

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

**JORGE A GONZALEZ, *Applicant***

**vs.**

**ALGER-TRITON, INC; UNINSURED  
STUDIO AT; THE HARTFORD, *Defendants***

**Adjudication Number: ADJ14875195  
Marina del Rey 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 and the Opinion on Decision 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 and the Opinion on Decision, both of which we adopt and incorporate, except as noted below, we will deny reconsideration.

We do not adopt or incorporate the Report to the extent that it addresses requests made by applicant in his Answer.

An employee may have more than one employer. The characteristics of such dual employment are: 1) that the employee is sent by one employer (the general employer) to perform labor for another employer (the special employer); 2) rendition of the work yields a benefit to each employer; and 3) each employer has some direction and control over the details of the work. (See *Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168 [44 Cal.Comp.Cases 134]; *Meloy v. Texas Co.* (1953) 121 Cal.App.2d 691 [18 Cal.Comp.Cases 313]; *Ridgeway v. Industrial Acc. Com.* (1955) 130 Cal.App.2d 841 [20 Cal.Comp.Cases 32]; *Doty v. Lacy* (1952) 114 Cal.App.2d 73 [17 Cal.Comp.Cases 316]; *Caso v. Nimrod Prods.* (2008) 163 Cal.App.4th 881.) The determination of whether a dual employment relationship exists is a question of fact. (*Kowalski, supra*, 23 Cal.3d at p. 176.) For the reasons stated by the WCJ in the Report and the Opinion on Decision, we agree

that applicant made a prima facie case that he was employed by both Studio AT and Alger-Tritonhad and that defendant presented no rebuttal evidence.

Moreover, we have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*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 determination. (*Id.*)

Finally, we find it necessary to admonish defense attorney Jody L. Dushkes, for failing to support the arguments made with specific references to the record. (Cal. Code Regs., tit. 8, § 10945(b).) We also admonish defense attorney for using offensive, inappropriate, and disrespectful language in the Petition for Reconsideration by saying that the WCJ's finding of employment may have been based upon sympathy for the applicant. (See Lab. Code, § 5813; see also Cal. Code Regs., tit. 8, § 10421(b)(9)(B) [sanctionable conduct includes "using any language in any pleading or other document [...] [w]here the language or gesture impugns the integrity of the Workers' Compensation Appeals Board or its commissioners, judges, or staff".]) Future violations may lead to the imposition of sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10561.)

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

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

**/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER**



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

**October 3, 2022**

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

**JORGE A. GONZALEZ  
HINDEN & BRESLAVSKY  
TOBIN LUCKS  
LAW OFFICES OF LYDIA NEWCOMB**

**PAG/abs**

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 OF WORKERS' COMPENSATION JUDGE  
ON PETITION FOR RECONSIDERATION**

**I.  
INTRODUCTION**

1. Applicant's Occupation: Loader/Unloader
2. Applicant's Age: N/A
3. Date of Injury: Specific: 06-08-2021
4. Body Parts Injured: Cervical, thoracic, lumbar, legs, hips,  
Left foot and neurological deficits
5. Manner in Which Injury Occurred: Pallet jack struck him at work
6. Identity of Petitioner: Co-Defendant Studio AT/Hartford filed
7. Timeliness: Petition was timely filed
8. Verification: Petition was verified per LC Section 5902
9. Date of issuance of Order: 07-08-2022
10. Petitioner's Contentions:

- (a) Petitioner Studio AT contends the WCJ erred by finding the applicant was employed on 06-08-2021 by both employers, Alger-Triton, Inc. and Studio AT.
- (b) Petitioner Studio AT contends the WCJ erred by finding that Alger-Triton, Inc. and Studio AT have joint and several liability towards the applicant.

**II.  
FACTS**

The applicant worked as a loader/unloader at a warehouse at 5600 W. Jefferson in Los Angeles which was operated by one or two employers. The big issue here is which of these two employers did applicant work for, or did he actually work for them both.

This case had an MSC on February 7, 2022 when it was set for trial on employment, AOE/COE and TTD. The defendant Studio AT insured by The Hartford was able to depose the applicant on February 24, 2022 and the case came up for trial for the first time on March 7, 2022. It was continued to April 25, 2022.

This case proceeded to trial on April 25, 2022, where we did Stipulations and Issues. The case had two defendants. The first defendant was Alger-Triton, Inc. located at 5600 Jefferson Blvd. Los Angeles 90016. Please see Applicant's Exhibit 15. The second defendant was Studio AT, also located at 5600 W. Jefferson Blvd. Los Angeles, CA 90016. Please see Applicant's Exhibit 16. Applicant stated at trial that he worked at Studio AT, which he said was also called Alger-Triton, at 5600 Jefferson Boulevard in Los Angeles. Please see the Summary of Evidence (SOE) of 06-09-2022 page 2 line 19.

Alger-Triton admitted that the applicant was employed with them on the date of the injury (06-08-2021); Studio AT did not admit employment. Please see Trial Stipulation Number 1 and see SOE of 04-25-2022 page 2 lines 3-6. Studio AT had workers' compensation insurance on the date of the injury with The Hartford and Alger-Triton was uninsured at the time. Please see Trial Stipulation Number 2 and SOE of 04-25-2022 page 2 lines 7-8. Employment with Studio AT was a major issue at trial.

Applicant testified at trial that Studio AT was the name on his check but the check was deposited through Triton. See SOE of 06-01-2022 page 2 lines 23-24. He had some difficulty remembering the name which appeared at the top of the paycheck. He saw that the name of Triton was at the top of his paycheck. Please see SOE of 06-01-2022 page 2 line 25 to page 4 line 2.

Neither defense attorney cross-examined the applicant about his statement that he was employed at Studio AT. Neither defense attorney brought in a witness to challenge the statement of the applicant that he was employed at Studio AT.

Applicant introduced at trial Applicant's Exhibit 2, Checks from Both Companies, EAMS dated 03-4-2022. This exhibit contained check number 29225 from Alger-Triton dated 03-16-2021 for \$495.00 payable to Jorge Gonzalez for missing hours from 2/25-2/27. It showed a telephone number for Alger-Triton on the check of 310-229-9500. This exhibit also contained check number 3634 dated 03-15-2021 from Studio AT for \$1230.00 payable to Jorge Gonzalez for 3/2-3/10 hours. This check showed a telephone number for Studio AT of 310-229-9500, the same telephone number that Alger-Triton had on its checks. The signature on both checks from the two separate employers is unique and identical.

Studio AT as the alleged employer had made no payments for workers' compensation benefits to the applicant whatsoever. Triton-Alger as the admitted employer sent a payment of \$3000.00 in a check dated 03-14-2022, and this check was sent by the admitted employer Triton-Alger but rather surprisingly was drawn on the checking account of the alleged employer Studio AT. There is a letter from the attorney for Alger-Triton which goes along with this check and attempts to offer an explanation. Please see Alger-Triton Exhibits A1 and A2 and Trial Stipulation Number 4, plus please see SOE of 04-25-2022 page 2 lines 13-15.

At the first day of trial on 04-25-2022, the WCJ realized that there may be a need for defendant to bring in rebuttal or explanatory witnesses and/or rebuttal documents, so the WCJ had the parties stipulate that discovery would remain open "as reasonable justice requires." The parties also agreed to be allowed to amend the Stipulations and Issues on the second day of trial. See SOE of 04-25-2022 page 2 lines 22-23. Despite this flexibility, the two defendants chose as their trial strategy not to call any rebuttal or explanatory witnesses or introduce any evidence beyond what has been mentioned here, on the second (and last) day of trial on June 9, 2022, except to introduce a new check for the \$3000.00 payment to applicant by Alger-Triton.

The applicant testified briefly at the second day of trial, there was no cross-examination of the applicant by either defense attorney. At the end of the trial on June 9, 2022, the WCJ offered the opportunity for the three attorneys to prepare a post-trial brief. Applicant's attorney prepared a post-trial brief. The two defense attorneys chose not to respond to applicant attorney's post trial

brief. The attorney for Studio AT/The Hartford then filed a timely and verified Petition for Reconsideration (PFR) on 08-02-2022.

### **III.** **DISCUSSION OF PETITIONER'S CONTENTIONS**

#### **PETITIONER STUDIO AT CONTENDS THE WCJ ERRED BY FINDING THE APPLICANT WAS EMPLOYED ON 06-08-2021 BY BOTH EMPLOYERS, ALGER-TRITON, INC. AND STUDIO AT.**

The WCJ wants to clear up any misunderstanding which might exist about his first finding in this case. The defendant Studio AT/Hartford's Petition for Reconsideration (PFR) seems to be hinting that the WCJ has done something the WCJ did not do. The WCJ did not ever make any finding that Alger-Triton and Studio AT were the same company. The applicant's testimony had veered in that direction briefly but the WCJ has never made any finding about Alger-Triton and Studio AT being one-in-the-same company, even though they are operated out of the same address, seem to use the same telephone number, have the same agent for service of process (see Applicant's Exhibits 15 and 16), co-mingle funds (see Exhibit A1 and A2), and the same individual is signing checks at both companies.

Instead, the WCJ has focused on whether the applicant in this case can be considered to have been employed at Studio AT in addition to have been employed at Alger-Triton on 06-08-2021. The applicant testified on June 9, 2022 that his last day of going to work was 06-16-2021. The applicant credibly testified that he worked at Studio AT and it was also called Alger-Triton. He testified the work was at 5600 Jefferson Boulevard in Los Angeles. His first day of working was February 3, 2021. Please see SOE of 06-09-2022 page 2 lines 18-20. There is corroborating evidence in Applicant's Exhibit 16 that Studio AT was located at this address on Jefferson. This credible testimony by the applicant was never rebutted from any source, not from cross-examination, not from documentary evidence and not from countervailing witness testimony.

It appears that at some point applicant's regular pay might have been put on direct deposit that was run through on "Triton" and this may or may not have been Alger-Triton. But if the applicant were short on hours, the make-up pay may or may not come from Studio AT or from Alger-Triton. Please see Applicant's Exhibit 2 and Applicant's Exhibit 4. Funds could be co-mingled between these two separate companies of Studio AT and Alger-Triton; see Exhibits A1 and A2.

The PFR from The Hartford says on page 3 lines 7-8: "There were no paychecks with the name Studio AT/Alger-Triton introduced into evidence. This is a confusing statement. There are paychecks which have the name of Studio AT on them, as mentioned above.

The PFR of The Hartford says on page 2 lines 25-26: "There was no testimony or physical evidence to establish that either applicant's direct supervisor or manager were employees of Studio AT." There was no testimony offered that they were not Studio AT employees either. Applicant said he worked at Studio AT and he said certain people were his supervisor/manager. These people could have come in and disputed his testimony and shredded his credibility. They did not show

up. A WCJ cannot base his decision on witnesses who do not testify; he must base his decision only on the witnesses who do testify.

The WCJ felt there was more than enough evidence to find that applicant had employment at Studio AT in addition to employment at Alger-Triton, and there was not a scintilla of rebuttal evidence offered by either defendant on this issue.

**PETITIONER STUDIO AT CONTENDS THAT THE WCJ ERRED BY FINDING THAT ALGER-TRITON AND STUDIO AT HAVE JOINT AND SEVERAL LIABILITY TOWARDS THE APPLICANT.**

Assuming that the WCJ was correct that both defendants employed the applicant on the date of the injury, 06-08-2021, then the WCJ believes he correctly found that there was joint and several liability towards the applicant. In the event that the Commissioners feel that Studio AT did not employ the applicant on 06-08-2021, the WCJ would agree that there is no joint and several liability which Studio AT and The Hartford would have towards the applicant on this decision.

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**IV.  
RECOMMENDATIONS**

For the reasons stated above, it is recommended the Petition for Reconsideration be denied.

DATED: 08/09/2022

**Robert F. Spoeri**  
WORKERS' COMPENSATION JUDGE

## **OPINION ON DECISION**

### **EMPLOYMENT:**

This finding is based on the applicant's credible and un rebutted testimony and Defendant's Exhibit A2 and various Applicant Exhibits. There are two employers here, and one of the employers, Alger-Triton has already admitted by stipulation that the applicant was employed at Alger-Triton on the alleged date of injury, 06-08-2021. Alger-Triton failed to send a denial letter, thereby admitting this specific date of injury.

There is an issue here where applicant has alleged that the two employers, Alger-Triton (which was uninsured for workers' compensation purposes on 06-08-2021) and Studio AT (which had insurance with The Hartford) are really one-in-the-same employer. The issue here is whether the applicant is also an employee of Studio AT. The applicant has claimed he indeed was employed at Studio AT on the date of injury. Applicant has even gone so far as to state that Studio AT and Alger-Triton are one-in-the-same company. Rather amazingly, the highly competent and aggressive defense attorneys who represented Alger-Triton and Studio AT/Hartford, not only failed to bring in witnesses to challenge the applicant's assertion that Alger-Triton and Studio AT are one-in-the-same company, neither defense attorney asked a single cross-examination question of the applicant when cross-examination of the applicant was offered at trial.

At trial on 06-09-2022 applicant stated that he worked at Studio AT, also called Alger-Triton at 5600 Jefferson Boulevard in Los Angeles. Please see Summary of Evidence (SOE) 06-09-21 page 2 lines 19-20. This testimony was never rebutted through other testimony or documents. Applicant stated his job duties did not change and his supervisor and his manager did not change between his first and final day of work. He sometimes received paychecks from Studio AT and sometimes from Alger-Triton. The same person owns both companies.

Applicant's Exhibit 2 is a document showing two paychecks to the applicant: one is dated 03-16-2021 for \$495.00 from Alger-Triton and the other is dated 03-15-2021 for \$1230.00 from Studio AT. Both companies have the same address of 5600 Jefferson, where applicant testified he worked for both companies. Applicant's Exhibit 3 consists of seven paycheck stubs from Alger-Triton from various dates in 2021. Applicant's Exhibit 4 shows a paycheck to applicant dated 02-25-2021 and a paycheck to him dated 03-15-2021 both from Studio AT. Defendant's A2 is a check from Alger-Triton drawn on the account of Studio AT. The evidence here is ironic to say the least. The payrolls and funds of Studio AT and Alger-Triton are therefore co-mingled, based on Defendant's Exhibit A2.

It is found that the applicant was employed on 06-08-2021 at both Alger-Triton and at Studio AT and that these two entities have joint and severable liability for the any injuries applicant may have suffered arising out of and occurring in the course of his employment on this date.

### **INJURY AOE/COE AND BODY PARTS:**

This finding is based upon the applicant's very credible and un rebutted testimony and the medical reporting of Dr. Amin Nia dated 07-13-2021 and PR-2 reports EAMS-dated 03-04-2022 (as set out in Applicant's Exhibits 8 and 7), the records of Southern California Hospital, EAMS-



dated 03-04-2022 (as set out Applicant's Exhibit 9), and the AME report of orthopedist Dr. Jeffrey Berman dated 03-29-2022, especially pages 25 through 27 (as set out in Court Exhibit X1).

It is found that the applicant has sustained injury arising out of and occurring in the course of employment on 06-08-2021 to his left foot, cervical spine, lumbar spine, hips and legs, and including neurological deficits. This finding is against Alger-Triton uninsured and Studio AT insured with The Hartford who are found to have joint and several liability to the applicant. Because the applicant is not yet permanent and stationary, there may be additional injured body parts.

**TEMPORARY DISABILITY:**

Applicant claims temporary disability for the period beginning 06-09-2021 to and including the present and continuing. This finding is based upon applicant's credible and un rebutted testimony and the medical reporting of applicant's Primary Treating Physician (PTP) Dr. Amin Nia, dated 07-13-2021 (Applicant's Exhibit 8) and the PR-2 reports of Dr. Nia from 08-24-2021 through 02-07-2022 (as set out in Applicant's Exhibit 7), and the medical reporting of AME Dr. Jeffrey Berman, especially on page 27 of his report (as set out in Court Exhibit X1).

It is found that the applicant is entitled to temporary disability (TD) for the period beginning 06-09-2021, to and including 03-29-2022, payable at a rate of \$820.00 per week, less credit for time worked, less indemnity paid (which appears to be \$3000.00 according to Defendant's Exhibit A-2 the check of Alger-Triton dated 04-26-2022), less benefits for State Disability paid by Employment Development Department (EDD) of \$1744.00. There will be a subtraction from this amount of TD for the attorney's fees awarded herein for non-EDD temporary disability. This TD benefit is found against defendants Alger-Triton, Uninsured and against Studio AT insured with The Hartford as a joint and severable liability. Because the applicant is not yet permanent and stationary, there may be additional periods of TD up to 104 weeks.

**NEED FOR FURTHER MEDICAL TREATMENT:**

This finding is based upon the medical reporting of Dr. Nia (as set out in Applicant's Exhibits 7 and 8) and Dr. Jeffrey Berman, dated 03-29-2022 (as set out in Court Exhibit X1).

It is found that the applicant is in need of further medical treatment to cure or relieve from the effects of the injury herein, and both Alger-Triton and Studio AT/The Hartford have joint and severable liability to provide applicant such medical treatment.

**LIEN OF EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD):**

This finding is based upon the above finding about temporary disability and the determination of applicant's average weekly wage:

It is found that EDD is entitled to a full reimbursement of its lien in the amount of \$1744.00 and that the defendants Alger-Triton, Inc., Uninsured and Studio AT insured with The Hartford have joint and severable liability to EDD for their lien of \$1744.00.

**NON-EDD LIENS:**

Non-EDD liens are deferred.

**SELF-PROCURED MEDICAL:**

This issue is deferred.

**ATTORNEY’S FEE ON TEMPORARY DISABILITY (TD):**

It is found a reasonable attorney’s fee on TD is 15% of the non-EDD TD awarded to the applicant for the period of 06-09-2021 through 03-29-2022. This finding is made against Alger-Triton, Uninsured and Studio AT insured with The Hartford as a joint and severable liability.

**LC 5401 FAILURE TO PROVIDE A CLAIM FORM BY EITHER EMPLOYER**

This finding is based on Applicant’s Exhibit 5 dated 06-25-2021 which was sent to both employers in this case and which indicated that the applicant was not given a Claim Form (DWC-1) “as required by Labor Code Section 5401....”

It is found that neither employer provided applicant with a claim form and that neither employer timely issued a denial within ninety days plus five days for mailing from the date of 06-25-2021 and that there is a presumption of compensability against both employers.

**LC5402 UNTIMELY DENIAL BY ADMITTED EMPLOYER, ALGER-TRITON**

This finding is based on the stipulation of Alger-Triton that they employed applicant on the date of the alleged injury, and the fact that no denial letter has ever been introduced as evidence.

It is found that the injury is presumed compensable against Alger-Triton based on the failure of the defendant Alger-Triton to deny the injury.

**LC 3550/3551 FAILURE TO POST NOTICE BY EITHER EMPLOYER**

This finding is based on a lack of persuasive evidence.

It is found the applicant has failed to meet its burden of proof on the LC3550/3551 issue.

**VIOLATION OF CCR 10109: DUTY TO CONDUCT GOOD FAITH INVESTIGATION BY EITHER EMPLOYER**

This finding is based on a lack of persuasive evidence.

It is found the applicant has failed to meet its burden of proof on the CCR10109 issue.

DATE: July 8, 2022

**Robert F. Spoeri**  
WORKERS' COMPENSATION JUDGE