks. The injury occurred when the
3 applicant was working down in a pit or bay underneath a car. The applicant testified that after
4 slipping and falling he got up and went to work on his next car. The applicant testified that he
5 finished his work shift and had no symptoms related to the fall. The applicant testified that later
6 that evening he developed symptoms of low back pain and took some Tylenol. (See, Summary
7 of Testimony at page 5).
8

9 The applicant further testified that at the time of the incident he notified his supervisor
10 that he had fallen. The applicant testified that he indicated to his supervisor that he was “okay”.
11 The applicant testified that later the next day he again told his supervisor about his back hurting
12 but again said that he was “okay” and “just kind of sore”. The applicant again completed his
13 work shift. (See, Summary of Testimony at page 5).
14

15 The applicant further testified that he continued his regular shifts and that there was no
16 lost time due to the work injury until March 20, 2015, his last day of work. The applicant
17 testified that he worked in pain. The applicant testified that he first received treatment for his
18 injury at Kaiser on February 2, 2015. (See, Summary of Testimony at pages 5-6).
19

20 The medical record from Kaiser dated February 2, 2015, records a history of the
21 applicant falling “a couple of weeks ago”. The note indicates the applicant slipped while
22 rounding a corner landing on his right side. The note indicates the applicant now has some back
23 pain and right shoulder pain and left knee pain. The record indicates the applicant’s back was
24 starting to get better and that he pulled it getting out of his truck after lunch (See, Defendant
25 Exhibit A; Applicant Exhibit 8).
26

27 The medical records further indicate that the applicant was re-examined on March 2,
28 2015. At that time the history indicates the applicant was walking and turned the corner and

1 slipped and fell onto his left hip. The history indicates low back pain up and down exacerbated
2 by various moves—getting out of truck, leaning over to pick up his lunch. The history indicates
3 that last week there was the onset of leg pain. (See, Applicant Exhibit 6).

4
5 At the trial, the applicant further testified that he had a “second incident” getting out of
6 his truck with a flare up of back pain in late February or early March. The applicant testified
7 that when he first went to see Dr. Antenucci he thought he just had a “pulled muscle”. The
8 applicant testified that he said he had fallen at work but was not there for a workers’
9 compensation injury. The applicant testified he was going to take care of it on his own and not
10 worry about workers’ compensation. (See, Summary of Testimony at page 9).

11 The testimony from the employer’s witnesses corroborates the applicant’s testimony that
12 the applicant indicated that he had injured himself getting out of a car or truck. (See, Summary
13 of Testimony Pedro Edgar Melendez, page 12; Summary of Testimony, Gabriel Airoidi, page
14 13; and Summary of Testimony, Nicole Madeiros, pages 14 and 16).

15
16 It is further found that the applicant has not offered any expert medical opinion to
17 substantiate his claim that the alleged incident on December 30, 2014, caused any compensable
18 temporary disability or permanent disability or need for medical treatment. The EDD certificate
19 by Dr. Antenucci, dated April 18, 2015, indicates that the applicant’s disabling condition was
20 not caused and/or aggravated by the applicant’s regular or customary work. (See, Defendant
21 Exhibit C). The medical record from Kaiser, dated February 2, 2015, further indicates that the
22 applicant’s symptoms “might” be related to the applicant’s chronic overhead work. (See,
23 Defendant Exhibit A and Applicant Exhibit 8).

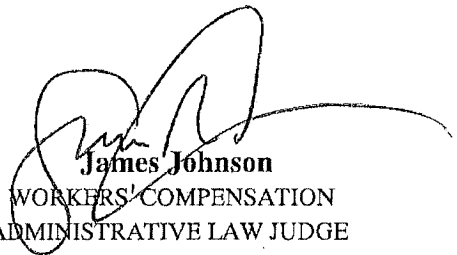
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25 Based upon the above record, and relying upon the testimony from the employer’s
26 witnesses, whose testimony is found to be the most credible and most persuasive concerning the
27 history of the applicant’s claimed injury, and there being no expert medical opinion supporting
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the applicant's claim, it is found that the applicant has failed to meet his burden of proving by a preponderance of the evidence that on December 30, 2014, he sustained an injury arising out of and in the course of employment to his low back.

All other issues are moot.

10/8/15
Date



James Johnson
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

(See attached Proof of Service)

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DION ARCADO
ADJ9918060

PROOF OF SERVICE
of
FINDINGS AND ORDER
with
OPINION ON DECISION

Filed and served by mail or email on the following parties.

By: *J. Larson* Date: *10/8/15*

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