WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CHRISTOPHER JONES (Deceased) by GUARDIAN AD LITEM, *in propia persona,* A*pplicant*

vs.

4B - WARNER MEDIA; SEDGWICK CMS, *Defendants*

Adjudication Number: ADJ13021735
Riverside District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration of the December 29, 2021, Findings and Order. This is our decision after reconsideration.

We have considered the allegations of the Petition for Reconsideration filed by Paule Jones as applicant and Guardian Ad Litem[1] 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.

In addition, we note that applicant has not provided sufficient evidence to find that Mr. Jones was employed by Warner Brothers. The parties' stipulation that decedent was in the movie "Ryan's Daughter" is not prima facie evidence that he was employed by defendant Warner Brothers. A movie set may have multiple employers. (See e.g*., McGee St. Productions/Hallmark Entm't v. Workers' Comp. Appeals Bd*., (2003) 108 Cal.App.4th 117 [68 Cal. Comp. Cases 708].) Applicant asks us to infer that the distributer of a movie was also applicant's employer. We agree with the WCJ that applicant has not met her burden on the issue of employment.

We also note that, if applicant had shown that decedent was employed by a particular employer, there would be additional challenges to finding a compensable claim including the

[1] Labor Code section 5408 allows for the appointment of a guardian or conservator to exercise the rights of an employee's dependents who are under 18 years of age or incompetent. It is unclear who applicant is acting on behalf of in her role as Guardian Ad Litem.

statute of limitations and a lack of evidence connecting any disability or need for medical treatment to an injury sustained at work.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration that the December 29, 2021, Findings and Order is **AFFIRMED.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 22, 2022

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

PAULE MCKENNA, GUARDIAN AD LITEM
WAI, CONNOR & HAMIDZADEH, LLP

MWH/mc

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Date of Injury:	03/01/1969-01/31/1970
Identity of Petitioner:	Paule McKenna, Guardian ad litem for applicant, Christopher Jones (deceased)
Parts of Body claimed:	Digestive system, excretory system; nervous system; psyche.
Date of Filing of Petition for Reconsideration	01/25/2022
Timeliness:	The petition appears to be timely.
Verification:	The petition was verified by a non-attorney representative.
Petitioner's Contentions:	Petitioner contends that by issuing the decision, order or award the Board acted without or in excess of powers; the petitioner has discovered new evidence material to him which he could not with reasonable diligence have discovered and produced at hearing; the findings of fact do not support the order, decision or award.

Paule McKenna, Guardian ad litem (discussed and referred to as applicant hereinafter) has filed a Petition for Reconsideration dated 01/22/2022 on 01/25/2022 (EAMS DOC ID 75105737). In the petition the applicant objects to and petitions for reconsideration of Findings of Fact, Orders, and Opinion on Decision dated 12/29/2021.

The defendant has filed an Answer to the Petition for Reconsideration on 01/31/2022 (EAMS Doc ID 39947057). The defendant argues that the findings of fact and orders are justified as applicant did not establish employment relationship and jurisdiction. Defendant also argued that the applicant failed to justify the presentation of new exhibits in reconsideration for the first time rather than offering at trial.

It is recommended that reconsideration be denied.

II

FACTS AND PROCEDURAL HISTORY

The application for adjudication alleging injury to nervous system, stress, psych, kidneys, and digestive system during the period March 1, 1969, to January 31, 1970, was filed by Paule McKenna on February 28, 2020. The alleged injury occurred at Ryan's Daughter MGM film set in Ireland. Christopher Jones is deceased. He died on January 31, 2014.

The defendant filed an answer on June 5, 2020 (EAMS DOC ID 72810481). The defendant denied injury arising out of employment, during course of employment (AOE/COE), employment, occupation, and all other issues at the time of filing of answer. The defendant filed a declaration of readiness for a status conference on 12/01/2020. An order appointing Paule McKenna as Guardian Ad Litem issued on 01/04/2021. After several continuances the case was set for a mandatory settlement conference on 09/09/2021. From there the case was set for trial on 10/26/2021.

The trial on 10/26/2021 was held in person. Testimony of Paule McKenna was taken and exhibits of applicant were presented. The defendant objected to exhibits and some were marked for identification and some were admitted. There was no objection to defendants exhibits A-E and these were admitted into evidence.

In the Findings of Fact and Orders and Opinion on Decision dated 12/29/2021 the undersigned WCJ determined that there was no employment and no jurisdiction found and that the applicant takes nothing.

The applicant filed a petition for reconsideration dated 01/22/2022, filed or entered in EAMS on 01/25/2022. The applicant argued that there was an employment relationship and there is jurisdiction along with a new allegation of a Serious and Willful allegation and alleged notice issue regarding an automobile accident and drugging of Christopher Jones. The petition totaled 32 pages with attachments. The applicant also offered new documents (Petition for Reconsideration, pages 28-32) and information that was not presented at trial and stated that with reasonable diligence could not have been produced at trial. The applicant has also presented new facts and asked for judicial notice of facts (Petition for Reconsideration, Pages 10-12).

There are no facts explaining why the new evidence that was material to the case could not have been produced at trial.

III

DISCUSSION

The applicant has the burden of proof since the case was denied and must meet the evidentiary burden of proof by a preponderance of evidence. The burden rests with the employee to prove his or her claim and all necessary elements. The employee has the initial burden of proving that the injury arose out of and in the course of the employment. *Wehr v. WCAB* (1985) 50 CCC 165.

Labor Code 3600 necessitates liability for injury "arising out of" and "in the course of" employment. If both conditions are met, the injury is or may be compensable unless barred by a legal theory.

Employment and the injury must be linked in some causal fashion to be industrial. *Madin v. IAC* (*Richardson*) (1956) 21 CCC 49, 50*; Maher v. WCAB* (1983) 48 CCC 326, 329; *LaTourette v. WCAB* (1998) 63 CCC 253, 256; *South Coast Framing, Inc. v. WCAB (Clark)* (2015) 80 CCC 489.

Pursuant to Labor Code 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." The applicant has the affirmative on proving injury arising out of employment and in the course of employment (AOE/COE).

Labor Code 3202.5 requires all parties and lien claimants to meet the evidentiary burden of proof on all issues by a "preponderance of the evidence." This means "evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth."

It is a fundamental principle of the workers' compensation system that an employer is liable for an injury to an employee, "...arising out of and in the course of the employment..." (Lab. Code, § 3600(a); *Maher v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 729, 732-733 [48 Cal.Comp.Cases 326] *(Maher).)* "In applying it, this court must be guided by the equally fundamental principle that the requirement is to be liberally construed in favor of awarding benefits. (Lab. Code, § 3202; *Laeng* v. *Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 771, 777-778....; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317...; *Scott v. Pacific Coast Borax Co.* (1956) 140 Cal.App.2d 173, 178...)" *(Maher, supra,* 33 Cal.3d at 733 (emphasis in the original).)

Applicant bears the burden of proving injury AOE/COE. *(South Coast Framing* v. *Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302; Lab. Code, §§ 5705; 3600(a).) The concept of "in the course of the employment" generally, "...refers to the time, place, and circumstances under which the injury occurs." *(Maher, supra,* 33 Cal.3d at 733.) "Arising out of" employment generally refers to the causal connection between the employment and the injury. *(Id.)* In other words, the employee must be exposed to the "danger from which the injury results" as a result of his or "particular employment." *(Maher, supra,* 33 Cal.3d at 734 n.3 citing *Industrial Indem. Co.* v. *Ind. Acc. Com.* (1950) 95 Cal.App.2d 804, 809.) The burden of proof shifts to the employer once an applicant makes a "prima facie showing...of exposure to the danger involved." *(McAllister v. Workmen's Comp. Appeals Board* (1968) 69 Cal.2d 408, 416 [33 Cal.Comp.Cases 660] *(McAllister).)*

Pursuant to Labor Code 3208.3(b) (1) an employee shall demonstrate by a preponderance of evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

In order for an injury to arise out of employment, the employment need only be "'one of the contributing causes"' of the injury. *(Clark, supra,* 61 Cal.4th at pp. 297-29 quoting

Latourette v. Workers' Comp. Appeals Bd. (1998) 17 Cal.4th 644 [63 Cal.Comp.Cases 253] *(Latourette)* quoting *Maher, supra,* 33 Cal.3d. at p. 734, fn. 3.)

In order to establish that an applicant's injury can "fairly be traced to the employment" and not "from a hazard which the workman would be equally exposed apart from the employment" *(Clark, supra,* 61 Cal.4th at p. 300), an employee need only show that the "proof of industrial causation is reasonably probable, although not certain or 'convincing.'" *{McAllister* v. *Workmen's Comp. Appeals Board* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660] *{McAllister).')*

Before there can be a valid workers' compensation claim, there must be an employment relationship (*County of Los Angeles v. WCAB (Conroy)* (1981) 46 CCC 1322, 1324; *Spradlin v. Cox* (1988) 201 Cal. App. 3d 799, 806). An employee must show that at the time of injury, he or she was "performing service growing out of and incidental to his or her employment" (LC 3600(a) (2)). But Labor Code 3357 provides a presumption in favor of employee status. It states, "Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee."

The employee has the initial burden of proving that he or she was "rendering service" for the employer at the time of injury. Once the presumption of employment comes into play, the burden shifts to the employer to establish that the injured person was an independent contractor or otherwise excluded from protection under the Workers' Compensation Act (*Yellow Cab v. WCAB (Edwinson)* (1991) 56 CCC 34, 37; *Barragan v. WCAB* (1987) 52 CCC 467, 470; *Anaheim General Hospital v. WCAB (Craig)* (1970) 35 CCC 2, 4; *Gale v. IAC* (1930) 211 Cal. 137, 141). The presumption also may be overcome if the essential contract of hire, express or implied, is not present under LC 3351 (*Jones v. WCAB* (1971) 36 CCC 563, 56; *Parsons v. WCAB* (1981) 46 CCC 1304, 1309). There was no proof that the applicant was performing services for the defendant in this case from March 1, 1969 to January 31, 1970 while employed as an actor.

There must be substantial evidence that employment actually was accepted in California, not merely discussed or negotiated (*Allen v. Milwaukee Bucks,* 2013 Cal. Wrk. Comp. P.D. LEXIS 138).

> In this case the applicant produced records of residuals payment statement from SAG-AFTRA (Exhibit 12) and a business search entity detail from Christopher Productions Limited dated 10/24/2021 (Exhibit 1). These records are insufficient to establish that there was an express or implied contract with defendant, that he was performing services growing out of and incidental to his or her employment, and that the applicant was hired in California.

The applicant through his executor and Guardian Ad Litem did not carry the burden of proof establishing employment.

Both the appeals board and the Superior Court have concurrent precedential jurisdiction to determine whether an injury is covered by state workers' compensation laws, and thus falls within the exclusive jurisdiction of the appeals board (*Yavitch v. WCAB (Hodges)* (1983) 48 CCC 281).

Labor Code 5300 states in part:

> All the following proceedings shall be instituted before the appeals board and not elsewhere, except as otherwise provided in Division 4:
>
> (a) For the recovery of compensation, or concerning any right or liability arising out of or incidental thereto.

The appeals board has jurisdiction over all injuries occurring within the state *(King v. Pan American World Airways* (1959) 24 CCC 244, 249. See *Phillips Petroleum Co. v. WCAB (Taylor)* (1977) 42 CCC 543 (writ denied). It has jurisdiction over a worker employed in another state who is injured while working in California (*Dailey v. Dallas Carriers Corp.* (1996) 61 CCC 216, 220). In addition, the appeals board has jurisdiction over injuries occurring in other states in certain instances. A state may exercise jurisdiction over an injury sustained in another state if it has a sufficient interest (*Crider v. Zurich Insurance Co.* (1965) 380 U.S. 39).

The Labor Code gives the appeals board jurisdiction over claims for out-of-state injuries when either (1) the contract for hire was made in California or (2) the out-of-state injured worker is regularly employed in California. Specifically, LC 5305 provides the appeals board with "jurisdiction over all controversies arising out of injuries suffered outside the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state." Furthermore, LC 3600.5 states, "If an employee who has been hired or is regularly employed in this state receives personal injury or accident arising out of and in the course of such employment outside of this state, he, or his dependents, in the case of his death, shall be entitled to compensation according to the laws of this state."

The conditions above must be met in order to confer California with jurisdiction for an out-of-state injury. If an employee is hired and injured out of state and is never regularly employed within the state, the appeals board will not have jurisdiction, even if the employer is a California corporation (*Petritsch v. WCAB* (1975) 40 CCC 478 (writ denied). See also *McCauley v. WCAB* (1996) 61 CCC 1310 (applicant, a resident of Texas, did not meet requirements of LC 5305). The parties cannot confer jurisdiction on the appeals board merely by agreeing to it (*Commercial Casualty Insurance Co. of Newark, New Jersey v. IAC (Porter)*

(1952) 17 CCC 84, 89; *Commercial Casualty Insurance Co. v. IAC (Crawford)* (1953) 18 CCC 65).

In order for there to be jurisdiction there must be proof that the contract of employment was entered into in the state of California or the out-of-state injured worker is regularly employed in California. The applicant produced a business search for State of California dated 10/24/2021 (Exhibit 1). This does not establish that the applicant entered into a contract in California. It does appear to show a business called Christopher Productions, Limited was

established on June 27, 1968. Further there is a SAG-AFTRA residuals payment statement that is dated 07/21/2017 (Exhibit 12). This indicates that $50.00 was sent to Christopher Jones on 07/21/2017. It also appears that the company that paid or was involved besides Christopher Jones/Christopher productions was Warner Bros. Pictures Inc. None of these documents show that Christopher Jones entered into a contract with 4B Warner Media or MGM/Warner Media or who he had a contract with from March 1, 1969 to January 31, 1970.

It cannot reasonably be found that there was a contract for hire entered into in the State of California or that he was a worker that was regularly employed in California based on the record. Therefore the applicant did not carry the burden of showing jurisdiction or employment.

The testimony of Paule McKenna and admitted or documentary evidence admitted or marked for identification was not sufficient to establish an employment relationship between Christopher Jones and 4B Warner Media or MGM/Warner Media or California workers' compensation jurisdiction. The applicant did not carry the burden of proof to establish employment or jurisdiction.

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

DATE: 02/22/2022

Eric Thompson

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:

PAULE MCKENNA EMAIL
WAI CONNOR IRVINE EMAIL

X all parties as shown on Official Address Record ON: 02/03/2022 BY: ggarcia