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

VALENTINA ULIAN THOMAS,

Applicant,

VS.

FOUR SEASONS HEALTHCARE
WELLNESS; XL SPECIALTY INSURANCE
COMPANY ADMINISTERED AND
ADJUSTED BY INTERCARE HOLDINGS
INSURANCE SERVICE;

Defendants.

Case No. ADJ14765137

FINDINGS AND ORDER

BRADFORD & BARTHEL

NOV 21 2024

Sacramento

The above entitled matter having been heard and regularly submitted with the parties listed below, the Honorable Martha D. Henderson, Workers' Compensation Administrative Law Judge, now decides as follows:

MEHR & ASSOCIATES
By: Amber Martin, Esquire
Attorneys for Applicant

BRADFORD & BARTHEL, LLP By: Sophia Martinez, Esquire Attorneys for Defendant(s)

FINDINGS OF FACT

1. Valentina Ulian Thomas, at age 69, while employed on December 24, 2019, as a Registered Nurse, Occupational Group Deferred, at Valley Village, California, by Four Seasons Healthcare & Wellness Center, LP, has failed to meet her burden of proof in

demonstrating that she sustained injury arising out of and in the course of employment to her head, neuro, neck, TBI, psyche, stress, cognitive behavior, and stroke.

- 2. The applicant did not sustain injury arising out of and in the course of employment to her head, neuro, neck, TBI, psyche, stress, cognitive behavior, and stroke.
- 3. At the time of the injury, the employer's workers' compensation carrier was XL Specialty Insurance Company administered and adjusted by Intercare Holdings Insurance Services.

ORDER

- 1. It is the order of this court that the applicant shall take nothing on this claim.
- 2. Defendant's Exhibits E and F are excluded and Exhibit K is admitted into evidence.
- 3. The matter is ordered off calendar.

DATE: 11-13-24

MARTHAD. HENDERSON
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

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

BY: Maria Guzman

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

11-18-2024

OFFICIAL ADDRESS RECORD/PROOF OF SERVICE

Case Number: ADJ14765137

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VALENTINA ULIAN THOMAS

Injured Worker, 5238 SYLMAR AVE SHERMAN OAKS CA 91401

FINDINGS AND ORDER -AMENDED OPINION ON DECISION SERVED BY MAIL ON PARTIES LISTED ABOVE

ON: 11/18/2024 BY: Maria Guzman

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

CASE NUMBER: ADJ14765137

VALENTINA ULIAN

-VS.-

FOUR SEASONS

THOMAS

HEALTHCARE WELLNESS
CENTER, FOUR SEASONS

HEALTHCARE WELLNESS;

administered by INTERCARE

;

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE:

Martha D. Henderson

AMENDED OPINION ON DECISION FOR CORRECTION OF CLERICAL ERRORS ON PAGE 8 AND 9

A. BRIEF STATEMENT OF THE CASE

Valentina Ulian Thomas, was employed as a registered nurse on December 24, 2019, by Four Seasons Healthcare & Wellness Center. The applicant filed a claim alleging that while employed, she sustained injury to her head, neuro, neck, TBI, psyche, stress, cognitive behavior, and stroke when she struck her head on a metal table. Her job duties at Four Seasons included providing medication and oxygen to patients. She testified at trial that she provided oxygen every Monday night to nine or ten patients. Her job was to assess patients when they came in and when they were discharged.

B. SUMMARY OF APPLICANT'S TESTMONY

On the date of injury, December 24, 2019, she was passing out medication to a patient when the cord on the oxygen tank fell and she bent over to pick it up. It was her testimony that she then hit her head on a table. When asked if she reported the injury, she said that her supervisor, Simarjot Gill, came in later to see what had happened, and when she saw what had happened, she did not ask the witness if she wanted to report an injury. The witness stated that there were cameras which saw everything the way it happened. She said that she struck her brow on the table. When asked whether there were any other people in the room that witnessed the incident, she said there were none. She

said that there were no coworkers in the room with her then. (MOH/SOE; 2/14/24, p 7: 21-25; (MOH/SOE; 2/14/24; page 8:1-4),

The applicant repeated that she hit her head on the table. Her testimony was that she did not ask for an incident report, and her supervisor did not provide her with one. She stated that she believed she had a bruise on her forehead and eyebrow area at the time. She said she was not cut or bleeding. She stated that she did not tell the supervisor about the injury because she did not know how bad it would get, and she believed that's why the supervisor did not give her a form. The supervisor told her to pay attention and to be careful once she saw the bruise.

She would typically work from 11:00 p.m. to 8:00 a.m., and this injury happened at approximately 4:00 a.m. She continued to work her shift up until 8:00 a.m., and she states that the date that she actually left work following the injury was December 25, when her shift ended. She went home immediately and arrived home in about 15 minutes. Her significant other, Joe, whom she has lived with for about 15 years, was not home, but he came home at about 11:00 p.m. as he was at work. He found her on the floor unconscious. She testified that she did not know what happened but stated that she did not fall at home. Joe found her unconscious and called 911 at 11:00 p.m. She stated that she had been home by herself from 8:00 a.m. until approximately 11:00 p.m. but denies that she hurt herself. She believes she was unconscious for about 24 hours. She regained consciousness at the hospital 24 hours after the surgery. (MOH/SOE; 2/14/24, p 8-9)

However, she said that she was at Adventist Hospital, and later became aware that she had injured herself above her brow. She was then asked if she had fallen at any other time at work, and she stated that she had fallen, but she did not hurt herself. She was seen by the doctor and they sent her back to the work the same night. It was her testimony that she fell only one time, but she did not recall the exact date. She stated that it was a couple of months prior to the claimed work-related fall, but she reiterated, again, that she went to the doctor as they wanted to make sure she was okay, and she was sent back to work on the same night. Ms. Thomas testified that she did not lose any time from work due to that first fall. She was then asked if she was seen by Dr. Kenneth Geiger, and if she disclosed the prior fall. She testified she did not disclose the prior fall because she did not get injured. (MOH/SOE; 4/17/24,)

On cross examination, Ms. Thomas was asked if in April of 2013, did she had a slip-and-fall at work. She said, "No." Defense counsel read from Exhibit D, records from Gallagher Bassett Service, April 16, 2013, beginning on page 2 of the records. The notation indicated: "Floor has oil, and fell down, hit left eyebrow, and hit her back by the ground." There was also reference to what appeared to be a signature from "V. Thomas" on April 16, 2013. Ms. Thomas testified that she did not recall this incident nor this fall at work. Next, Ms. Thomas was asked about an incident on September 22, 2015, pertaining to a fall at work while at Sherman Oaks Hospital. She testified that she did not fall and she was not injured. Defense counsel read from Exhibit B, Molani records, page 9, indicating that there was an encounter date of September 22, 2015, with Dr. Jabeen Fatima as the primary care physician. The substance of the records was essentially that the applicant's chief complaint was that she fell at work with bruising on the left eye. (MOH/SOE, 4/17/24 page 3, 11-23)

Defense counsel also read an entrance, dated September 23, 2015, when she then asked Ms. Thomas if she hit her head on the corner of a coffee table. She testified that she did. There was some

confusion; however, as to whether that incident occurred at Sherman Oaks Hospital while she was working there. Ms. Thomas responded that she did not hit her head on the corner of a coffee table while working at Sherman Oaks Hospital. She testified that this incident occurred before she was working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. Defense counsel read from Exhibit B, records of Molani Medical Center, working at Four Seasons. De

Defense counsel then read from Exhibit B, records of Molani Medical Center, pages 2 and 3, with an encounter date of May 11, 2020, on page 3, where the HPI was stated, essentially, as follows: "This is a 67-year-old with a history of involuntary muscle movement. According to her, and her friend who is present, she fell down at home and hit her head on the corner of a table and passed out and was taken to the hospital and found out that she had a subdural hematoma and had surgery done. After the surgery, she had involuntary movements." Ms. Thomas was then questioned, again, After the surgery, she had involuntary movements." Ms. Thomas was then questioned, again, regarding whether she fell at home any time prior to December 24, 2019, and she testified that she did not. Defense counsel then read from Exhibit C, page 14 of the records from Sherman Oaks Hospital, which contained a note indicating that the applicant fell a few days ago, according to her boyfriend.

Defense counsel then presented Exhibit E, page 167 of the records, and read from an entry of December 31, 2019, which indicated that the patient's boyfriend stated that she had prior falls. Those records were from her treatment at Glendale Adventist.

There was testimony that the table that Ms. Thomas hit her head on was at nursing station 4. It was a fixed table and was in room 26A, where she was preparing oxygen for a patient. She states that the oxygen cylinder fell from the table. She also testified that room 26A was approximately three feet from station 4. She indicated that she had to go to the oxygen room to retrieve the oxygen cylinder, which she had already done, and brought the cylinder to station 6. It was Ms. Thomas's testimony that the oxygen room was approximately six feet from the station 4

C. REVIEW OF TESTIMONY OF JOSEPH HARPER

Mr. Harper testified that he lives with Ms. Thomas now. They have lived together for nearly 15 years. He describes himself as her boyfriend, and has been for the entire time they have been together. He is currently retired, but was working on December 24, 2019 for the Los Angeles County Metropolitan Transit Authority. Ms. Thomas was home at the time that he left, having arrived between 9:30 a.m. and 10:00 a.m. He saw her that morning and described her as seeming somewhat off. He stated that she was looking at him, but was essentially looking spaced out and looking through him. She did not seem to be aware of her surroundings. When he asked her if she looking through him. She did not seem to be aware of her surroundings. When he asked her if she felt okay, she said she felt fine. Mr. Harper headed out to work leaving at about 11:00 a.m., and returned home at 10:00 p.m. He states that he did not talk to her while he was at work. When he got home, she was on the floor, but she was conscious. However, she was unable to answer his questions, so he called 911. She was not able to say if anything happened. When Mr. Harper was asked about various medical records that stated the applicant had fallen at home, as told by Mr. asked about various medical records that stated the applicant had fallen at home, and he told

them that she did. He stated that he told them she had banged into the shower door a couple days before going to the hospital, and that he was aware of some prior incidents of her falling. He was asked if it would be incorrect to note that the fall on December 24, 2019 happened at home, and he stated that it would be incorrect, because he was discussing a history of falls and banging into the shower door prior to December 24, 2019. When asked if she fell at home on December 24, 2019, he stated that he was not aware. (MOH/SOE; 4/17/24, 7:9-25)

Mr. Harper testified that he filled out the registration forms at Sherman Oaks and at Glendale Adventist when the applicant was admitted. He provided truthful and accurate information, to the best of his ability, about her accidents and injuries.

He was asked about a statement in the Sherman Oaks records which said that the boyfriend and family said that the applicant was normal in the morning before he left to go to work for a 12-hour shift. The witness states that he did tell Glendale Adventist Hospital that the applicant had a couple of falls. He admits that he did not tell Sherman Oaks Hospital that she fell at work because she told him that she had a stroke. He did not put the two together. He states that if he told Sherman Oaks Hospital that she fell a few days earlier, he misspoke. He also stated that he did not tell Glendale Adventist that she fell at work. The witness admits that in 2020, he attended an evaluation with the applicant's primary care physician Dr. Jabeen Fatima. (MOH/SOE; 6/26/24, 2:6-25)

He recalled being asked about checking a box in the Sherman Oaks Hospital records saying that the injury happened at home. He stated that he did not recall checking the box. He also testified that if he checked that box off, it would be incorrect. He testified that he recalled the applicant's activities before he left home for work on 12/24/2019. If he said that she was acting normally, that would also be incorrect. He says that she was not acting normally. When questioned about whether she had a fall a few days prior to this date of injury of 12/24/19, he said that she banged against the shower door, but he did not see her fall. He just was aware that she banged herself against the shower door. (MOH/SOE; 6/26/24, 3:22-25)

He states that Ms. Thomas advised him that she fell at work, when she arrived home on the morning of December 24, 2019. At that time, she told him that she had hit her head at work.

The court notes, however, that that information, however, is never relayed in the medical records. He was asked whether he told anyone at Sherman Oaks Hospital or Glendale Adventist Hospital that she hit her head at work. He confirmed that he did not tell anyone that it happened at work. Next, he was asked whether he told anyone at Sherman Oaks or Glendale Adventist that she banged her head on the shower door, and he said that he did not. He denies that he told people at Sherman Oaks on the shower door, and he said that he did not. He denies that he told people at Sherman Oaks Hospital that she had a fall a few days prior to the December 2019 injury. (MOH/SOE; 6/26/24, 4-10-15)

D. REVIEW OF TESTIMONY OF SIMARJOT GILL FOR DEFENDANTS

The witness states that she worked for Four Seasons on December 24, 2019, as an RN supervisor. She stopped working there in July of 2020, because she was hired by another company. She recalls

ADJ14765137 Document ID: 218165432190763008 Ms. Thomas. She was her supervisor on December 24, 2019. It is the protocol that if a worker is injured, they are to fill out paperwork to report the injury, send the person to the emergency room for treatment or call 911, if it is a severe injury. They are to document the incident in the paperwork. Even if the incident is not severe, they still have to document the incident. If the worker did not directly report an injury to them, they would not document it. (MOH/SOE; 6/26/24, 4-18-25)

Ms. Gill testified that there was no injury directly reported to her on December 24, 2019. She denies seeing any bruises or bleeding on the applicant's forehead or eyebrow. She denies that the applicant informed her that she hit her head on a table on December 24, 2019. She states that the applicant did not tell her that she hit her forehead at work and she did not see any evidence of the applicant having been hurt at work. She received no indication that she was hurt at all and so she did not document it. She denies telling the applicant that she should be careful or watch out. She states that those would not be words that she would use. She did not ask the applicant if she was hurt at all. It is her testimony that if the nurse had to grab oxygen from the oxygen room, she would then go from the oxygen room to the patient's room, rather than stopping at station 4, which is on the other size of the hallway and away from the oxygen room. She testified that there would be no reason for the nurse to go from the oxygen room and then walk past the patient's room to station four. (MOH/SOE; 6/26/24, 5-1-24)

E. REVIEW OF TESTIMONY OF ALLAN POBLETE FOR DEFENDANTS

The witness was working for Four Seasons on December 24, 2019. His job title was Director of Nursing services. He had worked for the company since August 8, 1996, and his last day of work there was June 16, 2024. He testified that if a nurse at Four Seasons needed to administer oxygen, it would be retrieved from the oxygen room. The oxygen room is the only place where oxygen is kept. He described the oxygen room as being far from station 4, a distance which he describes as more than six feet away. He testified that in order to get from station 4 to the oxygen room, you had to turn and go all the way down the hallway to the end of the hall. Room 26 was a patient room, and in order to go from patient room 26 to get to the oxygen room. According to Mr. Poblete, he did not notice any orders for the patient in room 26 to receive oxygen on December 24, 2019. He stated that there were no emergency oxygen requests for that patient on that date. (MOH/SOE; 9/4/24, 2-5-19)

Mr. Harper did not tell him that she got hurt at work. He was contacting Mr. Harper to determine how the applicant was doing and when she would return to work. He states that Mr. Harper did not tell him that she was hospitalized due to an injury at work. He also stated Mr. Harper did not tell him that the applicant hit her head at work and did not say that she had a stroke due to an injury at work.

F. REVIEW OF MEDICAL EVIDENCE

Exhibit 1 is a CT scan done on 12/24/19 indicating that the applicant had suffered a stroke. No history is provided. It was completed at Sherman Oaks Hospital. Exhibit 2 is from Adventist Hospital done on 12/27/19 resulting in a diagnosis of subdural membrane -Benign meningeal tissue and blood clots, consistent with subdural hematoma.

ADJ14765137

Exhibit 3 is a report from Adventist Health dated 12/25/24 which notes the following:

Pertinent medical history: 69 y/o female admitted on 12/26/19 to ADGL due to chronic imbalance who presented from Sherman Oaks ER after being found down and altered by her boyfriend. At Sherman Oaks, CT head revealed a 2.2 cm L acute on chronic SDH with 8mm midline shift. She was last seen normal this morning when the boyfriend went to work. He noted that she did have a fall 2-3 days ago where she struck her head. He was not present during the fall. She is quite aphasic and unable to the morning today, she was altered, wandering aimlessly in the house prior to him leaving. He notes that she has had falls in the past due to her "clumsiness" but she has never had any workup.

Exhibit 5 notes the following: 12/27/2019 10:35 PST (Pertinent medical history)
CT brain 12/25: Large left subdural hematoma measuring up to 20 mm with extensive compression of the left cerebral hemisphere and 9 mm of left-to-right midline shift noted 12/27: Decreased L frontal SDH. S/p SD drain placement. Decreased mass effects and distortion of L cerebral hemisphere

Exhibit 10: Medical records Keck Medical USC: 9/1/20

History of Present Illness: This is a 69-year-old female who presents to our clinic for further evaluation of hyperkinetic movements. She was originally seen by Dr. Lisa Balcadar, placed consultation for further assessment. She is accompanied by her friend, Vasilica. Both Valentina and her friend are retired registered nurses. Valentina states that she has had abnormal movements that have worsened since December 2019, when she hit her head and suffered a subdural hematoma which required a craniotomy.

According to her friend, these movements were also present for the last 10 to 12 years but so far lesser extent. Valentina states that these movements initially started after a flu vaccine at that time: She states that she had an acute reaction with severe flulike symptoms, but then it progressed to abnormal movements. Because they worsened so much in December, she sought further neurological Care.

She states that the movements occur all day, there are no palliating factors, and they might worsen in the setting of stress and fatigue. She is unsure if they occur during sleep. She has been with her boyfriend who is not present with us today. She denies any falls outside of the one that caused hematoma.

Exhibit 15 Sherman Oaks Hospital records: 000014 History of Present Illness
This is a 69-year-old female brought in by rescue from home. She is found down and altered. He is alert and oriented x2. Per boyfriend she is acting different. According to family last saw her normal before left wrist 12 hour work shift earlier today. She did fall a few days ago per the boyfriend, however he does not think she hit her head. No other current complaints.

Defendant's Exhibits A and D are duplicates of applicant's Exhibits offered as medical records.

Dr. Geiger's PQME report in neurology does not find causation: He reports that addressing the usual Workers' Compensation issues for this patient are rather complex. This is in part due to the conflicts between the patient's history and the provided medical records, the inadequate medical records from the patient's Primary Care Physician and the need to review the medical literature with regard to the natural course of the progression of Huntington's disease and whether that progression can be affected by head trauma, particularly a subdural hematoma. There is also the question as to whether the diagnosis of Chronic Lymphocytic Leukemia could influence the development of a subdural hematoma.

Although the patient denied prior head injuries, the provided medical records indicate that the patient fell at work during September 2015 and suffered bruising at the left orbit. Several days later, the patient apparently suffered a head injury at home when she struck her head against a coffee table there was bruising of the right upper eyelid. At that time, her Primary Care Physician, Dr. Fatima, obtained the history that 15 years previously, she had been diagnosed as having leukemia. When the patient was reevaluated by Dr. Fatima on May 1, 2018, she requested a referral to a neurologist due to "excessive moving she does without her noticing it." History was obtained that the involuntary movements had been present for many years.

There was documentation of a prior 2019 head injury. On January 6, 2019, the patient slipped and fell at the workplace and struck the right side of her scalp against the floor. There was no loss of consciousness. She was evaluated later that day by Dr. Rosenblum who obtained the history of a pre-existing Parkinsonian-like tremor. History was obtained that at approximately 4 A.M. on December 24, 2019, the patient bent over, arose and struck her right forehead against a metal table at the workplace. She remained on her feet. There was no loss of consciousness. She continued to work for an additional 5-6 hours until the end of her shift.

With regard to the issue of apportionment, please advise this examiner if a head injury was reported to the employer on December 24, 2019. This is important as in the next paragraph there is history of head trauma that occurred a few days previously. When the patient was evaluated at the Sherman Oaks Hospital Emergency Department on December 24, 2019, her boyfriend stated that she fell a few days previously. Dr. Geiger PQME 11/24/21(Exhibit "G").

During his CX of Dr. Geiger the following testimony was obtained:

Q: So it's difficult to determine exactly when that subdural hematoma began based upon the

provided records.

Q. Okay. But, Doctor, you've said, you know, whether it was on the day of the surgery or when she was in the emergency room. But other than the applicant's allegation that it occurred on December 24, 2019, there's nothing in the medical records that actually show that it occurred on December 24, 2019. Would you agree with that?

A. I'd agree with that. The only thing I'd say is we typically -- as with an automobile accident, often we determine the severity of the injury to the person by the dollar value of the automobile damage. I mean, it's rare, but I've seen patients that have had head trauma and suffered a skull fracture, but

there are no external signs of head trauma. So it's not 100 percent. And, again, as I said, in an older person, you know, minor trauma, even not directly to the head, can cause a subdural hematoma. But I'm agreeing with you there were no external signs of head trauma, according to the Sherman Oaks Hospital Emergency Room report. (Exhibit "H" Page 18 to 19.

G. OPINION ON AOE/COE

The PQME did not find causation but indicated that it would be up to the trier of fact. The medical history does not support a finding that there was an injury at work on 12/24/19. The medical records contain no indication that there was an incident that happened on 12/24/19 as alleged by the applicant. No history in the medical records contain mention of the claim alleged by the applicant. The witnesses also do not confirm the incident as reported. In fact, Mr. Harper who reported her history of injury, did not tell anyone that there was an injury at work on 12/24/19. This is true despite his allegation that the applicant told him that she had been injured at work.

The medical history is not supportive of a finding of injury on December 24, 2019. The questions of when, if or how the applicant fell or developed a subdural hematoma is not demonstrated in the medical record. The Judge does not find applicant's testimony or that of Mr. Harper to be accurate or supported by the medical records.

The supervisor disputes that there was a claim made reporting the injury on 12/24/19. She also denied that the applicant had any bruises, bleeding or injuries of any type on the date of the claimed injury. Ms. Gill had no evidence of this injury. She also disputed the method of the injury, by denying that the applicant would have had to obtain an oxygen tank in the way the applicant described it. Further, Mr. Poblete disputes that the person in room 26A was on oxygen as there is no record of a need for oxygen. The court finds that the evidence does not support the claim of a date of injury on December 24, 2019.

1. CREDIBILITY OF APPLICANT

As the sole issue for determination at trial is injury, it is found applicant's testimony was rebutted and she did not meet her burden of proof on establishing injury due to the lack of credibility. Although Labor Code Sections 3202 allows for liberal construction by the courts with the purpose of extending benefits to injured workers, Labor Code Section 3202.5 requires that all parties shall meet the evidentiary burden of proof by a preponderance of the evidence. The Trier of Fact must weigh all the evidence, including testimony and its credibility, to determine whether there is a sufficient record based upon which a finding of employment can be reached. <u>Garza v. WCAB</u> (1970) 3 Cal.3d 312.

The credibility determinations of the workers' compensation judge are entitled to great weight and should not be disturbed when they are supported by substantial evidence because the judge has the opportunity to observe the demeanor of witnesses and weigh their statements with their manner in testifying. Garza v. Workers' Comp. Appeals. (1970) 3 Cal. 3d 312, 318-319, 35 CCC 500.

2. THE APPLICANT FAILED TO MEET HER BURDEN OF PROOF RE: INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT

The burden of proof rests on the party holding the affirmative of an issue. (Labor Code §5705.) To meet her burden, applicant was required to prove each fact supporting her claim by a preponderance of the evidence. "Preponderance of the evidence' means that evidence that when weighed with that opposed to it, has more convincing force and the greater probability of truth." (Lab. Code, §3202.5.) The threshold of proof for the industrial causation of disease or disability requires a showing of more than a mere possibility. The applicant must show that "industrial causation is reasonably probable." (McAllister v. Workers' Comp. Appeals Bd., (1968) 69 Cal.2d 408; Rosas v. Workers' Comp. Appeals Bd. (1993) 16 Cal.App.4th 1692.) In this case, applicant failed to meet her burden.

3. RULINGS ON EVIDENCE

Defendant's Exhibits E and F are excluded. Mr. Poblete testified and the statement was not required. Ms. Aguirre did not testified and was not present to allow applicant the opportunity to cross examine her and thus it is excluded.

The transcript of applicant's deposition is admitted for impeachment. That is Exhibit K.

The applicant shall take nothing on this claim. This matter is off calendar.

DATE: 11-14-24

MARTHA D. HENDERSON
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

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

11-18-2024

OFFICIAL ADDRESS RECORD/PROOF OF SERVICE

Case Number: ADJ14765137

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VALENTINA ULIAN THOMAS

Injured Worker, 5238 SYLMAR AVE SHERMAN OAKS CA 91401

FINDINGS AND ORDER -AMENDED OPINION ON DECISION SERVED BY MAIL ON PARTIES LISTED ABOVE

ON: 11/18/2024 BY: Maria Guzman