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

Case No. ADJ11697188

CLEMENTE MARTINEZ,

Applicant,

vs.

WEST SIDE AG INC;
MEADOWBROOK INSURANCE LAS
VEGAS;

Defendants.

**FINDINGS OF FACT, ORDER AND
OPINION ON DECISION**

LAW OFFICES OF ROBERT OZERAN
BY: ROBERT OZERAN
Attorneys for Applicant

BRADFORD & BARTHEL, LLP
BY: MANJIT K. BATTH
Attorneys for Defendant (s)

The above-captioned matter having been heard by and submitted for decision at Trial to the Honorable Debra Sandoval, Workers' Compensation Administrative Law Judge, Findings of Fact and Order are made as follows:

STIPULATED FACT

1. Clemente Martinez, born 6/21/1983, while employed on or about 11/23/2016, as a planter, occupational group number 491, at Kerman, California, by West Side Ag II, Inc., claims to have sustained injury arising out of and in the course of employment to his legs, knee, ankle, and foot.

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2. At the time of injury the employer's workers' compensation carrier was Star Insurance, Company, administered by Meadowbrook Insurance.
3. No attorney fees have been paid, and no attorney fee arrangements have been made.

FINDINGS OF FACT

The stipulations of the parties are accepted as fact.

1. Defendant failed to meet their burden of proof that applicant was the initial aggressor barring his claim pursuant to Labor Code section 3600.
2. Applicant failed to commence proceedings for the collection of benefits within one year of the date of injury as required by Labor Code section 5405(a).
3. Applicant's claim is barred by the Statute of Limitations as set forth in Labor Code section 5405(a).

ORDER

IT IS ORDERED that Applicant TAKE NOTHING FURTHER.

DATE: 3/25/2021

/s/ Debra Sandoval
Debra Sandoval
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

FILED AND SERVED ON PARTIES LISTED ON THE ATTACHED
OFFICIAL ADDRESS RECORD (EXCLUDING EMPLOYER).
ON: 3/25/2021
BY: WCAB – MCASTILLO

OPINION ON DECISION

Initial aggressor affirmative defense

Per LC 3600(a)(7), an employee is not entitled to compensation for any injury that arises “out of an altercation in which the injured employee is the initial physical aggressor.” In *Mathews v. WCAB* (1972) 37 CCC 124, the Supreme Court defined an initial physical aggressor as one “who by physical conduct first places his opponent in reasonable fear of bodily harm.” As an affirmative defense, the defendant carries the burden of proof.

In this case, the applicant testified that the other party involved in the altercation, Juan Hernandez, struck the first blows hitting the applicant with a metal pipe on his hip, thigh and lower leg. The applicant denied striking Mr. Hernandez first. Mr. Hernandez testified that he felt in danger when the applicant approached him because the applicant was larger and appeared angry. Mr. Hernandez testified that the applicant threw two punches but missed before Mr. Hernandez struck the applicant with the metal pipe. Despite both parties testifying that there were other observers to the altercation, neither party produced any corroborating witnesses.

Based upon the conflicting testimony and the requirement that all reasonable doubts as to whether an injury is compensable are to be resolved in favor of the employee; it is found that defendant failed to meet their burden of proof that the applicant was the initial aggressor. This is consistent with the mandate that the workers' compensation laws “shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment.” (Lab. Code, § 3202.)

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Statute of Limitations

Labor Code section 5405 establishes the time limit for commencing proceedings is one year from the longest of the period from 1) the date of injury; 2) the date of last indemnity payment for temporary or permanent disability; or 3) the date of last furnishing of any hospital or medical benefits. In this case the defendant provided no medical treatment or payment of disability benefits.

The applicant admitted in his testimony that he did not file a claim until November 2018, approximately two years following his claimed injury. The applicant admitted that he did not ask his supervisor for treatment. The applicant claimed that his supervisor should have offered him treatment but admitted that he never told his supervisor that he needed treatment. The applicant claimed that his supervisor should have known that he needed treatment because he saw that he had been hit with a pipe. However, the applicant also admitted that Carlos was not there at the beginning of the altercation because Delia needed to call Carlos to come to the scene of the fight. Carlos testified in his deposition that he did not see the actual altercation and that the parties were no longer fighting when he arrived. The applicant also admitted that he was aware of the procedure for reporting a work related injury. The applicant continued to work for the employer for another season following the alleged injury apparently without missing work or requesting treatment. The applicant failed to establish a basis upon which to toll the Statute of Limitations as set forth in Labor Code section 5405.

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

03-25-2021

OFFICIAL ADDRESS RECORD

FINDINGS OF FACT, ORDER AND OPINION ON DECISION served on all parties, excluding
employer, listed on OAR by WCAB - M. Castillo.

Case Number: ADJ11697188

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