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NOV 19 1991

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November 13, 1991

Sally Fleming
GALLAGHER BASSETT SERVICES
23382 Mill Creek Dr., #205
Laguna Hills, CA 92653

REDACTED

RE: v. SHERWIN WILLIAMS
WCAB NO. : Unassigned
CLAIM NO.: 010733-000777-WC-01

Dear Ms. Fleming:

Thank you for referring this matter to my office for legal representation. I am filing an Appearance on applicant's counsel at this time.

It is unclear when the Employee Claim Form was filed. There appears to be an Employee Claim Form dated July 1, 1991 or August 1, 1991. There is a clear Claim Form dated July 31, 1991 alleging a cumulative trauma from May of 1991 through July 13, 1991 to the applicant's psyche, muscular system, fatigue, fainting, anxiety, eye sight strain and loss of appetite. This is a short cumulative trauma. Applicant's attorney has selected Long Beach as the proper venue.

I note that you received the Claim Form on September 18, 1991 according to the stamp at the bottom of the Employee Claim Form. There is no indication when the employer received the Claim Forms.

In this particular case, we seem to be confronted with a more substantial time issue under the 90 day rules.

There is an undated letter to Wellington Medical Group indicating that applicant is to be seen by them on August 1, 1991. We have the deposition of the applicant set for December 2, 1991.

The Doctor's First Report of Work Injury is dated July 31, 1991 from Dr. Ransom, Ph.D. in Long Beach. Applicant apparently complained of stress on the job and being timed by the supervisors as to how long she takes to go to the rest room. She is claiming exposure to chemicals and strong acetone.

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Dr. Hiler, D. O. issued a report dated August 16, 1991 which indicated that applicant is a 28-year old female who worked as a label room clerk. She last worked at Spray-On Products on July 13, 1991 due to going on medical leave. She worked at Spray-On Products from February of 1990 through July 13, 1991. She first started having stress problems on June 24, 1991. She lists three separate pages of symptomatology. She denied any prior psychiatric treatment.

She is married with one daughter and no health problems in the family. The diagnosis was stress syndrome, headaches and anemia. They indicate temporary total disability status. They indicate a work restriction should be recommended if no stress. Quite frankly, this report does not outline the specific allegations of stress on the job.

Dr. Towle issued a 10-page report through Wellington Medical Group dated August 23, 1991. This report apparently was done as a result of an examination on August 1, 1991 which is prior to the employer receiving the Claim Form. She claims she was affected by toxic chemicals and was washing cans with solvent and started feeling dizzy and weak. She claimed many hours of exposure to solvent.

She started seeing Dr. D. Garcia, internist, in June of 1991. She says she stopped working on July 13, 1991 because she felt sick and emotionally damaged and did not feel able to continue working there. It is noted at page six that her social interests are now "very good." She denied ever using illegal drugs and denied ever having a workers' compensation claim before. The diagnosis is adjustment disorder with mixed emotional features, psychological factors affecting physical condition.

She states in June of 1991, she was assigned to work outside of her customary work assignment and felt overworked and developed signs of depression, anxiety and apparently decompensated. They indicate she is temporarily totally disabled and in need of psychological testing.

Dr. Ransom issued a 17-page report through American Psychometric Consultants, Inc. dated September 9, 1991. The evaluation was indicated to be August 5, 1991. Stress was indicated to be due to the working environment being very poor. There was too much noise, and the work area was very dangerous. She states she was not equipped for the job and was dizzy from inhaling fumes of the cleaning chemicals. Diagnosis, based upon this testing, was major depression single episode moderate.

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Dr. Towle issued a September 25, 1991 report indicating ongoing complaints of nervousness, depression, sleeplessness, difficulty with concentration, memory loss and headaches. They still indicate a temporary total disability status. It also notes she "still declines psychotherapy." Those two statements seem somewhat inconsistent.

We do not know when the Employee Claim Form was filed. We do know you received it on September 18, 1991. We need to get a denial out as soon as possible. I will do an Information Response Form at this time. The thrust of her complaints seem to be that she was exposed to a very dangerous work area and was inhaling fumes from cleaning chemicals which were hazardous. Please contact any supervisor at Sherwin Williams or any industrial hygienist through Tony Colangelo to determine that testing was done and there were no exposures to hazardous chemicals outside of the OSHA guidelines. If we can confirm that by telephone, please issue a denial on a factual basis indicating that the employer denies the exposure to a hazardous working area and hazardous chemicals at levels which would cause any disability or injury.

RECOMMENDATIONS OF FURTHER HANDLING

1. I will file an Appearance and Information and Response Form on applicant's counsel.
2. The deposition of the applicant is set for December 2, 1991 at 2:00 p.m. in my office.
3. Please immediately issue a denial based upon your telephone discussions with Mr. Colangelo, Sherwin Williams or the current supervisor at the Spray-On location. In effect, the allegations in this case are that she was exposed to a hazardous working environment, hazardous chemicals and a dangerous situation. She was initially a clerk and then apparently had to clean some pans. It is very unclear from the history she gives to the doctor as to what her allegations are. Nonetheless, if we can establish through statements of the employer that there were no hazardous chemical levels in excess of OSHA guidelines then we should issue a denial forthwith. Pursuant to our discussion, the denial should issue as soon as possible, by Friday.

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4. We will schedule the applicant for a defense psychiatric evaluation at this time with Barrington Psychiatric Center. Eventually, we will want to schedule a defense internal evaluation, and I would recommend Dr. Markovitz since he is an AME quality doctor. This particular attorney's group is tied in with medical groups and uses poor doctors, so our best defense is the use of good doctors.

Again, thank you for referring this matter to my office for legal representation. I will advise you further after the deposition of the applicant. In the meantime, if you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

LAW OFFICES OF TAPPIN & BARLING
A Professional Corporation



BY: WILLIAM TAPPIN

WT:plp

cc: Tony Colangelo/Sherwin Williams - Cleveland, OH

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