

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

Case No. ADJ12459250

ALEJANDRA GOMEZ,

Applicant,

vs.

FERRARI CARANO insured by STATE
NATIONAL INSURANCE COMPANY,
administered by MEADOWBROOK
INSURANCE LAS VEGAS;

Defendants.

FINDINGS AND ORDER

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

FINDINGS OF FACT

1. Alejandra Gomez, born on January 8, 1971, while employed on October 18, 2018 as a winery cellar worker at Healdsburg, California, by Ferrari Carano Vineyards and Winery, sustained injury arising out of and in the course of employment to her right shoulder and right elbow.
2. At the time of injury, the employer's workers' compensation carrier was State National Insurance Company, administered by Meadowbrook Insurance Group.
3. The applicant was a temporary hire and the work assignment ended on November 1, 2018.
4. The applicant failed to show entitlement to temporary disability following the termination date.


5. Applicant's Petition for Penalties dated July 19, 2022 is hereby denied.
6. The applicant has not yet reached permanent and stationary status according to Qualified Medical Evaluator, Joseph Sclafani, M.D.
7. All other issues are deferred with jurisdiction reserved.

ORDERS

IT IS ORDERED that the applicant is not entitled to additional temporary disability benefits.

IT IS FURTHER ORDERED that the applicant's Petition for Penalties dated July 19, 2022 is denied.

DATE: October 10, 2022


Katie F. Boriolo
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served by mail on all parties listed on the
Official Address record on the above date.
BY: jleal

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

Alejandra Gomez
ADJ12459250

OPINION ON DECISION

TEMPORARY DISABILITY

A seasonal employee gets TTD at two rates: (1) in-season rate based upon pay rate while working and (2) off-season rate based upon the employee's off-season earnings capacity, taking into consideration such factors as the employee's earnings history, willingness and ability to work, age and health, education and skill, as well as, employment opportunities and general capacity of the labor market. (*Jimenez v. San Joaquin Valley Labor* 67 CCC 74 (Appeals en banc). No temporary disability is owed to a seasonal worker during off season when there is no history of work during off season. (*Signature First v. WCAB (Bedoy)* (2006) 71 CCC 1752.)

Here, the record supports that the applicant was a temporary worker. According to the employer's job description for a Seasonal Cellar Worker, this was a seasonal/temporary position from August through November 2018 with the possibility of full-time employment. (Def. Exh. B.) The applicant's employment with Ferrari-Carano Vineyards and Winery was terminated on November 1, 2018 because it was the end of the temporary assignment (seasonal harvest employment). (Def. Exh. D.) The applicant did not provide any evidence of off season wages. (Def. Exh. C.)

It is found that the defendant properly denied temporary disability because the applicant was a temporary hire and the work assignment ended on November 1, 2018. (Def. Exh. E.) Applicant has failed to show entitlement to temporary disability following the termination date. Applicant's Petition for Penalties dated July 19, 2022 is denied.

PERMANENT AND STATIONARY DATE

According to the Qualified Medical Evaluator, Joseph Sclafani, M.D., the applicant has not yet reached permanent and stationary status. (Jt. Exh. 9, Dr. Sclafani, 8/19/21.) It is found that the reporting of the QME is more persuasive and is given more weight than the permanent and stationary report from the primary treating physician, Richard Andolsen, M.D.

DATE: October 10, 2022


Katie F. Boriolo


WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

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

10-10-2022

PROOF OF SERVICE
OF
FINDINGS AND ORDER
AND
OPINION ON DECISION

Served by mail or email on the following parties:

By:  Date: October 10, 2022
OFFICIAL ADDRESS RECORD

Case Number: ADJ12459250

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