

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

**PEDRO LARIOS GAVINO, *Applicant***

**vs.**

**LUCAS LUCATERO; LUCAS LUCATERO dba ALPHA BUILDING COMPANY,  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ12809066  
Redding District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration (Petition) filed by Brian Hill, attorney for Ryan Lynch, dba Ryan Lynch Construction, 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 herein, we will deny reconsideration.

On February 20, 2024, defendant's attorney Mr. Hill filed a supplemental pleading and sought permission as required by WCAB Rule 10964. (Cal. Code Regs., tit. 8, § 10964.) We accept the supplemental pleading, and we have considered it.

In addition to the reasons set forth in the WCJ's report, we wish to note a helpful case cited in the Answer filed by defendant, State Compensation Insurance Fund (SCIF), namely, *Johnson v. Auto. Club of S. California/Pleasant Holidays (Johnson)* (May 6, 2019, ADJ10656776) [2019 Cal. Wrk. Comp. P.D. LEXIS 170], wherein we concluded that a party does not engage in bad faith conduct subject to sanctions simply by asserting an argument that is ultimately unsuccessful. (Answer, p. 23.) In *Johnson*, the WCJ sanctioned defendant for challenging the substantiality of the medical-legal evidence presented based upon a finding that defendant could not have "reasonably prevailed" on the issue. The WCAB rescinded the sanctions, explaining that, although defendant's evidence was "not enough to prevail," defendant was within its right to raise the issue, and its decision to do so was not "indisputably without merit" as to constitute bad faith or solely

intended to cause delay in violation of the WCAB Rules. (*Id.* at \*6, citing Cal. Code Regs., tit. 8, former § 10561, now § 10421 (eff. January 1, 2020).)

WCAB Rule 10421, subdivision (b) provides that: “Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers’ Compensation Appeals Board, or that are done for an improper motive or are *indisputably* without merit.” (Cal. Code Regs., tit. 8, § 10421(b), emphasis added.) Pursuant to subsection (b)(6)(A)(i)-(B), “Bringing a claim, conducting a defense or asserting a position: That is [i]ndisputably without merit and [w]here a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct” constitutes conduct for which sanctions may be imposed.

Here, similar to the defendant in *Johnson*, it is our view that SCIF was within its right to dispute the evidence offered that applicant was employed by SCIF’s insured, Alpha Building Company, with evidence that applicant was instead employed by petitioner’s client, Ryan Lynch. As indicated in the WCJ’s report, evidence did exist that Ryan Lynch may have employed applicant, thus, SCIF’s argument was not “indisputably” without merit or solely intended to cause delay in violation of the WCAB Rules.<sup>1</sup> Thus, as in *Johnson*, simply because SCIF did not prevail on its argument did not render its decision to raise it sanctionable. For this reason, as well as those provided in the WCJ’s report, we conclude that sanctions against SCIF are not warranted in this case.

---

<sup>1</sup> SCIF offered evidence to support its position during trial, as well as during the deposition of Ryan Lynch. (Minutes of Hearing and Summary of Evidence (MOH/SOE), May 7, 2023, pp. 22-23; Exh. YY, Deposition of Ryan Lynch, pp. 31-32, 38-40.)

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

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



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

**MARCH 26, 2024**

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

**PEDRO LARIOS GAVINO  
STATE COMPENSATION INSURANCE FUND  
LAW OFFICES OF BRIAN HILL  
RYAN LYNCH  
LUCAS LUCATERO**

**AH/cs**

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

## **REPORT AND RECOMMENDATION ON RECONSIDERATION**

### **BACKGROUND**

On or about 12/10/2019, Applicant Pedro Larios Gavino claimed industrial injury when he fell while on a roof with homeowner Ryan Lynch, while accessing damage to Mr. Lynch's roof. Applicant Gavino was not engaged in repair of the roof; however, subsequent trial testimony would reveal that Applicant Gavino had been directed to assess the roof damage on behalf of Lucas Lucatero.

At the time of the application, State Compensation Insurance Fund carried the workers' compensation insurance coverage for Alpha Building Company which was/is the company owned by Mr. Lucatero. However, State Compensation Insurance Fund (hereinafter referred to as State Fund), had conducted a proper investigation into the claim wherein they were informed that Applicant had not in fact been employed by Mr. Lucatero on the date of injury. The investigation had discovered and State Fund had submitted paystubs and timesheets which indicated Applicant was not working on that particular date.

State Fund then petitioned for joinder of various other potential employers including Darrell S. Carpenter, Darrell S. Carpenter dba DC Custom Framing, Ace American Insurance under a specific policy and Ryan Lynch, among others. Amongst the evidence submitted for joinder of other parties, were a set of text messages between Darrell Carpenter and Ryan Lynch which seemed to suggest Ryan Lynch's involvement with the framing contract and additionally, the siding. Darrell S. Carpenter dba DC Custom Framing, Ace American Insurance Company and Ryan Lunch Construction were joined as party defendants on 12/31/2019 due to the possibilities that one of them, or their insureds, were the employer. State Fund's petition for joinder admitted, "The identity of the actual employer is at this time unknown."

Complicating the issue of employment was the fact that on 11/25/2019, there was not the typical employer-employee relationship. Applicant Gavino had previously, several times, been in the employ of Mr. Lucatero, Alpha Building Company. However, the evidence at trial revealed that on the specific date of injury, there was a possibility that homeowner Ryan Lynch may have had a small construction project which possibly Mr. Lucatero could/would bid on. That suspicion could have led to Mr. Lynch having been the employer. However, the evidence at trial also revealed that it was Mr. Lucatero who thus told Applicant Gavino to go get further details on what the project could/would entail.

For the period between the date of injury on 11/25/2019 through the date of the initial trial, which was solely to determine who was the actual employer of Applicant Gavino, a virtual myriad of entities, in addition to their respective workers' compensation insurance carriers, were considered for the role of employer including:

Darrell Carpenter  
DC Custom Framing  
Ryan Lynch dba Ryan Lynch Construction, Inc.  
Lucas Lucatero dba Alpha Building Company

Barrett Business Services, Incorporated  
Ace American Insurance Company  
Corvel Corporation  
Uninsured Employers Benefit Trust Fund (UEBTF)  
OD Legal

Uninsured Employers Benefit Trust Fund and OD Legal were joined due to the possibility that the employer may have been Darrell Carpenter dba DC Custom Framing, who did not have workers' compensation insurance or Ryan Lynch who also had no workers' compensation insurance.

There was also the deposition testimony of Mark Lynch, father of Ryan Lynch<sup>2</sup> following Applicant Gavino's accident. That testimony seemed to indicate that Darrell Carpenter was/may have been the employer of Applicant Gavino. The State Fund intake remarks report indicates that in interview with their insured, Lucas Lucatero he said "that the employee is not his and that he is a 1099 employee". State Fund properly relied on what their insured was advising.

Suffice to say there were several possibilities as to who/whom the proper, legal employer was. During the discovery period on this issue, various parties were joined. Several parties requested dismissal. It is noted that Petitioner submitted Notice of Representation on behalf of Ryan Lynch dba Ryan Lynch Construction, Inc. on 2/12/2020.

It is further noted that several other potential employers, after their own investigations were completed, petitioned for dismissal and several were dismissed. Despite the allegations that Applicant Gavino had not been an employee of Ryan Lynch or Ryan Lunch Construction on the date of injury, Petitioner never requested dismissal of his client.

The issue also arose as to whether Applicant Gavino was a subcontractor of Lucas Lucatero. This was due to the Alpha Building Company check stubs to Applicant Gavino which stated "Business Checkin" and did not include the typical employee payroll deductions; however, there was no objection to the determination of employee rather than subcontractor.

It should additionally be noted that the undersigned was advised by State Fund on the day of trial, that while their insured, Lucas Lucatero, had planned to be present for the trial, the day before the trial, Mr. Lucatero's grandmother passed away and Mr. Lucatero understandably went to be with his family.

Notably, Defendant State Fund did submit into evidence at the trial, Defendant SCIF Exhibit A, which was subsequently admitted. Exhibit A consists of a series of text messages between Darrell Carpenter and Ryan Lynch during the period 11/04/2019 and 11/25/2019. On page 2 of 18, Ryan Lynch states:

"You may get a call from Jake Wade. He is a loan bank manager for a New Custom Home coming up he's checking my references, Can you let him know I am a general contractor as a general on your project thank you"

---

<sup>2</sup> Defendant SCIF trial exhibit A, 3/07/2023 Minutes of Hearing and Summary of Evidence.

There was the possibility that Mr. Lynch was talking about your project being the work on his home, where Applicant Gavina was injured.

Petitioner, while not requesting dismissal of his client due to lack of evidence of employment by Ryan Lynch, did petition to attend the trial via electronic means as he was out of the country at the time of trial, and so the undersigned approved the remote appearance a couple months before the trial.

Following the trial and submission, Findings of Fact and Opinion on Decision issued on 7/05/2023. There were just two determinations issued; the first being that Applicant Pedro Larios Gavina was an employee of Lucas Lucatero dba Alpha Building Company and the second that Pedro Larios Gavina suffered injury arising out of and in the course of his employment with Alpha Building Company. No entity filed any Petition for either Removal or Reconsideration to that Opinion.

However, and subsequently, on 7/14/2023, Petitioner filed the instant Petition for Sanctions against State Compensation Insurance Fund.

### **PETITION FOR SANCTIONS**

The Petition for Sanctions was filed on 7/17/2023. On 7/31/2023 a Declaration of Readiness to Proceed was received in the FileNet system. The 8/24/2023 Pre-Trial Conference Statement lists, under other issues, Petition for Sanctions filed by Ryan Lynch Construction against State Fund and Petitioner requests a general finding with jurisdiction reserved on a sanction amount.

The Petition itself discusses pre-trial discovery, which obviously did not resolve the parties disputes; however, and while Applicant Gavina was deposed and testified to employment by Lucas Lucatero, Mr. Lucatero had denied that employment. At this point, State Fund had it's insured advising them that there was no employment between the insured and Applicant Gavina. Further and while there was the deposition testimony, there remained questions regarding who was the employer on the actual date of injury, which eventually resulted in the 3/7/2023 trial.

The Petition For Sanctions also argues, "As a result of the State Fund's improvident joinder of Mr. Lynch and its utter failure to present *any* evidence of employment at trial, he is now responsible for payment of extensive attorney's fees for services provided by this office."

First, it was not State Fund who ordered the joinder of Ryan Lynch; it was the undersigned. Second and as detailed above, there was evidence sufficient to substantiate the joinder, which was reviewed by the undersigned prior to the joinder order. Ryan Lynch Construction was/is a construction company whose principal business is construction. Second, the text messages<sup>3</sup> in Ryan Lynch's own words, were that he was a general contractor, as a general on your project. Yes, the joinder was requested by State Fund; however, it was the undersigned who ordered joinder after reviewing the then evidence that suggested Ryan Lynch may in fact have been the employer of Applicant Gavino. As previously stated, when Applicant's injury occurred, Applicant was with Ryan Lynch assessing the roof damage and how to correct the damage.

---

<sup>3</sup> Defendant SCIF trial exhibit A, 3/07/2023 Minutes of Hearing and Summary of Evidence.

There was no absolute evidence that Alpha Building was the employer, prior to the trial, for several reasons. Ryan Lynch had suggested he was the general on the project. It was not the typical employer-employee relationship. It was just Lucas Lucatero telling Applicant Gavino to go check out the site. There was no building contract between Ryan Lynch and Lucas Lucatero. There was also the question as to whether the employer was in fact, Darrell Carpenter or DC Construction, or Applicant Gavino himself, as he had available two other workers who could have completed a small construction project.

Further and a note - in Petitioner's Reply to Answer to Petition for Sanctions, starting at the top of page 2, Petitioner starts discussing a Mr. Luciano, which name is continued through the end of the Reply to the Petition. It is assumed that all references to Mr. Luciano, are actually references to Mr. Lucatero.<sup>4</sup>

### **TRIAL ON THE PETITION FOR SANCTIONS**

At the resulting trial on the Sanctions Petition on 11/28/2023, Mr. Ryan Lynch testified that he had received a bill for legal fees but had not paid the bill "because he does not have that kind of money".

Following Mr. Lynch's testimony, Petitioner rested his case. Petitioner's theory for the Petition For Sanctions seems to be that because his client could not afford to pay the legal bill, State Fund should. Thus the Petition for Sanctions.

The issue is not quite as simple as the picture Petitioner paints. There were at least five entities which could have been found the employer in the original trial. Yes, as Petitioner argues, no contrary evidence was submitted at trial; however, prior to the trial, no entity admitted to the role of employer. To repeat, trial was necessary to determine who the employer was, especially when ALL potential employers were denying employment. It took the trial, testimony and review of all the submitted evidence, to determine what result the evidence pointed to. After review of all the evidence, the result in the Findings of Fact and Opinion on Decision, was that the employer was Lucas Lucatero doing business as Alpha Building Company. Ryan Lynch remained a suspect employer and no evidence was submitted by Mr. Lynch prior to the trial which could have disputed that question, although Petitioner had, by that time, received the various petitions and requests for dismissal filed by others, who had been dismissed.

At the time of trial, Lucas Lucatero dba Alpha Building Company, DC Custom Framing and Ryan Lynch dba Ryan Lynch Construction, Inc. remained as potential employers.

Petitioner uses quotes from the Opinion on Decision following the 11/28/2023 trial on the Petition for Sanctions to argue several issues. For example, Petitioner states that no evidence was presented at trial by any party that in any way suggested that the applicant had ever been employed by or had any relationship with Lynch Construction. That statement is true to a point, but it took the trial to determine there was no evidence. But for the trial, the evidence showing that Mr. Lynch was not the employer, possibly would not have become known.

---

<sup>4</sup> Stated just for the sake of clarity.

There was the very fact that Applicant was on the roof with the homeowner discussing the nature and extent of the work which needed to be done. Typically, those discussions would be between the contracting parties. There was also the possibility that because at the time of injury, Ryan Lynch had direction and control of the situation, argument could be made that Ryan Lynch was in fact, the employer. He was, after all, showing Applicant Gavina the nature and extent of the work which needed to be done.

There was the fact that at the time of Applicant's injury, Ryan Lynch, who was the owner of his own construction company, believed that Applicant was actually employed by Darrell Carpenter, or Darrell Carpenter doing business as DC Construction. Again, issues which made trial necessary.

There was also the possibility that Applicant Gavino, who had two other individuals to work with him, was acting in his own behalf.

### **CONCLUSION AND RECOMMENDATION**

Petitioner submitted a bill for services originally for \$75,320.00. That bill was subsequently amended to \$84,160.00. Petitioner's client, Ryan Lynch, testified that he did not have the type of funds necessary to pay his Attorney's bill. Subsequently, Petitioner has argued that because State Compensation Insurance Fund's insured (Lucas Lucatero dba Alpha Building Company), was ultimately found, after trial, submission and review of testimony and evidence, to be the employer that State Fund is guilty of the type of frivolous behavior and/or behavior *solely* intended to cause unnecessary delay.

If there had not been evidence that the employer of Applicant Gavino could have been any one of a number of entities, including Ryan Lynch Construction, trial would not have been necessary. But there was such evidence, as detailed above.

If in fact, Ryan Lynch fully believed he was not the employer, why did he not at least request dismissal as others had done. Yet, there was, as stated sufficient evidence that Ryan Lynch could have been found the employer, which Petitioner chooses to ignore in his petition.

For all the above reasons, the undersigned respectfully recommends that the Petition for Reconsideration be denied in its entirety.

DATE: 2/08/2024

**Mary Sulprizio**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE