

**STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD**

**MARIA ROSA TAVARES
ARMANDO TAVARES (DECEASED),**

Applicant,
vs.

**LUIS SCATTINI AND SONS,
STAR INSURANCE CO.,**

Defendant,

ADJ8247302

FINDINGS, AWARD and ORDER

This matter having been heard and submitted, Stuart R. Crymes, Presiding Workers' Compensation Administrative Law Judge, now finds, awards, and orders as follows:

FINDINGS OF FACT

1. Armando Tavares (deceased), born 11/01/62, while employed on 06/13/11, as a Tractor Driver, at Salinas, CA, by Luis Scattini and Sons, sustained injury AOE/COE consisting of a fatal heart attack/heart-cardiovascular injury resulting in death.
2. At the time of injury the employer's workers' compensation insurance carrier was Star Insurance Company.
3. Applicant left four total dependents at the time of his death as follows: Maria Rosa Tavares (widow), Mario Tavares (son), Andres Tavares (son), and Nancy Tavares (daughter).
4. At the time of the injury applicant's earnings were sufficient to warrant a temporary disability compensation rate of \$349.11 per week.
5. The dependents are entitled to a death benefit of \$320,000.00
6. There is good cause to appoint Maria Rosa Tavares as the Guardian Ad Litem for the dependent minor children.
7. There is no good cause to grant defendant's petition to reopen discovery.
8. Applicant's attorney has performed services of a reasonable value of \$48,000.00.

AWARD

AWARD IS MADE in favor of **MARIA ROSA TAVARES, individually and as Guardian Ad Litem** for the dependent minor children Mario Tavares, Andres Tavares and Nancy Tavares as follows: :

- (A) Death benefits in the total amount of \$320,000, payable at the rate of \$349.11 per week commencing on 06/14/11 and continuing thereafter until the award has been paid in full, less \$48,000.00 which is awarded as reasonable attorney fees and ordered payable to Rucka, O'Boyle et al.

ORDER APPOINTING GUARDIAN AD LITEM

IT IS ORDERED that Maria Rosa Tavares be appointed Guardian Ad Litem and Trustee to serve without bond for the dependent minor children Mario Tavares, Andres Tavares and Nancy Tavares.



STUART R. CRYMES
Presiding Workers' Compensation
Administrative Law Judge

Served: 12/30/14
On parties as shown on the
Official Address Record.



By: _____
Nora Martinez

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**MARIA ROSA TAVARES
ARMANDO TAVARES (DECEASED)
ADJ8247302**

OPINION ON DECISION

The matters were submitted for decision on the following issues: injury AOE/COE, earnings, death benefits and defendants petition to reopen discovery and applicants attorney fees.

INJURY AOE/COE

Applicant Armando Tavares is determined to have sustained an industrial injury resulting in death based on the medical reports from Revels Cayton, M.D., and Maria Nellie Bettancourt, M.D. Both doctors agree that Mr. Tavares' heart attack was caused by the physical strain he exerted while using the restroom facilities at work. Applicant' restroom activities are considered to have arisen out of and during the course and scope of his employment based on decisions in *Allied Signal Inc. v. WCAB (Briggs)* 66 Cal. Comp. Cases 1333 (2001) and *Smith v. WCAB* (1960) 71 Cal. 2d 588, 34 Cal. Comp. Cases 424. These cases hold that an injury precipitated by a movement which is incidental to the employment constitutes a compensable injury even though it is a normal bodily movement.

EARNINGS

Applicant's earnings were based upon the employer wage statement (Exhibit W-2) which shows that applicant earned \$27,304.00 during the 2010 calendar year. This results in average weekly wages of \$523.67 and a compensation rate of \$349.11 per week.

DEATH BENEFIT OF \$320,000.00

Armando Tavares left the following total dependents at the time of his death: Widow-Maria Rosa Tavares (who did not have any earnings during the year before his death based upon her credible testimony at trial), and three minor dependent children as follows: Mario Tavares (son), Andres Tavares (son), and Nancy Tavares (daughter). Pursuant to Labor Code Section 4702 (a) (5) when there are three or more total dependents the death benefit is \$320,000.00 payable at the temporary disability rate of \$349.11 per week.

ATTORNEY FEES

Applicant's attorney is awarded fees of \$48,000.00 which is 15% of the death benefit.

NO GOOD CAUSE TO REOPEN DISCOVERY

In this case defendant filed a petition to reopen discovery when applicant served him with a medical report from Dr. Cayton at the time of the mandatory settlement conference. Applicant's attorney decided not to request that this document be admitted into evidence. Since this document was not admitted into evidence defendant has not established good cause to reopen discovery.

A handwritten signature in black ink, appearing to read 'Stuart R. Crymes', written over a horizontal line.

STUART R. CRYMES
Presiding Workers' Compensation
Administrative Law Judge

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 WORKERS' COMPENSATION APPEALS BOARD

4 MARIA ROSA TAVARES,
5 ARMANDO TAVARES (DECEASED)

6 Applicant,

7 vs.

CASE NO. ADJ 8247302

SALINAS DISTRICT OFFICE

MINUTES OF HEARING

SUMMARY OF EVIDENCE

8 LUIS SCATTINI & SONS
9 and STAR INSURANCE CO.,

10 Defendants.
11

12 LOCATION: Salinas, California
13 DATE AND TIME: 12/3/14, 8:55 a.m. - 10:23 a.m.

14 JUDGE: STUART R. CRYMES, P.W.C.A.L. Judge
15 REPORTER: LIANA MABRY, CSR No. 13305

16 APPEARANCES: APPLICANT present represented by
17 RUCKA, O'BOYLE, et al. by
18 ALFRED LOMBARDO, Attorney at Law

19 DEFENDANT represented by
20 BRADFORD & BARTHEL, by
21 MICHELLE M. WHITE, Attorney at Law

22 OLIVIA WILSON, Certified Interpreter

23 WITNESSES: MARIA ROSA GONZALEZ-TAVARES (APPL.)
24 GREGORY SCATTINI (DEFT.)

25 **DISPOSITION:** The matter is submitted.

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1 The following facts are admitted:

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3 (1) Applicant, Armando Tavares (deceased), born 11/1/62,
4 while employed on 6/13/11 as a tractor driver, at Salinas,
5 California, by Luis Scattini & Sons, claims to have sustained
injury AOE/COE consisting of a fatal heart attack/heart-
cardiovascular resulting in death.

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7 (2) At the time of the injury, the employer's workers'
8 compensation carrier was Star Insurance Company.

9 (3) At the time of the injury, the employee's earnings
10 were in dispute.

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13 ISSUES: (a) Injury AOE/COE and specifically whether the
14 decedent's fatal heart attack is a compensable
15 injury.

16 (b) Earnings: Employee claims average weekly wage
17 of \$611.79 per week based upon a wage statement.

18 (c) Attorney fees.

19
20 (d) Applicant claims total death benefits of
21 \$320,000 based on a widow plus three minor
22 dependents.

23 (e) Defendant's Petition to Reopen Discovery showing
24 good cause and ongoing objection to closure of
25 discovery, ruling pending, submitted for an
Order, 9/10/14.

E X H I B I T S

WCAB'S EX. W-1: Coroner's Report, Randal Dyck, including the Monterey County Sheriff-Coroner, Case 20110432, 6/13/11, signed 7/7/11; Decedent's California Driver's License, Social Security Card and Passport; Report, John R. Hain, M.D., 6/15/11; Toxicology Report, 6/17/11, Monterey County Postmortem Examination, 6/15/11; Radiographic Examination, 6/17/11; Toxicology Report 6/17/11.

WCAB'S EX. W-2: Wage information.

APPL'S EX. A-1: Report, Revels M. Cayton, M.D., 11/25/13.

APPL'S EX. A-2: Marriage Certificate, 4/8/10.

APPL'S EX. A-3: Birth Certificate, Mario Tavares.

APPL'S EX. A-4: Birth Certificate, Andres Tavares.

APPL'S EX. A-5: Birth Certificate, Nancy Tavares.

DEFT'S EX. D-1: Report, Maria Nellie Betancourt, M.D., 3/12/14.

DEFT'S EX. D-2: Witness Summary, Jorge Tavares, 7/22/11 (pages 16-17).

DEFT'S EX. D-3: Witness Summary, Jorge Tavares, 7/22/11 (pages 17-18).

DEFT'S EX. D-4: Report, Maria Nellie Betancourt, M.D., 6/5/13.

DEFT'S EX. D-5: Report, Maria Nellie Betancourt, M.D., 8/9/13.

DEFT'S EX. D-6: Petition to Reopen Discovery and Amend Trial Exhibits; Letter, Susan Baker, 9/12/14.

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Direct Examination by Mr. Lombardo: She was married to Armando Tavares at the time of his death. The marriage certificate is dated April, 2010; however, they had been living as husband and wife for some time before they were actually married. They had four children including three children that are still minors. The minor dependent children are Mario, Andres and Nancy Tavares. There is an older sibling who is not a dependent. The three dependent children are under the age of 18 and were living at home with her at the time of her husband's death.

Mr. Tavares worked in the Salinas Valley at the time of his death. He first came to the United States to work in the fields at age 13.

During the year before her husband's death she did not work outside the home. During her marriage she had never worked. She paid the living expenses for the family including food and necessities out of the money that her husband sent to her. He would send her approximately \$200 to \$300 every 8 to 15 days. During the year before his death the money he sent her was her only source of income.

Her husband had been married previously and was divorced when she and the decedent started their relationship. He did have children from a prior marriage but the children are all grown. She and her children were the only dependents at the time of his death.

1 During the last few years before his death her husband had no
2 health problems.

3 **Cross-examination by Ms. White:** Her husband would send a
4 check every 8 - 15 days and this would occur throughout the
5 year. Mr. Tavares did not have any other jobs at the time of
6 his death. Her husband only worked certain months out of the
7 year. He would work from April through August then was off
8 for one month and then would return to work.

9 Her children did not have any other source of income except
10 for the checks sent by Mr. Tavares.

11 The residence she lives in is loaned to her from her sister-
12 in-law. She does not pay any rent. This is the same house
13 she has lived in ever since she married Mr. Tavares.

14 She pays for groceries, electricity and necessities out of the
15 money that Mr. Tavares sent her. When her husband visited
16 her, he would stay for approximately one month during the year
17 and then during Christmas he would stay for two months.

18 Jorge Tavares is her husband's brother. She was not aware of
19 her husband having diabetes. Her husband would visit the
20 doctor when he traveled to Mexico but this was just for
21 checkups.

22 She was not aware of any stressful events in her husband's
23 life during the last year of his life.

24 She did attempt to come to the United States to live but she
25 was unable to obtain a visa. This occurred approximately 10
years ago.

26 She communicated by telephone with her husband approximately
27 two to three times per day. Some of these discussions
28 involved how much he missed her and the children. She is not
29 aware of Mr. Tavares owing money to other people. He did not
30 have any dietary restrictions. He did not tell her about any
31 chest pains before his death.

32 If he had a medical problem, he was the type of person who
33 would have discussed it with her.

1 **GREGORY SCATTINI**, was called as a witness by Defendant, sworn,
2 and testified substantially as follows:

3 **Direct Examination by Ms. White:** The witness is the
4 owner/partner of Luis Scattini & Sons and has been the owner
5 for 14 years. He manages the operations of the business both
6 in the fields and in the office. He is in the fields on a
7 daily basis. He is familiar with Applicant's duties.

8 Armando Tavares was an employee of Luis Scattini & Sons and
9 had been employed there for approximately 3 - 4 years. He was
10 a tractor driver. This was a seasonal job which basically
11 lasted from April 1st through November 1st of each year.

12 His work consisted of driving a tractor for 10 hours per day.
13 This was a large implement tractor which had a cab and air
14 ventilation. He was not exposed to the elements. The witness
15 worked on the day that Mr. Tavares died.

16 He arrived at work that day and observed Applicant pressure
17 washing the mud off of his tractor. He was using a motorized
18 cart with a hose for this purpose. This was a standard
19 practice in the industry.

20 Mr. Tavares came to his truck and told him and Cipriano
21 (phonetic), the foreman, that he was having chest pain.
22 Cipriano was going to be driving Mr. Tavares to see a doctor.
23 There did not appear to be an emergency to this situation. He
24 advised that it was appropriate for Cipriano to go to Doctors
25 on Duty to get him checked out.

26 He then went to another site on the ranch. He later learned,
27 when he returned, that Applicant had requested to use the
28 restroom before leaving. Mr. Tavares did not come out of the
29 restroom. The door was locked. The employees had called 911
30 when they did not receive a response after knocking on the
31 restroom door. As he was returning to the location where
32 Applicant died, he saw an EMT vehicle driving into the yard.

33 He then walked to the toilet and saw that Applicant was
34 doubled over. The EMTs were trying to revive Mr. Tavares.

35 In his 14 years at this company no other employees had filed a
claim for heart/stress. He is familiar with the job duties as

1 a tractor driver, and it was not physically demanding. He
2 interacted on a daily basis with Mr. Tavares either by
3 telephone or in person. He was never aware of Applicant
4 complaining of chest pain before the date of death. Applicant
5 never complained about issues of being physically overworked.

6 **Cross-examination by Mr. Lombardo:** When Applicant started
7 working for him, he had good references. Applicant was a good
8 employee, dedicated, conscientious and you could rely on him
9 to get the job done. There were times when Mr. Tavares would
10 work up to 12 hours per day and 8 hours at the low end. There
11 would be times when he actually would spend 10 hours driving
12 the tractor. On the day he died it was a normal workday and
13 Applicant reported to work at 6 a.m.

14 When he arrived at the location where Applicant was working on
15 the date of his death, he did observe Applicant pressure
16 washing his tractor. This was around 11 a.m. Applicant had
17 worked five hours before his physical problem started.

18 He was not aware of any health problems Applicant had before
19 the date of his death. He did not miss any significant time
20 from work.

21 **Redirect Examination by Ms. White:** The hours that Applicant
22 worked were typical for all tractor drivers in this industry.

23 

24 STUART R. CRYMES
25 PRESIDING WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

26 SERVICE AS SHOWN ON THE
27 OFFICIAL ADDRESS RECORD

28 

29 DATE: 12/30/14 BY:
30 Nora Martinez

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

12-30-2014

OFFICIAL ADDRESS RECORD

Case Number: ADJ8247302

BRADFORD BARTHEL SAN JOSE	Law Firm, 2841 JUNCTION AVE STE 114 SAN JOSE CA 95134, E-DOCS@BRADFORDBARTHEL.COM
MARIA ROSA TAVARES	Other Applicant, 814 BORONDA ROAD SALINAS CA 93907
MEADOWBROOK INSURANCE LAS VEGAS	Insurance Company, 10100 W CHARLESTON BLVD STE 200 LAS VEGAS NV 89135, JOSEPH.SGRO@MEADOWBROOK.COM
RUCKA OBOYLE MONTEREY	Law Firm, 1035 5TH ST STE B MONTEREY CA 93940

SERVED FINDINGS, AWARD AND ORDER AND MINUTES OF HEARING SUMMARY OF EVIDENCE OF 12/3/14 ON PARTIES SHOWN ABOVE ON 12/30/14 BY NORA MARTINEZ.