

Handwritten initials/signature

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

Case No. ADJ630145

GREGORY NILSEN,

Applicant,

vs.

VISTA FORD;
PACIFIC COMPENSATION INSURANCE
COMPANY;

Defendants.

FINDINGS AND AWARD

AND ORDER

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

FINDINGS OF FACT

1. GREGORY NILSEN born on 02-27-1958 while employed on 02-12-2007 as a service writer and advisor in occupational group no. 214 at Woodland Hills , California, by VISTA FORD, whose workers' compensation insurance carrier was PACIFIC COMPENSATION INSURANCE COMPANY, sustained injury arising out of and occurring in the course of employment to back, bilateral knees, psyche, gastrointestinal, high blood pressure, chronic pain, sexual dysfunction, neck, shoulders, right hand, headaches, eyes, sleep disorder and hearing.

2. Applicant lacks any future earning capacity and is 100% permanently and totally disabled, entitling him to weekly indemnity of \$881.66 from 02/22/2007 through 03/01/2012 and continuing through the injured worker's life, with increase by the State Average Weekly Wage (SAWW) as applicable, less \$232,576.15 commuted by the uniformly increasing reduction method (see DEU calculation, attached) from 06/15/2012 through the end of the award. (This is Method #2 in the attached calculation from DEU, providing for reduction of indemnity beginning at \$145.47 per week and increasing yearly consistent with the percentage of yearly SAWW increase.)

3. There is no apportionment of the permanent and total disability to factors other than the instant industrial injury.

4. Applicant is entitled to further medical treatment to cure or relieve from the effects of the industrial injury.

5. Applicant is entitled to reimbursement by defendant of the lien of the Employment Development Department for benefits paid at the weekly rate of \$882.00 from 02/23/2009 through and including 02/21/2010, plus statutory interest.

6. Based on 8 Cal. Code of Reg. Section 10775, and the guidelines for awarding attorney fees in Policy and Procedure Manual Index Number 1.140, a reasonable attorney fee is found to be \$232,576.15, which shall be commuted by the uniformly increasing reduction method from permanent disability indemnity commencing 06/15/2012 through the end of the award (see above), and which shall be paid forthwith to Rowen, Gurvey and Win.

7. The reporting and testimony of Enrique Vega produced reasonable medical legal costs. As such both are ordered reimbursed by defendant.

8. Penalty issues are deferred, jurisdiction reserved.

AWARD

AWARD IS MADE in favor of GREGORY NILSEN against PACIFIC COMPENSATION INSURANCE COMPANY of:

- a. Permanent disability pursuant to Finding of Fact No. 2, above;
- b. Further medical treatment pursuant to Finding of Fact No. 4, above;
- c. Reimbursement to the EDD pursuant to Finding of Fact No. 5, above;
- d. An attorney fee pursuant to Finding of Fact No. 6, above;
- e. Reimbursement of medical-legal costs for the reporting and testimony of expert witness Enrique Vega pursuant to Finding of Fact No. 7, above;

ORDER OF COMMUTATION

IT IS ORDERED that the sum of \$232,576.15 be commuted by the uniformly increasing reduction method from permanent disability indemnity commencing 06/15/2012 through the end of the award (see DEU calculation, attached) in order to pay attorney fees awarded herein.

DATE: 05/10/2012



WILLIAM M. CARERO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:

BETH ROSS HUCK, US Mail
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Served on above parties by preferred method of service shown
above at addresses shown on attached Proof of Service:

ON: 5/11/12

BY: *Belinda Doleman*

Belinda Doleman

**PROOF OF SERVICE
FINDINGS AND AWARD AND ORDER
AND OPINION ON DECISION
MAY 11, 2012**

Case Number: ADJ630145

BETH ROSS HUCK	Lien Claimant - Other, 2427 WINDWOOD DR PALMDALE CA 93550
CENTER FOR ORTHOPEDICS AND REHAB	Lien Claimant - Other, 1405 W RANCHO VISTA BLVD PALMDALE CA 93551
CONEJO PAIN SPECIALIST	Lien Claimant - Other, 3366 E THOUSAND OAKS BLVD SECOND FLOOR THOUSAND OAKS CA 91362
EDD SDI SANTA BARBARA	Lien Claimant, PO BOX 1529 SANTA BARBARA CA 93102, DI.EAMS215@EDD.CA.GOV
GREGORY NILSEN	Injured Worker, 2506 KENWOOD CT PALMDALE CA 93550
OXNARD VALLEY MEDICAL CALABASAS	Lien Claimant - Other, 26500 W. AGOURA RD., STE 102-581 CALABASAS CA 91302

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STEVENS PHARMACY COSTA MESA	Lien Claimant - Other, 1525 MESA VERDE E COSTA MESA CA 92626
WORK COMP SPECIALISTS AGOURA HILLS	Law Firm, 5737 KANAN RD STE 249 AGOURA HILLS CA 91301, WCS101@SBCGLOBAL.NET

IW:	Gregory Nilsen
WCAB#	ADJ630145
Date:	5/9/2012

ATTORNEY FEE CALCULATION - PERMANENT TOTAL DISABILITY

DOI:	02/12/07
Date of commutation (DOC):	06/15/12
Attorney fee %:	15%
Assumed annual SAWW increase:	4.60%

This calculation utilizes the approach set forth in Baker v. WCAB and X.S. (ADJ1510738/SJO 0251902). This calculation will be invalid unless benefits are paid to applicant in a manner consistent with this decision.

PTD starting rate:	\$881.66
PTD rate on DOC:	\$902.94
PTD start date:	02/22/10
Assumed SAWW increase:	4.60%

1) PTD accrued through commutation date.....		\$106,936.64
2) Commuted value of remaining PTD.....		\$1,443,571.00
3) Total basis for attorney fee.....		\$1,550,507.64
4) Attorney fee percentage.....	x	15%
5) Total amount of attorney fee.....		\$232,576.15
6) Weekly deduction from future PTD payments to produce attorney fee:	Method #1*	\$269.84
	Method #2*	\$145.47

Method #1 notes:

Method #1 is the Uniform Reduction Method. The weekly deduction remains constant or uniform for the life of the injured worker. The reduction becomes effective on the day after the date of commutation.

Method #2 notes:

Method #2 is the Uniformly Increasing Reduction Method. The weekly reduction increases every year effective January 1st by the same fixed percentage equal to the "Assumed annual SAWW increase" listed above. The initial reduction becomes effective on the day after the date of commutation. For the convenience of the parties, the reductions for the current year plus the next three years are show below.

Year	Reduction:
2012	\$145.47
2013	\$152.17
2014	\$159.17
2015	\$166.49

* The claims administrator is cautioned that when calculating the annual increase in PTD pursuant to LC 4659(c), the applicable SAWW adjustment is to be applied to the pre-reduced PTD rate, i.e. the rate before reduction for any prior commutations.

Calculated by: 
Ann Simshauser
Disability Evaluation Unit

1) Indemnity total for date range

	Start Date	End Date	#Weeks (inclusive)	Rate of indemnity	Amount of indemnity
1	2/22/2010	12/31/2010	44.7143	\$881.66	\$39,422.80
2	1/1/2011	12/31/2011	52.1429	\$881.66	\$45,972.27
3	1/1/2012	6/15/2012	23.8571	\$902.94	\$21,541.57
4			0.0000		\$0.00
5			0.0000		\$0.00
6			0.0000		\$0.00
7			0.0000		\$0.00
8			0.0000		\$0.00
	Sum =		120.7143	Sum =	\$106,936.64

2) Commencement date of 15% increase (LC 4658d)

P&S Date	Duration (days)	Date of rate change
	60	

3) SAWW rate calculator

	Indemnity rate	Increase on Jan 1st
2003	\$0.00	NA
2004	\$0.00	0.000000%
2005	\$0.00	1.974700%
2006	\$0.00	4.008138%
2007	\$0.00	4.959328%
2008	\$0.00	3.931818%
2009	\$0.00	4.548436%
2010	\$881.66	2.994144%
2011	\$881.66	0.000000%
2012	\$902.94	2.413512%

4) End of PD Period Calculator


Start Date	Duration (weeks)	Duration (days)	Last full Day

PRESENT VALUE OF PERMANENT TOTAL DISABILITY

Name: **Gregory Nilsen**
WCAB#: **ADJ630145**
Date: **5/9/2012**

Date of birth: **2/27/1958**
Date of commutation: **6/15/2012**
Rate of PTD benefits on DOC: **\$902.94**
Assumed annual increase: **4.60%**
Gender: **Male**

Present Value = **\$1,443,571**

Calculated by: 
Ann Simshauser
Disability Evaluation Unit

IW:	Gregory Nilssen
WCAB#	ADJ630145
Date:	5/9/2012

**F) COMMUTATION OF PORTION OF REMAINING LIFE PENSION
BY UNIFORM REDUCTION OF LIFE PENSION**

Date of birth:	02/27/58
DOI:	02/12/07
LP starts:	02/22/10
DOC:	06/15/10

Life pension rate:	\$902.94
Gender:	Male
Amount to commute:	\$232,576.15

1 Determine exact age in years as of date of commutation (DOC).	
1a # of days from DOB through DOC.....	19101
1b Divide by average number of days per year.....*	365.24
1c Exact age on DOC.....	52.297
2 Determine PV of life pension as of exact age on DOC.	
	Age PV
2a Enter PV for age in table below 1c*.....	52 867.93
2b Enter PV for age in table above 1c*.....	53 847.65
2c Difference of 2a and 2b.....	20.28
2d Multiply by fractional portion of 1c.....x	0.297
2e Interpolation adjustment for age.....	6.02
2f PV for age in table below 1c (2a from above).....	867.93
2g Subtract 2e.....-	6.02
2h PV of life pension as of exact age on DOC.....	861.91
3 Calculate amount of reduction in LP rate necessary to produce lump sum.	
3a Amount to be commuted.....	\$232,576.15
3b Divide by PV for exact age on DOC (2h from above).....*	861.91
3c Amount of weekly reduction in LP.....	\$269.84
4 Calculate LP rate after commutation.	
4a LP rate before commutation.....	\$902.94
4b Subtract weekly reduction in LP (3c from above).....-	269.84
4c LP rate after commutation.....	\$633.10
5 Additional interest due for payment after date of commutation:	
Additional interest due for each day late.....	\$63.72

* Take values from Table 2 - Present Value of Life Pension for a Male, or Table 3 - Present Value of Life Pension for a Female, as dictated by gender.

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GREGORY NILSEN

-vs.-

VISTA FORD;
PACIFIC COMPENSATION
INSURANCE COMPANY

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:

William M. Carero

DATE: 05/10/2012

OPINION ON DECISION

ADMISSIBILITY OF WCAB EXHIBITS DDD AND EEE

Defendant has objected to the admission of the reports of David Glaser, M. D., the panel qualified medical examiner in psychiatry on the ground that his opinion is not substantial medical evidence. These exhibits are admitted into evidence. The assertions of defendant are considered in assigning evidentiary weight to the opinion of Dr. Glaser.

PARTS OF BODY

Applicant's industrial accident caused injury to his back, bilateral knees, psyche, gastrointestinal, high blood pressure, chronic pain and sexual dysfunction.

Applicant alleges and defendant denies that this industrial accident caused injury to applicant's neck, shoulders, right hand, headaches, eyes, sleep disorder and hearing.

Based on WCAB Exhibits AAA, BBB and CCC, the reports of Seymour Levine, M. D. it is found that applicant did sustain injury including sleep disorder and headaches. Based on the opinions of Sam Bakshian, M. D. Applicant's Exhibits 4, 5 and 6, and on the opinion of Robert Fields, M. D. (WCAB Exhibit GGG) it is found that applicant sustained injury to his neck, shoulders and right hand in this industrial accident. Based on the opinion of Ali Namazie, M. D. (Applicant's Exhibit 13) it is found that applicant's hearing condition is the result of prolonged use of pain medication in connection with the industrial injury and is therefore an industrially injured part of body

PERMANENT DISABILITY

Based on Applicant's Exhibit 12 and the expert testimony of Enrique Vega it is found that applicant lacks any future earning capacity and is therefore 100% permanently and totally disabled.

The severity of applicant's injury and the course of treatment with the regression of his overall condition that followed is well documented in the agreed medical evaluations (WCAB Exhibits AAA through GGG).

The vocational expert testified without rebuttal that applicant does not have the physical stamina to maintain any realistic work pace despite his skill level. He is unable to earn. There is no evidence, medical or otherwise, to the contrary,

Absent any earning capacity, applicant is permanently and totally disabled.

In the absence of apportionment (see below) applicant is entitled to weekly indemnity of \$881.66 from 02/22/2007 through 03/01/2012 and continuing through the injured worker's life, with increase by the State Average Weekly Wage (SAWW) as applicable, less \$232,576.15 commuted by

the uniformly increasing reduction method (see DEU calculation, attached) from 06/15/2012 through the end of the award. (This is Method #2 in the attached calculation from DEU, providing for reduction of indemnity beginning at \$145.47 per week and increasing yearly consistent with the percentage of yearly SAWW increase.)

Presumption under Labor Code Section 4662

This issue is moot in light of the determination of permanent and total disability based on the evidentiary record rather than upon a presumption.

APPORTIONMENT

When permanent disability is based on a complete and total loss of earning capacity rather than an impairment, apportionment to causation must be based on what causes the loss.

An impairment might be scientifically attributed by substantial medical evidence to a factor that never impaired the worker before his industrial injury. To establish apportionment of the causation of a loss of future earning capacity, substantial expert evidence is also required. The vocational expert must credibly opine that part of the loss of FEC is caused by some factor other than the industrial accident.

Here, the expert testified that since applicant demonstrated good, solid, consistent earnings over an extended period of time prior to the accident, his pre-existing medical condition is not causing his loss of earning capacity. No rebuttal testimony was offered.

Accordingly it is found that there is no apportionment of applicant's permanent and total disability. He is entitled to a 100% permanent disability award.

NEED FOR FURTHER MEDICAL TREATMENT

Based on the entire medical record herein, it is found that applicant requires further medical treatment to cure or relieve from the effects of the industrial injury.

LIABILITY FOR SELF-PROCURED MEDICAL TREATMENT

Based on the entire medical record herein, it is found that applicant has incurred costs for self-procured treatment to cure or relieve from the effects of the industrial injury and is entitled to reimbursement to lien claimants herein, jurisdiction reserved.

LIEN OF THE EMPLOYMENT DEVELOPMENT DEPARTMENT

The Employment Development Department paid benefits at the weekly rate of \$882.00 from 02/23/2009 through and including 02/21/2010. During this time defendant made no payments to applicant. In light of the determination of 100% PD, reimbursement by defendant to the Department plus statutory interest is ordered.

ATTORNEY FEE

Based on 8 Cal. Code of Reg. Section 10775, and the guidelines for awarding attorney fees in Policy and Procedure Manual Index Number 1.140, a reasonable attorney fee is found to be \$232,576.15, which shall be commuted by the uniformly increasing reduction method from permanent disability indemnity commencing 06/15/2012 through the end of the award (see above), and which shall be paid forthwith to Rowen, Gurvey and Win.

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REIMBURSEMENT FOR COSTS OF EXPERT

The reporting and testimony of Enrique Vega produced reasonable medical legal costs. As such both are ordered reimbursed by defendant.

PENALTY

Penalty issues are deferred, jurisdiction reserved.

DATE: 05/10/2012



WILLIAM M. CARERO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

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