

DBH
#052722

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

BRADFORD & BARTHEL, LLP
SEP 29 2021
ANAHEIM

LORI NEW,

Applicant,

vs.

ARAMARK; ACE AMERICAN
INSURANCE COMPANY administered by
SEDGWICK CMS;

Defendants.

Case Nos ADJ7910164 & ADJ7900854
ANAHEIM DISTRICT OFFICE

JOINT FINDINGS AWARD & ORDER

LAW OFFICES OF ROSE, KLEIN & MARIAS, LLP
By: LILIA BALLESTEROS, Esq.
Attorneys for Applicant

BRADFORD & BARTHEL
By: DAVID HUEBNER, Esq.
Attorneys for Defendants

The above entitled matter having been heard and regularly submitted, the Hon. Nancy M. Gordon, Workers' Compensation Judge, now finds, awards, and orders as follows:

FINDINGS OF FACT

1. The applicant, LORI NEW, 52 years old, while employed on 7/28/2010 and 10/29/2010, as a food preparer at Anaheim, California, by ARAMARK, whose workers' compensation insurance carrier was ACE AMERICAN INSURANCE COMPANY administered by SEDGWICK CMS, sustained injuries arising out of and occurring in the course of her employment to her left knee, right knee, and left hip, but not her right hip.

2. The applicant's average weekly earnings at the time of injury were \$196.37 per week producing a permanent disability indemnity rate of \$130.91 per week.

3. The applicant's 10/29/2010 injury caused temporary disability, for which she has been adequately compensated.

4. The applicant's 7/28/2010 injury caused permanent disability of 3% after apportionment, to the left knee, entitling applicant to nine weeks of disability indemnity payable at the rate of \$130.91 per week in the total sum of \$1,178.19.

5. The applicant's 10/29/2010 injury caused permanent disability of 14%, after apportionment, to the left knee, entitling applicant to 46.25 weeks of disability indemnity payable at the rate of \$130.91 per week in the total sum of \$6,054.59.

6. The employer did not, within 60 days of the disability becoming permanent and stationary on applicant's 10/29/2010 injury, offered the applicant regular work, modified work or alternative work, in the manner prescribed by the Administrative Director, for a period of at least 12 months.

7. The defendants are not entitled to a credit for overpayment of temporary disability, if any.

8. The reasonable value of the services and disbursements of applicant's attorney is \$176.72 for the 7/28/2010 date of injury and \$908.19 for the 10/29/2010 injury, plus 15% of the 15% increase awarded, pursuant to 4648(d) with jurisdiction reserved as to any dispute of that calculation.

AWARD

AWARD IS MADE in favor of LORI NEW against ACE AMERICAN INSURANCE COMPANY of:

a. Permanent disability of 3%, entitling applicant to 9 weeks of disability indemnity at the rate of \$130.91 per week, in the sum total of \$1,178.19, less credit for any sums heretofore paid on account thereof, if any, and less \$176.72, payable to Rose Klein & Marias as attorney fees, for the 7/28/2010 injury.

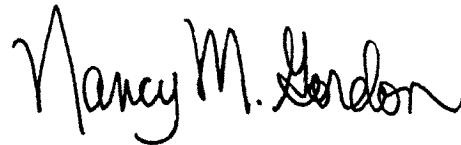
b. Permanent disability of 14%, entitling applicant to 46.25 weeks of disability indemnity at the rate of \$130.91 per week, in the total sum of \$6,054.59, less credit to defendant for all sums heretofore paid on account thereof, if any, and less \$908.19, payable to Rose, Klein & Marias as attorney fees;

c. Each permanent disability payment remaining for the 10/29/2010 injury to be paid to the applicant from 7/25/2011 shall be increased by 15%, less 15% of the increased payment value paid as a reasonable attorney fee to Rose Klein & Marias.

ORDERS

IT IS ORDERED that the defendant's request for an order of credit for alleged overpayment of temporary disability is denied.

DATE: 9/29/2021



Nancy M. Gordon
WORKERS' COMPENSATION JUDGE

09-29-2021

OFFICIAL ADDRESS RECORD

Case Number: ADJ7910164

ARAMARK Employer, 2000 E GENE AUTRY WAY ANAHEIM CA 92802

BRADFORD BARTHEL ANAHEIM **Law Firm, PO BOX 348450 SACRAMENTO CA 95834, E-DOCS@BRADFORDBARTHEL.COM**

LORI NEW **Injured Worker, 8173 APPOMATOX LN BOISE ID 83714**

ROSE KLEIN CERRITOS **Law Firm, 12800 CENTER COURT DR STE 500 CERRITOS CA 90703, INFO@RKMLAW.NET**

SEDGWICK BURBANK Claims Administrator, PO BOX 14153 LEXINGTON KY 40512

THE ABOVE HIGHLIGHTED PARTIES WAS SERVED THE FOLLOWING DOCUMENTS:

- **JOINT FINDINGS AWARD AND ORDER DATED 09/29/2021**
- **OPINION ON DECISION DATED 09/29/2021**

SERVICE BY: A. MORALES ON 09/29/2021

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STATE OF CALIFORNIA
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ERATOSEDA & BARTHEL, LLP
SEP 29 2021
ANALYST

CASE NUMBERS: ADJ7910164 & ADJ7900854

LORI NEW

-vs.-

ARAMARK; ACE
AMERICAN INSURANCE
COMPANY administered by
SEDGWICK CMS;

WORKERS' COMPENSATION JUDGE: Nancy M. Gordon

DATE: 9/29/2021

JOINT OPINION ON DECISION

The applicant, Lori New, born 2/22/1958, while employed on 7/28/2010, as a food preparer, Occupational Group Number 322, at Anaheim California, by Aramark, was admitted by defendant to have sustained injury arising out of and in the course of her employment to her right knee and left knee. This is case number ADJ7910164. In the court's 4/22/2020 Joint Opinion on Decision, the injury was found to have extended to her left hip pursuant to the opinion of Panel QME, Dr. Zenia E. Cortes.

The applicant also sustained a second injury on 10/29/2010 to her right knee, left knee, and left hip. This is case number ADJ7900854.

The employer's workers compensation carrier at the time of both injuries was ACE American Insurance Company administered by Sedgwick CMS.

The court made findings on most of the issues set for trial in its 4/22/2020 Joint Opinion on Decision. A few issues required development of the record. The parties have since provided additional stipulations on these few remaining issues.

TEMPORARY TOTAL DISABILITY

There are three remaining periods of time that the applicant claims she was temporarily totally disabled that the parties represent still need a court decision. The first is 10/29/2010 to 1/29/2011. The attorneys for the parties have now stipulated that the applicant has already been paid temporary disability for that period of time.

The second period is from 2/1/2011 to 6/6/2011. The parties also now stipulate the applicant has been paid temporary disability for that period of time.

The third period at issue is from 7/30/2012 to 2/1/2013. It is stipulated that no temporary disability was paid for that period of time. As both Dr. Zenia Cortes and Dr. David R. Johnson found the applicant to have reached maximum medical improvement on 5/26/2011, the court finds the applicant was not temporarily disabled during that period of time.

PERMANENT DISABILITY

Due to the dates of injury, the court must consider the application of Labor Code §4658(d). No evidence had been offered as to whether the employer had 50 or more employees at the time of the applicant's injuries. The parties have now stipulated that Aramark had 50 or more employees at the time of the applicant's injuries.

No evidence was offered that defendant offered applicant regular, modified, or alternative work, lasting at least 12 months, sixty days after she became permanent and stationary.

The applicant's average weekly wage was \$197.37 per week.

For the applicant's 7/28/2010 injury, the only permanent disability is to the left knee, which after apportionment rates 3%. It is equivalent to 9 weeks of disability payable at the rate of \$130.91 per week in the sum total of \$1,178.19. The Labor Code §4658(d) increase is not applicable to an award of 9 weeks of disability.

For applicant's 10/29/2010 injury, the applicant has permanent disability solely to the left knee. Her permanent disability pursuant to the opinion of Dr. Cortes is 14% after apportionment. Prior to the application of Labor Code §4658(d), the applicant's permanent disability is equivalent to 46.25 weeks payable at the rate of \$130.91 per week in the sum total of \$6,054.59.

**CREDIT FOR OVERPAYMENT OF TEMPORARY DISABILITY AGAINST
PERMANENT DISABILITY AWARD**

No petition for a credit pursuant to Regulation §10555 has been filed. The request for credit is denied.

ATTORNEY FEES

The reasonable value of attorney fees payable to the Law Offices of Rose Klein & Marias is 15% of the awarded permanent disability.

DATE: 9/29/2021



Nancy M. Gordon
WORKERS' COMPENSATION JUDGE