

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

**JESUS OSEGUERA, *Applicant***

**vs.**

**STATE BROS. MARKETS;  
PROPERTY AND CASUALTY INSURANCE COMPANY  
OF HARTFORD, administered by CORVEL, *Defendants***

**Adjudication Number: ADJ13786644  
Santa Ana District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
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 grant reconsideration, amend the WCJ's decision as recommended in the report, and otherwise affirm the January 25, 2022 Findings and Order.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the January 25, 2022 Findings and Order is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the January 25, 2022 Findings and Order is **AFFIRMED**, **EXCEPT** that it is **AMENDED** as follows:

**FINDINGS OF FACT**

1. Jesus Oseguera, while employed on August 26, 2020, as a carpenter helper, at San Bernardino, California, by Stater Bros. Markets, claims to have sustained injury arising out of and in the course of employment to his head, back, and left ear.

\* \* \*

4. All body parts are deferred.

\* \* \*

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**April 15, 2022**

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

**JESUS OSEGUERA  
MICHAEL BURGIS & ASSOCIATES  
MICHAEL SULLIVAN & ASSOCIATES**

**PAG/abs**

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

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE ON  
PETITION FOR RECONSIDERATION**

Defendant, STATER BROS. MARKETS; PROPERTY AND CASUALTY INSURANCE COMPANY OF HARTFORD, ADMINISTERED BY CORVEL; timely filed a verified Petition for Reconsideration of a Findings and Order dated January 24, 2022. Defendant contends that the court erred in finding injury to applicant's face and not finding a post termination defense in favor of defendant by applying the wrong legal standard.

**STATEMENT OF FACTS**

As noted in the Opinion on Decision, Jesus Oseguera while employed on August 26, 2020, as a carpenter helper, at San Bernardino, California, by Stater Bros. Markets, claims to have sustained injury arising out of and in the course of employment to his head, back, and left ear. This matter proceeded to trial on the issues of AOE/COE, post termination defense pursuant to Labor Code section 3600(a)(10) and whether applicant is entitled to a Panel QME evaluation prior to the determination of a post termination defense.

Applicant testified that on August 26, 2020 he fell backwards after he stepped on a pipe and hit the left side of his head and ear. (10/06/2021 MOH page 3, lines 1-8). Applicant further stated he informed the foreman and had blood on the side of his face. (10/06/2021 MOH page 3, lines 9-12). Applicant states that his foreman advised him to speak to the superintendent Tony, who advised applicant to go see a doctor. (10/06/2021 MOH page 3, lines 13-17). Applicant states that he refused treatment because of his fear of Covid. (10/06/2021 MOH page 3, lines 13-19). Applicant states that he filled out a report the following day with Tony. (10/06/2021 MOH page 3, lines 24-25, page 4, lines 1-2).

According to defense witness Tony Jaques, applicant reported to him on August 26, 2020 that he tripped on debris and asked applicant if he needed help, according Mr. Jaques, applicant said he was fine. (11/8/2021, MOH Page 3, lines 1-3). According Mr. Jaques applicant had a red mark on his cheek and red mark on his shin, but there was nothing to warrant medical treatment, although it was offered. (11/8/2021, MOH Page 3, lines 5-7, 13-16). According to Mr. Jaques, applicant refused to fill out a claim form packet. (11/8/2021, MOH Page 3, lines 8-9).

Mr. Jaques noted that applicant was laid off in September of 2020. (11/8/2021, MOH Page 3, lines 17-18). Applicant testified he was laid off on September 10 or 11 of 2020. (10/06/2021 MOH page 5, lines 7-8). Applicant testified that he did not see a doctor prior to being laid off. (10/06/2021 MOH page 5, lines 11-12).

The parties filed a claim form dated September 18, 2020. However, the claim form is ineligible. (Joint Exhibit 1). A September 29, 2020 claim form appears to be filled out by claims examiner, Josh Okada, where it is noted that the employer was aware of injury on August 28, 2020. (Joint Exhibit 2).

The court found Applicant to have sustained injury arising out of and in the course of employment to his face, while deferring all other body parts, that post termination defense did not apply, and that applicant is entitled to a Panel QME Evaluation. Defendant was aggrieved by these findings and has filed a Petition for Reconsideration regarding injury and the lack of post termination defense finding.

### **POST TERMINATION DEFENSE**

Labor Code section 3600(a)(10) provides that:

“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:”

Section (a)(10)(A) states that:

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

Section 5402(a) of Chapter 2, illustrates that:

“Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400.” (Also noted in footnote 4 in *Honeywell* at 9).

Defendant argues that this court’s erred in not applying the standards noted by the Supreme Court in *Honeywell* and the Appeals Board in *Palacios*. *Honeywell*, involved a case regarding notice for the commencement of the employer’s duty to investigate a claim when the presumption on compensability was raised pursuant to Labor Code section 5402(b). (*Honeywell v. Workers’ Comp. Appeals Bd.*, 2005 Cal. LEXIS 1604). That is not the issue in the case here.

In *Palacios*, the Board disagreed with the WCJ regarding the findings of section 3600(a)(10), “not because the employer did not have notice of applicant’s fall, but because the employer did not have notice of an “injury.” There were no witnesses to applicant’s fall. He told Mr. Spiliotis and Mr. Baker that he fell from a ladder, but neither testified to seeing any signs of injury.” (*Jose Pavel Palacios v. Upside Management Co., Inc., Public Service Mutual Insurance Co.*, 2011 Cal. Wrk. Comp. P.D. LEXIS 495 at 8)

Here, as noted in the Opinion, the superintendent, Tony Jaques, testified that applicant informed him of the incident that injured the applicant on August 28, 2020. Unlike *Palacios*, here, Mr. Jaques testified that he saw redness on applicant’s cheek, face and shin (signs of injury) and even offered applicant the opportunity to fill out a claim form. (11/08/2021 MOH/SOE, page 3, lines 8-10). In addition, the 9/29/2020 claim form filled out by defendant, acknowledges that the

defendant was aware of injury on August 28, 2020. (Joint Exhibit 2). Thus, this WCJ is of the opinion that applicant meets the exemption noted in Labor Code section (a)(10)(A). Thus, the post termination defense of Labor Code section 3600(a)(10) does not apply.

### **INJURY ARISING IN THE COURSE OF EMPLOYMENT**

In the court's Findings & Order and Opinion on Decision the court found injury to applicant's face based on applicant's testimony regarding the mechanism of injury and testimony of Tony Jaques, regarding his observations of applicant's appearance after the incident occurred. In reviewing the record, the court agrees with defendant regarding the finding of injury to Applicant's face should be rescinded. The court believes this finding was premature and all body parts should be deferred. Therefore, the court recommends as to Findings Number 1, it should be amended to: Jesus Oseguera while employed on August 26, 2020 as a carpenter helper, at San Bernardino, California, by Stater Bros. Markets, claims to have sustained injury arising out of and in the course of employment to his head, back, and left ear. Moreover, Findings Number 4 should be amended to: All body parts are deferred.

### **RECOMMENDATION**

It is respectfully, recommended that the Petition for Reconsideration be denied as to the Post Termination Defense. It is recommended that reconsideration should be granted as to the finding of injury to applicant's face.

DATE: February 23, 2022

**Juan Cervantes**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE