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

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| **ROBERT COMER,**<br><br>*Applicant,*<br><br>vs.<br><br>**G2 GRAPHICS SVC; HARTFORD SACRAMENTO, SCIF INSURED GLENDALE, PREFERRED EMPLOYERS SAN DIEGO, BERKSHIRE HATHAWAY SAN FRANCISCO, SEDGWICK CIGA GLENDALE,**<br><br>*Defendants.* | **Case No. ADJ7426004**<br><br>**FINDINGS OF FACT** |

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

**FINDINGS OF FACT**

1. ROBERT COMER, born on January 12, 1949, while employed during the period July 14, 1969 through May, 2010 as a dispatch manager/film developer, occupational group number 221, at Hollywood, California by G2 Graphic Services, Inc., whose workers' compensation insurance carriers were HARTFORD SACRAMENTO, SCIF INSURED GLENDALE, PREFERRED EMPLOYERS SAN DIEGO, BERKSHIRE HATHAWAY SAN FRANCISCO, SEDGWICK CIGA GLENDALE, claims to have sustained injury arising out of and occurring in the course of employment to his eyes, stress, psyche, respiratory system, internal, neurological, headaches, cardiac and sleep.

2. Based on the record as a whole, it is concluded the applicant did not meet his burden of proof to prove up injury arising out of and occurring in the course of employment during the period July 14, 1969 through May, 2010, to his eyes, stress, psyche, respiratory

system, internal, neurological, headaches, cardiac and sleep while employed by G2 Graphic Services, Inc.

3. Having found applicant did not meet his burden of proof to prove up injury arising out of and occurring in the course of employment, the applicant shall take nothing herein.

4. Having found applicant did not meet his burden of proof to prove up injury arising out of and occurring in the course of employment renders moot all other issues raised at time of trial.

DATE: May 9, 2014

**Sharon Bernal**
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

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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 5/9/14 I deposited in the United States mail at 732 Corporate Center Drive, Pomona, CA 91768, a sealed envelope containing a copy of *Findings of Fact*, with postage fully paid, addressed to the party or parties with check mark (√) above and *Findings of Fact* emailed/faxed to the party or parties with double check marks (√√) above. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: W. K. Belhumeur

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PRIORITY

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**Division of Workers' Compensation**
**Workers' Compensation Appeals Board**

**CASE NUMBER: ADJ7426004**

**ROBERT COMER** -vs.- **G2 GRAPHICS SVC; HARTFORD SACRAMENTO, SCIF INSURED GLENDALE, PREFERRED EMPLOYERS SAN DIEGO, BERKSHIRE HATHAWAY SAN FRANCISCO, SEDGWICK CIGA GLENDALE,**

**WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE:** **Sharon Bernal**

## OPINION ON DECISION

### INJURY AOE/COE

Based upon the medical report of Samir Shahin, M.D. dated September 3, 2013, and the reports of Stanley Majcher, M.D. dated July 30, 2011, June 24, 2011 and October 11, 2010, and the report of Kenneth Geiger, M.D. dated November 22, 2011, which are the better reasoned and more persuasive, it is found that the applicant did not sustain injury to his eyes, stress, psyche, respiratory system, internal, neurological, headaches, cardiac and sleep arising out of and occurring in the course of employment during the period July 14, 1969 to and including May, 2010.

### SUBSTANTIAL MEDICAL EVIDENCE

Even though the courts in the past have construed the workers' compensation laws liberally in favor of extending benefits, an employee seeking benefits still carries the burden of proof by a preponderance of evidence that an injury or disease arose out of and in the course of employment. (*Livitsanos v. Superior Court* (1992) 2 Cal.4th 744, 753, 57 CCC 355, Labor Code 3202, 3202.5, 3208, 5705)

It is well established that an award must be based on legally competent evidence, not on mere speculations that an injury was industrially caused, nor on a judge's lay belief. (*City & County of San Francisco v.* IAC (Murdock) (1953) 18 CCC 103)

In this case the applicant, Robert Comer, has claimed injury to his eyes, stress, psyche, respiratory system, internal, neurological, headaches, cardiac and sleep as a result of claimed exposure to multiple chemicals (exposure to hands as well as inhalation) over a period of approximately forty-two years. For any claimed injury there must be a causal connection between the employment and the claimed injury.

The applicant relies on the medical opinions and reports of Marvin Pietruszka, M.D. In his initial report dated January 18, 2012, Dr. Pietruszka states the applicant was exposed to a broad variety of chemicals as well as fumes, dust and vapors on the job. The chemicals were described as

relating to the printing and film processing business. There are some inconsistencies in the reporting on the applicant's use of gloves and respiratory masks. In the January 18, 2012 report, Dr. Pietruska states the applicant did not use any form of a face mask for at least the first ten years of his employment and he rarely used gloves (page 3 of 10). In the June 15, 2012 report, Dr. Pietruska also reports the applicant states for at least the first ten years of his employment he did not use any form of a respirator mask and he rarely used gloves (page 3 of 35).

The applicant, Robert Comer, testified at trial under direct-examination that occasionally he wore a mask and occasionally he wore gloves. That sometimes there was no money for masks and gloves, but if they had masks and gloves he would use them. That he wore gloves five to ten times a month. (Minutes of Hearing and Summary of Evidence January 27, 2014, page 5) Under cross-examination the applicant testified that between 2002 to approximately 2007 or 2008, fifteen percent of his shift was spent developing film in the darkroom. During those years he wore a mask and gloves off and on, when they were available. Applicant testified he used the masks and gloves the same amount of time he worked in the five foot by seven foot lab as later when he worked in the ten foot by twelve foot lab. (Minutes of Hearing and Summary of Evidence January 27, 2014, page 7) As shown in defense exhibit 'E', the applicant did testify in his deposition he used gloves between the period 1979 to 1989.

Consistent with any claim of industrial injury, a causal connection between the employment and the claimed occupational disease must be established in order for that claimed injury to be found to be compensable.

The only testimony offered at trial was from the applicant, Robert Comer. Under direct-examination applicant testified that in processing photographs he used both liquids and dry powder. Applicant also testified he has heard of isopropyl alcohol, but has not used it in the lab. (Minutes of Hearing and Summary of Evidence January 27, 2014, pages 5 and 6) Under cross-examination applicant testified he did not use rubbing alcohol at all and that he did not recall if he worked with a chemical identified as RA-3000 and 200(R). (Minutes of Hearing and Summary of Evidence March 10, 2014, page 3) Under redirect-examination applicant testified he was familiar with some of the names of the chemicals he worked with, but was not familiar with the components of those chemicals. Isopropyl alcohol may have been in one of the chemicals he used without his knowledge. Applicant recalled being shown Material Safety Data Sheets and that he used Kodak liquid developer. (Minutes of Hearing and Summary of Evidence March 10, 2014, pages 4 and 5). In the present case the testimony of the applicant, Robert Comer, is insufficient to constitute substantial medical evidence without substantiation via competent and substantial evidence from a physician.

In order to prove a causal connection between the applicant's employment and the claimed occupational exposure, the injured worker needs to show causation by a reasonable medical probability, not an absolute certainty. (*McAllister v. WCAB*, (1968) 33 CCC 660. 665)

The permanent and stationary report by the treating physician, Dr. Pietruszka (June 15, 2012, page 3 of 35) states the applicant was exposed to a broad variety of chemicals as well as fumes, dust and vapors in the course of his employment and provided an extensive list of named chemicals. In his report, Dr. Pietruszka does not identify the source for identifying that extensive list of chemicals. There was no testimony from the applicant at trial as to any claimed exposure to those chemicals

listed in the June 15, 2012 report. There was no testimony from the applicant at trial as to the Material Data Safety Sheets offered into evidence as Applicant's Exhibit '3'. In that permanent and stationary report, Dr. Pietruszka concludes his analysis supports a finding that a scientifically plausible explanation for the applicant's neurologic injury, identified as Parkinsonian-like condition, is an industrial injury (page 32 of 35). That conclusion is not found to be proof by a preponderance of the evidence that there is a causal connection between the claimed injuries and claimed workplace exposure.

Conflicting medical opinions and analysis was submitted in the medical report of Samir Shahin, M.D., reporting as a Panel Qualified Medical Evaluator. In the report dated September 3, 2013, the Panel QME included a review of a substantial amount of medical records, reviewed both applicant's deposition transcripts, as well as the medical reports of the other reporting physicians entered into evidence at trial. Dr. Shahin also provided a summary of Material Safety Data Sheets. The Panel QME concluded there was no evidence of industrial injury and that correlation is not causation. (Defense Exhibit 'A')

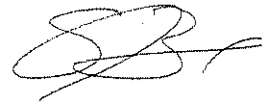
The applicant was seen by Stanley Majcher, M.D. for an internal medicine consultation. In a report dated July 30, 2011, Dr. Majcher reviewed the material safety data sheets. Dr. Majcher issued reports reviewing the applicant's medical records and deposition transcripts. Dr. Majcher found no objective evidence to substantiate internal organ damage and found no evidence of injury (Defense Exhibit 'C').

The applicant was seen by Kenneth Geiger, M.D. for a neurologic evaluation. Dr. Geiger included a review of medical records and medical research literature. Dr. Geiger concluded the applicant should be treated for Parkinson's disease and dementia on a non-industrial basis.

Based upon the facts in total, it is found the applicant did not meet his burden of proof to prove up an injury arising out of and in the course of employment during the period July 14, 1969 through May, 2010.

**ALL OTHER ISSUES**

Based on the above findings, all other issues raised are rendered moot.



DATE: May 9, 2014

**Sharon Bernal**
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

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On 5/9/14 I deposited in the United States mail at 732 Corporate Center Drive, Pomona, CA 91768, a sealed envelope containing a copy of *Opinion on Decision*, with postage fully paid, addressed to the party or parties with check mark (√) above and *Opinion* emailed/faxed to the party or parties with double check marks (√√) above. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: W. K. Belhumeur