

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

**JOSE OROZCO, *Applicant***

**vs.**

**KAREN KENT, an individual; USAA administered by LIBERTY/HELMSMAN  
MANAGEMENT SERVICES, INC.; and UNINSURED EMPLOYERS BENEFITS  
TRUST FUND, *Defendants***

**Adjudication Numbers: ADJ9391970, ADJ9391972  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

As noted in the report, the WCJ relied on petitioner's own credible testimony that she did not terminate the applicant but that he quit. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 11/27/18, at p. 3:15-19.) We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**July 30, 2021**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**JOSE OROZCO (2)  
EQUITABLE LAW FIRM  
KAREN KENT (2)  
HALLETT, EMERICK, WELLS & SAREEN  
LAW OFFICE OF KENNETH GOODFRIED**

**PAG/ara**

I certify that I affixed the official seal of the  
Workers' Compensation Appeals Board to this  
original decision on this date. *abs*

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**I**

**INTRODUCTION**

Defendant Karen Kent, uninsured, by and through her attorney of record, has filed a timely, verified Petition for Reconsideration challenging the Findings and Order dated May 14, 2021 wherein it was found that defendant's affirmative defense under Labor Code § 3600 (a)(10) did not apply as applicant was not terminated by the employer.

**II**

**FACTS**

In ADJ9391970, applicant laborer, claimed to have sustained injury arising out of and in the course of his employment on an unknown date in 2011 to his lumbar spine. In ADJ9391972, applicant claimed to have sustained injury arising out of and in the course of his employment during the period 1/1/1996 through 9/17/2013 to his lumbar spine and both knees. The issues for trial were employment and injury AOE/COE. Applicant claimed to be an employee of Karen Kent, uninsured, or in the alternative a residential employee of Ms. Kent, insured via a homeowners policy with defendant USAA Property and Casualty, administered by Liberty/Helmsman.

In ADJ9391970 it was found that Labor Code §3600(a)(10) did not apply but that applicant did not sustain injury AOE/COE. In case number ADJ9391972, it was likewise found that Labor Code §3600(a)(10) did not apply but injury AOE was found to the applicant's lumbar spine and both knees.

**III**

**DISCUSSION**

Labor Code Section 3600 (a)(10) states in pertinent part:

a) Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558, shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:

...

(10) Except for psychiatric injuries governed by subdivision (e) of Section 3208.3, where the claim for compensation is filed after notice of termination or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that one or more of the following conditions apply:

(A) The employer has notice of the injury, as provided under Chapter 2 (commencing with Section 5400), prior to the notice of termination or layoff.

(B) The employee's medical records, existing prior to the notice of termination or layoff, contain evidence of the injury.

(C) The date of injury, as specified in Section 5411, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

(D) The date of injury, as specified in Section 5412, is subsequent to the date of the notice of termination or layoff.

In both cases the undersigned relied on the credible testimony of Ms. Kent, that she did not terminate the applicant but that the applicant had quit. At hearing on 11/27/2018 Ms. Kent credibly substantially testified that: She didn't actually yell at him, but she was firm and told him he cannot drink at work. He asked if she was firing him, and she said no. He broke a pencil in half and said "I'm done and walked off" (Minutes of Hearing, 11/27/2018, page 3, I. 17 - 19).

Applicant although initially testifying that he had been fired by Ms. Kent, and also relating that statement to several treating physicians, later recanted and admitted that he had not been fired, that he had left the workplace because Ms. Kent had yelled at him. At hearing on 11/27/2018 applicant substantially testified: "In prior testimony, he stated that Ms. Kent fired him, but now he is saying it was because she yelled at him." (MOH 11/27/2018, p. 2, I. 10 - 12).

Petitioner's position that what Ms. Kent, who was the Petitioner's employer, believed is "not relevant" is inaccurate; it is relevant to the trier of fact in finding that the applicant was indeed not terminated from his employment with the employer. What the applicant may or may not have perceived may also be considered into making that determination, but the fact is that applicant stated under questioning that he was not fired, vacillated on the issue, and ultimately was not found to be credible. It was therefore found that applicant was not terminated for purposes of Labor Code 3600(a)(10).

As stated by the Court of Appeal in *CJS Co. v. WCAB (Fong)* (1999) 74 Cal.App 4th 294, 64 CCC 954: "It is not enough for petitioners merely to cite legislative concern for fraudulent claims. The Legislature may well have concluded that it is only fired or laid-off employees who are sufficiently motivated to retaliate with a fraudulent claim." (supra, at p. 298).

The Court of Appeal has interpreted LC 3600(a)(10) as applying only to employer-initiated separations, not to employees who voluntarily resign or abandon the job, which has been followed by the WCAB (see e.g., *CJS Co. v. WCAB (Fong)*, supra; *De Jesus Flores v. Carl Karcher Enterprises, Inc. dba Carl's Jr.*, 2012 Cal. Wrk. Comp. P.D. LEXIS 461; *Johnson v. The Roman Catholic Archdiocese of Los Angeles*, 2012 Cal. Wrk. Comp. P.D. LEXIS 582; *Golden Eagle Insurance Co. v. WCAB (Jenkins)* (1999) 64 CCC 1403 (writ denied). Based thereon it was found that the defense does not apply in this case.

Regarding Petitioner's comments on a potential temporary disability claim, this was not an issue at trial and fails to support the petition.

#### IV

#### **RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

DATED: JUNE 14, 2021

Respectfully submitted,

David Brotman  
PRESIDING WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE