

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

ANTONIO GONZALEZ CAMPOS, *Applicant*

vs.

DTL LOGISTIC, INC., a California Corporation, and GURGIT SINGH DHALIWAL, individually and as a substantial shareholder of DTL LOGISTICS, INC. a California Corporation, Inc. a Texas Corporation and GURJIT SINGH DHALIWAL, aka GURJIT DHALIWAL, individually and as a substantial shareholder of DTL LOGISTIC, INC., a Texas Corporation; AMARGIT SINGH DHALIWAL individually and as a substantial shareholder of DTK LOGISTIC, INC. a Texas Corporation, DILJIT SINGH DHALIWAL, individually and as a substantial shareholder of DTL LOGISTICS, INC., a Texas Corporation, and UNINSURED EMPLOYER BENEFIT TRUST FUND, *Defendants*

**Adjudication Number: ADJ10813808
Stockton District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously issued granted reconsideration in order to study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

We have considered the allegations of the Petition for Reconsideration and the Answer 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 Opinion on Decision and the Report, which we adopt and incorporate, we will affirm the Findings of Fact.

Here, the WCJ found that applicant had dual employment with DTL Logistics, Inc. Texas and DTL Logistics, Inc., California. We agree. As set forth in *Kowalski*:

The possibility of dual employment is well recognized in the case law. 'Where an employer sends an employee to do work for another person, and both have the right to exercise certain powers of control over the employee, that employee may be held to have two employers—his original or 'general' employer and a second, the 'special' employer.' (*Miller v. Long Beach Oil Dev. Co.* (1959) 167 Cal.App.2d 546, 549 [334 P.2d 695].) In *Industrial Ind. Exch. v. Ind. Acc. Com.* (1945) 26 Cal.2d 130, 134–135 [156 P.2d 926], this court stated that 'an employee may at the same time be under a general and a special

employer, and where, either by the terms of a contract or during the course of its performance, the employee of an independent contractor comes under the control and direction of the other party to the contract, a dual employment relation is held to exist. [Citations.]’

If general and special employment exist, ‘he injured workman can look to both employers for [workers'] compensation benefits...’

In determining whether a special employment relationship exists, the primary consideration is whether the special employer has ‘[t]he right to control and direct the activities of the alleged employee or the manner and method in which the work is performed, whether exercised or not...’ [Citation] However, ‘[whether] the right to control existed or was exercised is generally a question of fact to be resolved from the reasonable inferences to be drawn from the circumstances shown. [Citations.]...’

(*Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168, 174–175 [44 Cal.Comp.Cases 134] (*Kowalski*.)

In sum, the determination of whether a dual employment relationship exists is a question of fact. (See *Kowalski, supra*, 23 Cal.3d at p. 176.) 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.*) Here, the WCJ determined that applicant’s testimony was credible, and that defendant’s witness’s testimony was not. As explained by the WCJ, the evidence produced at trial shows that defendants DTL Logistics, Inc. Texas and DTL Logistics, Inc., California were dual employers of applicant, and we will not disturb her decision.

Accordingly, as our decision after reconsideration, we affirm the Findings of Fact.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued by the WCJ on May 19, 2022 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 27, 2022

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

**ANTONIO GONZALEZ CAMPOS
KELLY, DUARTE, URSTOEGER & RUBLE, LLP
LAW OFFICE OF GARY C. NELSON
LIENING EDGE
MATTHEW BRUECKNER
MEDICAL LIEN MANAGEMENT
OFFICE OF THE DIRECTOR, LEGAL UNIT**

AS/ara

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

The defendant, DTS Logistic, Inc. a California Corporation (“DTL CA”), and individually, Gurgit Singh Dhaliwal, is seeking reconsideration of the Findings of Fact dated 19 May 2022. The Petition for Reconsideration is timely and verified. 22 June 2022, a verified answer was filed by the applicant.

FACTS

The relevant facts in this matter are as follows:

1. The applicant was employed by DTL Logistics, Inc. in Texas (“DTLTX”), and allegedly employed with DTL Logistics, Inc. in California (“DTLCA”).
2. Based upon the applicant’s credible testimony, he believed he was employed by DTLCA.
3. The applicant’s credible testimony was that he did not know there was a DTLTX.
4. The applicant was believed when he stated he did not write the DTL TX address on his employment application.
5. Mr. Dhaliwal is a principal of DTLTX and DTLCA.
6. Mr. Dhaliwal is the sole officer and agent for service of process for DTLCA.
7. Mr. Dhaliwal was a director of DTLTX from its inception to his resignation 15 February 2017.
8. Mr. Dhaliwal brokered loads between DTLCA and DTL TX.
9. Mr. Dhaliwal is not credible when he stated that he did not know how the applicant obtained a truck allegedly owned by DTLTX, for a DTLCA brokered load.
10. Mr. Dhaliwal hired the applicant, paid the applicant, and instructed the applicant on the route to drive.
11. On 13 June 2022, the defendant filed a timely, verified petition for reconsideration.
12. 22 June 2022, the applicant filed a timely, verified answer.

PETITIONER’S CONTENTIONS ON RECONSIDERATION

The defendant alleges there is no dual employment.

DISCUSSION

The sole issue at trial was whether the applicant was a dual employee of DTLTX and DTLCA. Based upon the credibility of the applicant, the limited documentary evidence, and the lack of credibility for the defendant’s witness, it was found that there is a dual benefit to both entities. The applicant’s answer supports a finding of employment by DTLCA, which was not an issue to be addressed. It was implied that both DTL entities were established to allow brokering between the two entities. The testimony of Mr. Dhaliwal was such that all aspects were fluid moving money, manpower, and machinery between the two entities in CA at will. At all times the applicant was on the west coast, based in CA. He received instructions from Mr. Dhaliwal upon where to pick up loads and deliver loads. Mr. Dhaliwal provided the applicant with a gas card, performed repairs if needed, and provided payment to the applicant. There was never a clear delineation between the two entities or in what capacity Mr. Dhaliwal was interacting with the applicant. Thus, the benefit

of the applicant's employment was to both entities simultaneously and is thus a dual employment situation.

CONCLUSION

There was a dual simultaneous benefit to DTSCA and DTL TX which allows for a finding of dual employment by the applicant with both entities. Further, based upon the evidence provided it is unclear where one entity stops and the other begins.

RECOMMENDATION

For the foregoing reasons, I recommend that the Petition for Reconsideration be denied.

Dated: 7 July 2022

Deborah A. Whitcomb
WORKERS' COMPENSATION JUDGE

OPINION ON DECISION

Whether the applicant had dual employment with DTL Logistics, Inc. Texas and DTL Logistics, Inc. California

The applicant has dual employment with DTL Logistics, Inc. Texas and DTL Logistics, Inc. California.

ANALYSIS

The question of whether the applicant was employed with DTL Logistics, Inc. Texas (“TX”) and DTL Logistics, Inc. California (“CA”) turns on whether the applicant provided benefit to both alleged employers at the same time. In this case the applicant’s credible testimony suggests he believed he applied for and was working for CA, not TX. The witness, Gurjit Singh Dhaliwal, is found to not be credible and does not serve to negate dual employment. Specifically, the applicant is believed when he stated he did not write the Texas address on his application¹ and that he was unaware that there is/was a TX².

Mr. Dhaliwal is believed when he stated that he would broker loads between CA and TX, providing an explanation of the brokering process³. However, from the un rebutted documentary evidence, Mr. Dhaliwal is found to be a principal of both CA and TX⁴. Specifically, for CA he is the sole officer and agent for service of process, and as to TX he was a director from its inception, 29 July 2014, through his resignation, 15 February 2017⁵. It is not believed when Mr. Dhaliwal states that he had no idea how the applicant obtained a truck to drive from Turlock to Washington⁶. After reviewing Mr. Dhaliwal's testimony *en toto* he cannot be found to be credible. As principle of both corporations, a family member, and the person who is clearly manipulating manpower and machines, he would be aware of the interrelationship between the two companies. Especially since he was brokering loads between TX and CA. The ability to manipulate the financial aspects of brokering between CA and TX ultimately failed since TX was liquidated. However, Mr. Dhaliwal remained a principle of TX until 2017, after the applicant’s accident.

As stated above, the question of dual employment turns on whether there is joint hiring, or whether services performed are for the mutual benefit of two entities. In the present matter there was an attempt to show that the two entities are distinct. However, the over lapping of directors and the brokering done by Mr. Dhaliwal suggests just the opposite. In fact, the testimony is very clear that the applicant was driving for the benefit of CA and TX.

Deborah A. Whitcomb
Workers' Compensation Judge

¹ *Minutes of Hearing Summary of Evidence 3 March 2022 (“MOH/SOE”), 6:6-7.5*

² *Id. at 6:1-1.5.*

³ *Id. at 7:3.5-4, 8:6-7.5.*

⁴ *See Applicant 11, Defendant A.*

⁵ *Id.*

⁶ *MOH/SOE, 7:24-25, 8:5.*