

STATE OF CALIFORNIA

WORKERS' COMPENSATION APPEALS BOARD

Case No. ADJ8761915

Antonio Duenas,

*Applicant,*

vs.

Sandoval Enterprises, Inc., and Illinois  
Midwest Insurance Agency, on behalf of  
Star Insurance Company,

*Defendants.*

FINDINGS OF FACT  
AND ORDER

The above-entitled matter having been heard by and submitted for decision to Thomas J. Heslin, Workers' Compensation Administrative Law Judge, Findings of Fact and Order are made as follows:

FINDINGS OF FACT

- 1) Applicant, Antonio Duenas, did not sustain industrial injury to his back, on September 7, 2012;
- 2) Applicant's claim is barred by L.C. §3600 (a) (10);
- 3) The medical reports of Alan Fonseca M.D. (App Exhibits #1-6) do not constitute substantial medical evidence;
- 4) Lien claim of EDD/SDI is denied;
- 5) Defendant is not liable for any self-procured medical treatment obtained by applicant;
- 6) There are no funds from which to award applicant attorney fees.

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ORDER

IT IS HEREBY ORDERED THAT: APPLICANT, Antonio Duenas takes nothing as a result of this claim.

OPINION ON DECISION

This claim arises from an alleged injury claimed to have occurred on or about September 7, 2012. Trial was held and testimony was received from the applicant, the store manager, Jesus Jimenez, and the store owner Martin Sandoval.

Applicant' testimony was not credible in light of the collective evidence and testimony of Mr. Jimenez and Mr. Sandoval. Applicant contradicted himself on multiple occasions and presented a false history to Alan Fonseca M.D., the physician to whom he was referred by his attorney. Applicant initially testified that the alleged injury occurred and that "they noticed". (MOH/Summary page 4 lines 7-8) On cross examination he confirms his prior statement in his deposition that no one observed the alleged incident. (MOH/Summary page 5 lines 8-9)

He further testified that he was certain that the person he allegedly collided with had reported the injury because that person was seen speaking with the employer. (MOH/Summary page 6 lines 4-8) He admits however that he was not part of this conversation and therefore has no idea as to what was said.

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In his statements to Dr. Fonseca, the applicant related a history that the alleged incident was witnessed and that he had reported the incident to Martin Sandoval. (App Exhibit #1: Fonseca report January 31, 2013 page 2) This statement is contradicted by the above testimony and by applicant's subsequent testimony on page 16 line 13 of the MOH/Summary wherein after being recalled by his attorney, he testified that he did not report the alleged injury to Mr. Sandoval.

The reports of Dr. Fonseca contain other incorrect history; on page 4 of the January 31, 2013 report under the caption "General" the doctor reports that applicant worked "8+ hours a day, 40+ hours a week. At the time of injury, he was the in charge of the store" This statement is contradicted Defendant's exhibit #H, applicant's time card which demonstrates that he was working less than 40 hours per week for the immediate periods prior to the alleged injury and that he was not working on a daily basis. The reports of Dr. Fonseca are based on a false history and are therefore unreliable.

Applicant has presented no evidence to support his assertion that the alleged injury was witnessed or that he reported it to someone in a supervisory position prior to his termination on November 23, 2012.

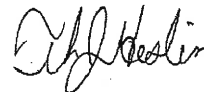
The testimony of the defense witnesses, Mr. Sandoval, the owner of the store, who trained applicant in his position as butcher and assistant manager of the meat department and the testimony of Jesus Jimenez, the store manager, are consistent and are supported by the evidence presented at trial.

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Applicant has failed to carry his burden of proof as to the issue of injury AOE/COE. He has failed to overcome the testimony of the employer and store manager that the alleged incident was never reported prior to his termination.

Dated: September 12, 2014



**Thomas J. Heslin**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Filed and Served by mail on parties  
as listed on the Official Address Record.

By: *C. Cook* 09/17/2014

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

09-17-2014

OFFICIAL ADDRESS RECORD  
FINDINGS OF FACT AND ORDER

Case Number: ADJ8761915

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Served on all parties by C. Cook