

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS

FROM: JOE TRUCE

DATE: June 18, 2003

RE: STATUTE OF LIMITATIONS TOLLED BY THE
FURNISHING OF NON-PRESCRIPTION ANALGESIC
MEDICATION

In the case of James W. Gordon v. Workers' Compensation Appeals Board, Certaineed Roofing Products Group the Board held that the furnishing of non-prescription analgesic medication constitutes the furnishing of "medical treatment" for the purposes of Labor Code §5410 thereby tolling the statute of limitations.

The applicant, James W. Gordon, was injured on July 19, 1999 when he slipped and fell to the ground landing on his back and buttocks. The applicant then filled out the employer's "First Aid Log." The applicant did not receive any formal treatment (nor did he ask for it) but he started taking ibuprofen from the first aid kit at work on a regular basis.

The applicant filed his Application on February 22, 2001 or more than one year following the July 19, 1999 date of injury.

Although the defendant raised the statute of limitations, the Workers' Compensation Judge found that the applicant's claim was not barred by the statute of limitations and defendants sought reconsideration. On reconsideration defendants argued that the statute of limitations barred applicant's claim because applicant took non-prescription pain medication from a bottle in the break room at work and that the "employer had no knowledge that applicant had taken pain medication, therefore, employer did not furnish medical treatment..."

In reversing the WCJ, the Board found that although the furnishing of non-prescription analgesic medication constitutes the furnishing of "medical treatment" thereby tolling the statute of limitations pursuant to Labor Code §5404, in this case the analgesic medication "must have been furnished by the employer or his representative with the knowledge and intent that the medication is to alleviate an industrial condition..."

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The applicant's Petition for Writ of Review was denied.¹

WJT:dab
Attach - Appeals Board Reporter decision re Gordon

¹A copy of a summary of the Board's decision taken from the Appeals Board Reporter is enclosed.