IN THE WORKERS' COMPENSATION COMMISSION
DEPARTMENT OF LABOR
GOVERNMENT OF GUAM

BRENT PAULINO, Plaintiff, vs. SM GUAM, INC., Employer And DB INSURANCE COMPANY LTD., Insurance Carrier	WCC CASE NO. 2014-000125 **DECISION AND ORDER**

This matter, Worker's Compensation Claim Case No.: 2014-000125, Brent Paulino v. SM Guam Inc., came before the Worker's Compensation Commission ("WCC") on July 1, 2021. Attorney John Richard Bordallo Bell appeared on behalf of Claimant, and Attorney R. Marsil Johnson appeared on behalf of Employer and Insurance Carrier.

The WCC finds that the instant claim shall be granted in part and denied in part because: (1) the injury occurred while the Claimant was acting within the scope of his employment; and, (2) the injury sustained by Mr. Paulino was proximately caused by his employment activity. Therefore, the WCC orders that the instant claim shall be GRANTED, subject to the limitations set forth herein.

II. FACTUAL AND PROCEDURAL BACKGROUND.

Claimant, Brent Paulino, ("Mr. Paulino" or "Claimant") suffered an apparent injury in the form of a lower back injury on July 3, 2013 while engaged in heavy lifting while employed

as a stock worker in a warehouse owned and operated by SM Guam, Inc. ("SM Guam" or "Employer").

On or about October 16, 2013 the WCC received the "Employer's Report of Occupational Injury or Illness," Form GWC-202. On or about October 16, 2013, the WCC received a "Notice of Employee's Injury/Illness or Death," Form GWC-201 ("Notice of Injury"), which was completed by Brent Paulino. Form GWC-203 "Employee's Claim for Compensation," was never received by the Worker's Compensation Commission.

Mr. Paulino received compensation in the amount of $413.30/bi-weekly from September, 2013 until February 10, 2015. On February 18, 2020, Employer filed its "Notice to Commissioner of Controversion of Right to Compensation," Form GWC-207.

Mr. Paulino underwent an Independent Medical Examination (IME) before Andrew Blakley, MSN, APRN, FNP-BC, at The Weingarten Institute for Neuroscience on March 18, 2019. In an Amendment to his report of his findings and conclusions from that date, Mr. Blakley concluded that, "From a clinical standpoint, Mr. Paulino can resume normal work activities."

On July 1, 2021, the WCC held a formal Hearing for Brent Paulino, WCC-2014-00125 ("First Hearing"). Public Notices were provided five days and 48 hours before the First Hearing. At the First Hearing, Claimant Brent Paulino testified in support of his Claim.

Upon submission of the evidence, the Workers Compensation Commission conducted an examination of this matter to include a review of the medical evidence provided by Dr. Ramel Carlos, Dr. Raymond M. Taniguchi, Andrew Blakley, and Julienne Duenas, PT, DPT, and was argued by counsel.

The weight and sufficiency of the evidence supports a finding that the injury of the Claimant is indeed job related with the proximate causation being the heavy lifting required by

Claimant's occupation as a stock clerk in Employer's warehouse. There is ample evidence in the record to support this factual conclusion.

CONCLUSIONS OF LAW:

I. Claimant was employed by SM Guam at the time of his injury.

Claimant is a statutory employee subject to the protections of Guam's workers compensation statutes. The Test for Statutory Employee under Worker's Compensation is set forth in 22 GCA § 9103 (i), which provides, in pertinent part:

> Employee. This term, as used herein, is synonymous with worker, and means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer.

Under Guam's Workers Compensation laws, every employer is liable to compensate a worker, regardless of fault as to the cause of the injury. See 22 GCA § 9105; *Gibbs v. Holmes*, 2001 Guam 11 ¶ 13. "Workers' compensation statutes were enacted to provide security for laborers and their dependents by shifting a portion of the economic loss resulting from injuries and death in the course of employment to industry." 38 Sutherland Statutory Construction § 75:3 (7th ed.). Workers' compensation statutes provide an alternate, no-fault system of compensation for injuries workers sustain in the course of employment. *Id.*

The statutes provide "a speedier and more efficient method to settle the claims of employees against their employers" by "holding an employer strictly liable for any injuries incurred by an employee within the course of his or her employment." *Id.* Courts have used a liberal interpretation to resolve any reasonable doubts about coverage in favor of the worker because such acts were passed to benefit workers. *Id.* (referencing *Villalon v. Hawaiian Rock Products, Inc.*,2001 Guam 5; *Rio Linda Union Sch. Dist. v. Workers' Comp. Appeals Bd.*,31 Cal. Rptr. 3d789 (Cal. App. 2005)). Thus, courts seek to construe Worker's Compensation statutes so

that the burden of employment injuries or accidents falls upon the industry, not the injured worker.

II. The injury was within the scope of Claimant's employment with SM Guam.

The courts are required to undertake the analysis of "the essence of the injured person's work at the time of injury that indicates that he was engaged in the trade, occupation or business of the employer." 2001Guam 5 n29. An "injured person must have been engaged in or carrying on the trade or business of the ostensible employer." *Id.* Beyond that, however, the Court must keep in mind that the Guam Supreme Court looks to the "regular business" of the employer, not just the broadest category or description possible. As the Guam Supreme Court articulated, the "relative nature of the work" test focuses on the fit between the claimant and the regular work of the purported employer, by examining: the character of the claimant's work or business-how skilled it is, how much of a separate calling or enterprise it is, to what extent it may be expected to carry its own accident burden and so on-and its relation to the employer's business, that is, how much it is a regular part of the employer's regular work, whether it is continuous or intermittent, and whether the duration is sufficient to amount to the hiring of continuing services as distinguished from contracting for the completion of a particular job. *Id.* n 25. As the *Villslon* court further noted, in cases denying coverage, the facts did not show that the employee engaged in "some substantial services" of the alleged employer. *Id.* n 27.

CONCLUSION AND ORDER

Based upon the foregoing, the WCC finds that the instant claim is valid and Claimant`s claim for compensation is hereby **GRANTED**, subject to the following limitations:

Claimant shall be granted compensation in the amount of $413.30/bi-weekly from the period February 10, 2015 to March 18, 2019, the date of the IME agreed upon by the parties.

Total compensation due to the Claimant shall be in the amount of Forty-two Thousand Nine Hundred Eighty-three Dollars and Twenty Cents. ($42,983.20), plus interest in the amount of six percent (6%) per annum.

SO ORDERED on this 20 day of July 2021:

David Dell'Isola
Commissioner

Suzanne Lobaton, MN, RN COHN-S
Board Member
Guam Board of Nurse Examiners

Vincent Leon Guerrero
Board Member
Guam Bar Association

Yolanda Padrones, SHRM-SCP, SPHR
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Candise NML Aragon
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Board Member
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Filed on: _____