

PUBLIC LAW BOARD NO. 7258

Richard K. Hanft, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Claimant was notified to report for an investigation and hearing on August 6, 2008 concerning an allegation that he violated Rule 1.6, Part 2 by furnishing falsified information or omitted to include pertinent information on his application for employment dated January 29, 2003. The investigation was conducted as scheduled and Claimant was notified by letter dated August 22, 2008 that the evidence supported the charges alleged and as a consequence thereof he

was being dismissed from the Carrier's service. Claim was made by the Organization on September 30, 2008. That claim was denied on November 24, 2008. Appeal was made on January 14, 2009 and denied on March 11, 2009 and the claim was discussed in conference without resolution on April 6, 2009.

Claimant filled out a Physical Exam and Confidential Worker Health Questionnaire as part of his initial application for employment with the Carrier on January 29, 2003 and signed a statement on the questionnaire that stated: "...I have read and understood the instructions for completing this questionnaire and all responses are accurate and complete." One of the questions asked: "Have you ever had a surgical operation on any of the following:" and lists 12 specific areas or systems of the body. The following question begins on one line "In the past year" or, on the next line, "More than a year ago" and lists 17 other areas or systems of the body including neck and back. None of the bubbles indicating a surgical operation in any of the areas was darkened. The next line of the questionnaire specifically asks "Never had surgery" and that bubble is darkened in.

In another area of the questionnaire the question is asked: "Do you have pain, soreness or stiffness that interferes with your job, hobbies, and/or personal life in any of the following (mark all that apply)..." Two of the areas inquired about are shoulders and neck. Both of those areas, as well as all others are marked "No." Claimant was hired and holds seniority from May 5, 2003.

It was subsequently discovered by Carrier that despite the answers on the above referred to questionnaire, Claimant had surgery performed on his left shoulder on January 25, 2001 and as a result thereof was placed on a work restriction on August 15, 2001 limiting Claimant to no heavy lifting, no overhead or prolonged work at or above shoulder level. Carrier contends that had it known of the surgery or work restrictions when Claimant filled out the Health Questionnaire, it would have not offered him employment and avers that because Claimant furnished falsified information or omitted to include pertinent information on his application for employment, that he is in violation of Rule 1.6, Part 2, which is a dismissible offense.

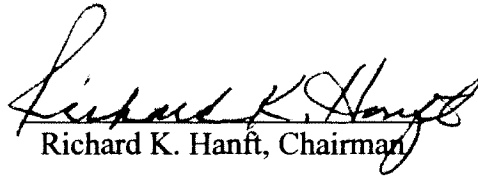
The Organization argues that the Carrier failed to prove that Claimant was under any permanent physical/work restriction at the time he completed his questionnaire in 2003. Moreover, the Organization contends, the Carrier failed to prove that Claimant intentionally misled the Carrier in regard to prior surgeries, but rather that Claimant was forthright with the examining doctor and provided details of the surgery to the doctor who conducted tests relative to that surgery and made no note of any physical or work restriction relative to that surgery.

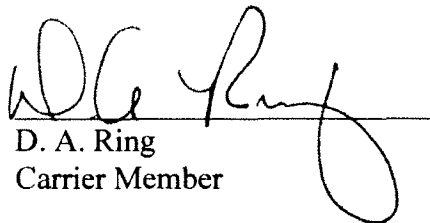
After a formal disciplinary investigation that afforded Claimant all contractual due process, Carrier concluded that a substantial degree of evidence was presented to warrant sustaining the charges preferred against Claimant, specifically that he was in violation of Rule 1.6, Part 2 when he furnished incorrect information on his application form concerning permanent physical restrictions, work restrictions and prior surgeries. The Organization contends that the charges against Claimant were not proven. We have reviewed the record carefully and concur that Carrier proved the charge by substantial evidence that Claimant falsely answered the

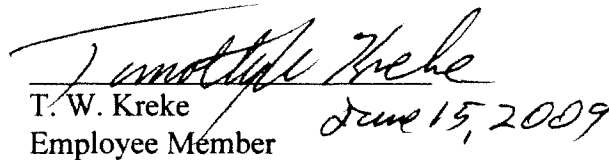
questionnaire that he had never had a surgery. Claimant signed a statement on his Physical Exam and Confidential Worker Health Questionnaire that all responses were accurate and complete. Violation of Rule 1.6 is a dismissible offense. This Panel has no basis to overturn the Carrier's determination on the property.

AWARD

Claim denied.


Richard K. Hanft, Chairman


D. A. Ring
Carrier Member


T. W. Kreke
Employee Member June 15, 2009

Dated at Chicago, Illinois, May 29, 2009

June 15, 2009