

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

PARDEEP KUMAR, *Applicant*

vs.

**BROTHERS TRUCKLINES CORPORATION; BROTHERS ROADLINES, INC.;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ12103741
San Bernardino District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant State Compensation Insurance Fund (SCIF) seeks reconsideration of the Findings of Fact issued on January 10, 2022, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that (1) applicant was an employee of Brothers Roadlines, Inc., when he sustained injury on March 21, 2019; (2) SCIF, Brothers Roadlines, Inc.'s insurer, is liable for workers' compensation benefits payable to applicant; and (3) applicant's injury arose out of and in the course of his employment with Brothers Roadlines, Inc.

SCIF contends that the evidence establishes that applicant was employed by Brothers Trucklines Corporation.

We received an Answer from applicant.

The WCJ filed a Report and Recommendation on Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record and for the reasons expressed below and in the Report, which we adopt and incorporate herein, we will deny the Petition.

We observe that California has a no-fault workers' compensation system. With few exceptions, all California employers are liable for the compensation provided by the system to employees injured or disabled in the course of and arising out of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no-fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms

of ‘service to an employer’ and by including a general presumption that any person ‘in service to another’ is a covered ‘employee.’” (§§ 3351, 5705(a).)

An “employee” is defined as “every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed.” (§ 3351.) Any person rendering service for another, other than as an independent contractor or other excluded classification, is presumed to be an employee. (See § 3357.) Under these authorities, applicant bears the initial burden of proving that he rendered service for the alleged employer, Brothers Roadlines, Inc., whereupon the burden shifts to Brothers Roadlines, Inc. to rebut the employment presumption with proof that applicant did not work “under any appointment or contract of hire or apprenticeship.” (See § 3351; *Parsons v. Workers’ Comp. Appeals Bd.* (1981) 126 Cal.App.3d 629, 638 [46 Cal.Comp.Cases 1304].)

Here, the record shows that applicant presented evidence in the form of a paystub obtained during discovery showing that he was employed by Brothers Roadlines, Inc. when he sustained injury—and that SCIF failed to rebut this evidence. Nevertheless, SCIF argues that applicant failed to meet his burden of proving he was employed by Brothers Roadlines, Inc., questioning the authenticity of the paystub it produced and on which applicant’s claim to employment relied. (Petition, pp. 4:7-9, 7:12-17.) However, SCIF’s question as to the paystub’s authenticity is not evidence; and, inasmuch as it bears the burden of obtaining and presenting evidence sufficient to rebut the showing of employment, we are unable to discern grounds to support the Petition.

Accordingly, we will deny the Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact issued on January 10, 2022 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 4, 2022

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

**PARDEEP KUMAR
LAW OFFICE OF FRANK H. CANTER
STATE COMPENSATION INSURANCE FUND**

SRO/pc

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 PETITION FOR RECONSIDERATION**

By timely, verified Petition for Reconsideration, filed 2/2/2022, Petitioner, State Compensation Insurance Fund the workers' compensation carrier for Brothers Roadlines, Inc. (hereafter defendant – Brothers Roadlines), by and through their attorney of record, Victor Salazar of SCIF Legal, seeks reconsideration of the Findings of Fact dated 1/7/2022 and filed and served herein on 1/10/2022.

Respondent, Pardeep Kumar (hereafter applicant), by and through his attorney of record Frank H. Canter, Esq., filed a timely and verified Answer to the Petition for Reconsideration on 2/10/2022.

ISSUES PRESENTED

1. Was it error to determine that applicant was an employee of Brothers Roadlines, Inc. at the time he sustained injuries in a motor vehicle accident on March 21, 2019?

INTRODUCTION

There is no dispute that applicant was injured in a motor vehicle accident on March 21, 2019 while a passenger in the sleep compartment of a big rig being driven by his colleague and that the two drivers took turns driving. There is also no dispute that applicant was working at the time of the accident. The dispute is whether his employer was Brothers Roadlines, Inc., which company was insured for workers' compensation by State Compensation Insurance Fund, or whether his employer was Brothers Trucklines Corporation, which was uninsured at the time of the accident on 3/21/2019.

In the decision complained of, pertaining to the issues raised on reconsideration, the undersigned Workers' Compensation Administrative Law Judge found as follows:

“State Compensation Insurance Fund, insurer for Brothers Roadlines, Inc., denied the injury claim on 6/7/2019 on the basis they could not verify an employer/employee relationship on the date of injury (Exhibit A). A WCIRB inquiry resulted in no insurance information for Brothers Trucklines Corporation (Exhibit B)

A Statement of Information filed with the Secretary of State on 4/14/2018 (Exhibit C) noted that Brothers Trucklines Corporation's President, Chief Executive Officer, Secretary and Chief Financial Officer, as well as the only named Director was Harmanpreet S. Bhangu, at 1083 Bensen St., Manteca, CA 95337. Mr. Bhangu was also listed as the agent for service of process. The type of business was noted to be, “GEN FREIGHT TRUCKING, LONGDIST”.

A Statement of Information filed with the Secretary of State on 2/19/2019 (Exhibit D) noted that Brothers Roadlines, Inc.'s President, CEO, Secretary and CFO, as well as the only named Director was Sarabjit Singh, at 720 Bishop St., Manteca, CA 95337. Mr. Singh was also listed as the agent for service of process. The type of business was noted to be, "LONG HAUL TRANSPORTATION."

Exhibit E consists of a letter from the Employment Development Department, dated 6/4/2019, stating that no employer wages were reported to the State of California for Pardeep Kumar from 2018 – 2019 for the Social Security Number provided, noting that "19-2 QTR not yet available." It is assumed this means that the second quarter wages for 2019 were not yet available. Since the injury occurred in the first quarter of 2019 (on 3/21/2019), it does not appear as though any wages were reported for Mr. Pardeep Kumar to the State of California.

The Traffic Collision Report (Exhibit 1) indicates the accident was a roll-over accident at 9:00 a.m. on 3/21/2019, with no other vehicle being involved. The driver of the truck was noted to be Jaspreet Singh (of Fresno, CA), the owner of the truck was noted to be Brothers Trucklines Corp. on Bensen Street in Manteca, CA, and the passenger in the truck was Pardeep Kumar (of Fresno, CA), who was asleep in the sleeper berth at the time of the accident. Both the driver and the passenger were taken to Barstow Community Hospital by Desert Ambulance, with Mr. Pardeep Kumar complaining of pain to the back and neck. The cause of the accident was deemed to be Mr. Singh driving the freightliner in violation of 22107 V.C.

Exhibit 2 consists of a Pay Stub Detail, for a pay date of 4/1/2019 for the pay period beginning 3/9/2019 and ending 3/21/2019. The employer was noted to be **Brothers Roadlines Inc.**, 3474 Pitcairn Way, San Jose, CA 95111 and the employee was noted to be Pardeep Kumar, 3506 W. Nelson Ave., Fresno, CA 93706.

The only witness to testify was Pardeep Kumar, who was assisted in his testimony by a Punjabi interpreter. Mr. Kumar testified that he met Harmanpreet Singh Bhangu in 2018 and that he operated a business named Brothers Roadlines and he also operated a business named Brothers Trucklines. Witness began working for Mr. Bhangu. Witness credibly testified that Mr. Bhangu did not tell him specifically which company he operated that witness worked for. Witness believed he worked for Harmanpreet Singh Bhanu without a specific reference as to which company he was working for.

Witness would be sent to a specific location with one of the trucks and he would be told where to go and where to pick up the loads. Mr. Bhangu would tell him when to leave with one of his trucks, and witness was given cards to cover the cost for fuel. Witness was paid per trip. He confirmed receiving some checks from Brothers Trucklines and some checks from Brothers Roadlines. Sometimes

Mr. Bhangu would hand him a check and other times Mr. Bhangu would deposit it in witness' account. Witness denied that Mr. Bhangu ever sat down with him to tell him which company he worked for and which one he didn't work for. At the time, witness had only been in the United States for a couple of years and he did not know much English.

Witness testified that he and Jaspreet Singh would alternate driving and both of them were in the vehicle at the time the accident occurred, but Mr. Singh was driving. Both of them worked for Harmanpreet Sing Bhangu. Witness credibly testified that at the time the accident occurred, he had no idea which company he was working for, only that Harmanpreet was the one who sent him.

When the pay stub exhibit was referenced and shown to witness, witness testified that after review of this document with his sister and his attorney, he came to understand that he was employed by Brothers Roadlines, Inc., too. Witness testified that approximately two months before this accident, witness had a brief conversation with Mr. Bhangu about workers' compensation coverage and he was told that if he was injured while working, he would have insurance for that and he would be under workers' comp insurance for that.

Upon cross-examination, applicant continued to maintain that he wasn't sure if he was working for Brothers Roadlines or Brothers Trucklines. He knew that Harmanpreet had other companies also. Witness denied that Harmanpreet Singh Bhangu ever specifically told him that he owned Brothers Roadlines, and he didn't know the names of the companies that Mr. Bhangu was running.

When asked if he has heard of the name Sarabjit Singh before, witness responded that he has heard of the name and that shen he used to sit in Mr. Bhangu's office, he had heard this name many times. When asked if Sarabjit Singh sent witness on any driving jobs, witness responded that Sarabjit Singh would be sitting in Mr. Bhangu's office and witness met him before, but it would be Mr. Bhangu who would send witness on jobs.

When asked by the undersigned WCALJ if he was aware of a familial relationship between Sarabjit Singh and Mr. Bhangu, witness responded that Mr. Sarabjit Singh was Mr. Bhangu's wife's brother.

Witness readily confirmed that Mr. Bhangu was the only person who instructed witness on where to go. Witness testified that they would change the trucks many times. Witness stated that he never filled out an employment application for either Brothers Roadlines or Brothers Trucklines and never took a road test.

Witness testified that he was visited at the hospital by Mr. Bhangu, but when asked if he was visited at the hospital by Sarabjit Singh, he doesn't remember or thought "maybe no." Witness recalled no discussion with Mr. Bhangu about the payment of the medical bills, because at that time his injury was really bad and

what was important was to get the treatment, not the bills. Witness confirmed he was initially taken to Barstow Community Hospital and then he was taken to Loma Linda. Witness stated he had a fractured spine.

Applicant once again confirmed that the only person he took instruction from was Harmanpreet Singh Bhangu and that he was the one who told witness where to go and he was the only one to tell him and was the only one who offered witness a job.

It was very disappointing not to hear testimony from either Sarabjit Singh or Harmanpreet Singh Bhangu, who are identified in the Secretary of State Statements of Information (Exhibits D and C) as the principals for Brothers Roadlines and Brothers Trucklines respectively. Their testimony may have made a critical difference, had it been given, and could have clarified the difference between the companies and sorted out who ran or controlled the companies, despite what may be on the Secretary of State Statements of Information.

Applicant clearly and credibly testified that the only person he took instruction from was Harmanpreet Singh Bhangu, but that alone does not establish which company he worked for, as no testimony was provided by Mr. Bhangu or Mr. Sarabjit to explain the relationship between the two companies and which company (or both) actually employed Mr. Pardeep Kumar.

Applicant was unable to specifically identify which company he worked for except by reference to the single check stub offered into evidence, which clearly indicates that applicant was paid \$2,400.00 "salary" (less deductions) by Brothers Roadlines, Inc. for the pay period 3/8/2019 through 3/21/2019, which included the day of the accident (3/21/2019). Witness testified that he obtained this document from State Compensation Insurance Fund, who provided records to his attorney. Since companies typically do not pay a salary, from which deductions are taken for state and federal taxes, Social Security, Medicare and California State Disability Insurance, to people who are not their employees, and since the salary period included the date of the accident, I must infer, with there being no documentary or testimonial evidence to the contrary, that Mr. Pardeep Kumar was an employee of Brothers Roadlines, Inc. at the time of his injuries on 3/21/2019.

With the finding that Pardeep Kumar was a salaried employee of Brothers Roadlines, Inc. on the date he was injured while a passenger in a truck owned by Brothers Trucklines Corporation, I find that State Compensation Insurance Fund, as insurer for Brothers Roadlines, Inc., is liable for providing workers' compensation benefits to Pardeep Kumar.

Insofar as applicant was clearly injured in the roll-over truck accident on 3/21/19 in which vehicle he and the driver had alternated driving responsibilities, I find

that applicant sustained an injury arising out of and in the course of his employment with Brothers Roadlines, Inc., who paid him a salary for the period 3/8/2019 through 3/21/2019.”

DISCUSSION

Defendant argues that the testimony of the applicant and the Secretary of State Information on both entities (Brothers Trucklines Corp. and Brothers Roadlines, Inc.) support an employment relationship between the applicant and Brothers Trucklines Corporation only. They further argue that the paystub introduced by applicant and relied upon by the Court was not authenticated and contains purported EDD deductions, which are inconsistent with evidence from EDD, and thus should not be relied upon to support an employment relationship between applicant and Brothers Roadlines, Inc.

As pointed out in Applicant’s Answer to Petition for Reconsideration, at no point before trial or during trial did defendant ever object to the admission into evidence of the paystub (Exhibit 2). The record reflects this exhibit was admitted into evidence without objection. Thus, it is improper for defendant to now raise as an issue the admissibility of this document. Further, in point of fact, applicant’s un rebutted testimony was that this document was provided to applicant’s attorney by State Compensation Insurance Fund, the insurance carrier for Brothers Roadlines, Inc., and that this document was contained in the records of Brothers Roadlines, Inc. relating to Pardeep Kumar. Thus, it is completely disingenuous for defendant – Brothers Roadlines/SCIF – to now object to records they in fact received from their client and provided to applicant.

If defendant – Brothers Roadlines/SCIF - had any concerns with the authenticity of the document *they* provided as part of “ordinary discovery,” defendant was in the best position to explain why that document was contained in records that Brothers Roadlines provided to State Fund. Yet, defendant Brothers Roadlines/SCIF brought no rebuttal witnesses to trial, and subpoenaed no witnesses to appear and testify as to the mysterious relationship between Brothers Roadlines and Brothers Trucklines.

The argument that evidence from the EDD is inconsistent with the paystub information is a red herring and is not determinative of the issue of whether or not a pay stub contained in defendant’s own records is defective. I have no idea how long it takes employers to report earnings and deductions on pay stubs to the EDD, or whether such earnings and deductions were in fact reported and paid to the EDD. Once again, defendant would be in the best position to present testimony from his client to explain this document contained in their own records. As pointed out by applicant, defendant has raised weak and unsubstantiated argument without offering any substantive proof.

It is entirely possible that there was dual employment between Brothers Roadlines and Brothers Trucklines – it seems likely the companies may be inter-related in some unexplained way, but as pointed out in the Opinion on Decision, defendant presented no testimonial evidence from either Bhangu or Singh to explain. Applicant testified that he received his assignments from Harman Preet S. Bhangu, identified on the Secretary of State Statement of Information as President of Brothers Trucklines Corp., but applicant also testified that Bhangu was related by marriage to Sarabjit Singh, who is listed as President of Brothers Roadlines, Inc. in the Secretary of State Statement of Information, and that applicant had seen the two men together in the office. Applicant’s un rebutted testimony was that he didn’t know and was never told exactly which company he worked for, but that he had a conversation with Mr. Bhangu, who told applicant that he was covered for workers’ compensation. Mr. Bhangu’s Brothers Trucklines had no workers’ compensation insurance and Mr. Singh’s Brothers Roadlines did. Even so, I stand by the determination that the pay stub clearly identifies applicant being an employee of Brothers Roadlines as of the date of the accident herein. I also stand by the statement that employers generally do not issue salary pay stubs (with noted deductions) to persons who are not in their employ. It was not error to determine that applicant was an employee of Brothers Roadlines at the time of the accident on 3/21/2019.

RECOMMENDATION

I recommend the Petition for Reconsideration, filed by defendant Brothers Roadlines/SCIF on 2/2/2022 be **DENIED** on the merits.

Dated at San Bernardino, California
2/11/2022

MYRLE R. PETTY
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE