

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

**EDGAR GAMA, *Applicant***

**vs.**

**XTRACTOR DEPOT, LLC, 2020 LONG BEACH, LLC; THE HARTFORD;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ14871067  
Long Beach 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 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.

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.*)

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

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



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

**February 13, 2023**

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

**EDGAR GAMA  
LAW OFFICES OF KUPER & WILSON, APLC  
ALBERT AND MACKENZIE  
STATE COMPENSATION INSURANCE FUND**

**AS/ara**

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 OF WORKERS' COMPENSATION JUDGE ON  
PETITION FOR RECONSIDERATION**

**I  
INTRODUCTION**

1. Applicant's Occupation: Operator / Extractor  
Applicant's Age: 31 on DOI  
Date of Injury: August 19, 2020  
Parts of Body Claimed: Third-degree burns, legs, arms, back, cognitive function, neurological system, hands, ambulatory function, psych, vocal system, skin, scars, hearing/ears, eyes/vision, diabetes, and sleep
2. Identity of Petitioner: Defendant, The Hartford  
Timeliness: Yes  
Verification: Yes
3. Date of Findings and Order: November 28, 2022
4. Petitioner's Contentions: That despite introducing no evidence, and making no motion that the undersigned take judicial notice of the employer's website, that the undersigned erred by not taking judicial notice of the employer's website and erred in finding employment with Defendant's insured.

**II  
STATEMENT OF THE CASE AND FACTS**

Generally, the Applicant worked in the marijuana industry. More specifically, the Applicant worked in extracting cannabis oil from marijuana. In doing said work, the Applicant worked for 2020 Long Beach, LLC (hereinafter "2020") until it was shuttered by the fire marshal. During his time with 2020, Applicant had contact with Andrew Yoon, owner and corporate officer of Xtractor Depot, LLC (hereinafter "Xtractor"). The undersigned found that the employment relationship with 2020 ended when the fire marshal shuttered the business, before the date of injury herein.

The Applicant then started working at a warehouse in Jurupa. Applicant found this job through contacts he had while working at 2020. Andrew Yoon was the individual coordinating Applicant's work at the warehouse, including how to commute to the job site, payment, communications, and other work related directives. Xtractor provided the equipment for the warehouse. The Applicant

even had Andrew in his phone as “Andrew Xtractor.” On August 19, 2020 there was an explosion at the warehouse and the Applicant sustained significant injuries, including burns and scarring.

The matter came around for trial on October 19, 2022. Only the Applicant testified, and the Applicant was the only party to offer exhibits, all of which were admitted without objection. At no time during the trial, or thereafter, did Defendant request that judicial notice be taken of anything, let alone the employer’s website. The undersigned then issued a Findings and Order (hereinafter “F&O”) that found the Applicant to have sustained injury as an employee of Xtractor, it is from this F&O that Defendant files the instant Petition for Reconsideration (hereinafter “Petition”).

### **III** **DISCUSSION**

#### The Petition impermissibly attaches exhibits in violation of CCR 10945

The Regulations prohibit attaching exhibits to a Petition for Reconsideration documents that have already been received in evidence or that have already been made part of the adjudication file.<sup>1</sup>

The Petition impermissibly attaches three exhibits in violation of the rules. Exhibit A is the Application for Adjudication of Claim, already part of the adjudication file. Exhibit B is the MOH and SOE from the trial, already part of the adjudication file. Exhibit C is the F&O, already part of the adjudication file. Failing to comply with the rules is conduct subject to sanctions.<sup>2</sup> The undersigned respectfully defers to the Board’s judgment regarding any further action on this issue.

#### The Applicant was employed by Xtractor on the date of injury

The Labor Code presumes that anyone performing services for another is an employee.<sup>3</sup> In analyzing the status of an Applicant as an “employee,” the substance and essence of the relationship between the Applicant and the purported employer must be examined.<sup>4</sup> There is no special test, fact, or circumstance that is conclusive in the analysis; each case must be examined on its own peculiar facts and circumstances.<sup>5</sup> Moreover, an agent’s actions can bind a corporation through “ostensible authority.”<sup>6</sup> Ostensible authority exists where intentionally or by want of ordinary care, an agent causes or allows a third person to believe the agent to have said authority.

In the matter herein, the Applicant worked in the marijuana industry as a cannabis extractor. He was employed at 2020 in that capacity until the worksite was closed by the fire marshal. From there, Applicant’s contacts in the industry allowed him to find work in a warehouse in Jurupa. The Petition asks to reconsider the finding that the Applicant was employed by Xtractor.

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<sup>1</sup> CCR 10945(c)(1)

<sup>2</sup> CCR 10421(b)(4)

<sup>3</sup> Labor Code §3357

<sup>4</sup> *Pruitt v. Workers' Comp. Appeals Bd.*, 261 Cal. App. 2d 546, 552

<sup>5</sup> *Schaller v. Industrial Acc. Com.*, 11 Cal.2d 46, 52; *Bates v. Industrial Acc. Com.*, 156 Cal.App.2d 713, 719

<sup>6</sup> Cal Civ Code § 2317

The Applicant knew Andrew Yoon from his time at 2020. He knew that Andrew Yoon was an equipment supplier through Xtractor. (MOH & SOE, Page 4, Lines 20-21). Documentary evidence establishes that Andrew Yoon is Xtractor's owner and an agent of the company. (Applicant's Exhibit 5). Once the Applicant started working at the warehouse, he believed Andrew Yoon to be his boss. Andrew took employees to lunch, facilitated payment, instructed on methods of transportation, and exercised other considerable control over the warehouse operation. The equipment at the warehouse came from Xtractor. (MOH & SOE, Page 5, Lines 19-20). Objectively, Xtractor's involvement with the warehouse was significant, and it would appear to a reasonable person that Andrew was acting as an agent of the company.

Moreover, subjectively the Applicant believed Andrew to be Xtractor and Xtractor to be Andrew. The Applicant had Andrew Yoon in his phone as "Andrew Xtractor." There is nothing in evidence to demonstrate that Andrew Yoon took any steps to parcel out this warehouse site as a "completely different business venture" as the Petition suggests it should be considered.<sup>7</sup> The Applicant was not certain if his coworkers were Xtractor employees; however, the Applicant acknowledges that they were coworkers during his time in the cannabis extraction industry with 2020, and the undersigned would note that unless the Applicant were in human resources for the company, he would not know the business relationship of those beside him. Andrew Yoon's behavior exemplifies "ostensible authority." As the CEO of Xtractor, with prior relationships with the Applicant and reputation in the cannabis community, Andrew Yoon's actions are binding on Xtractor. He supplied the equipment to the warehouse site, directed control over the day-to-day functions, and acted in such a way that a reasonable person would think that the warehouse is an extension of Xtractor's operations. In sum, Andrew Yoon's conduct ratified the warehouse operation as an extension of Xtractor.

The undersigned found the Applicant to be credible. He was forthright with what he could immediately recall and candid with disclosing things he was uncertain about. There was some quiet shyness to the testimony, which the undersigned reasonably believes to be due to nerves and/or the aftereffects of a traumatic equipment explosion and burns.<sup>8</sup>

The Petition wishes to rely on Xtractor's website to evaluate its involvement in the cannabis industry, as well as indicate the undersigned erred in failing to take judicial notice of the website. The website is not part of the record as Defendant decided not to introduce any evidence. A request needs to be made of the court for judicial notice and there was no motion made during the proceedings for judicial notice of any fact, let alone the website.<sup>9</sup> The undersigned is not able to do outside and/or independent investigation of facts.<sup>10</sup> The Petition's discussion about the website, which was not introduced into evidence or requested that the undersigned even acknowledge, is at best misplaced and at worst possibly referencing evidence not in the record.

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<sup>7</sup> Petition, Page 5, Lines 6-7

<sup>8</sup> The undersigned would note that validating any of those observations and/or commentary would be deferred to the appropriate medical-legal process to appropriately verify any industrial causation; however, the Applicant presented with very visible and prominent scarring on his person.

<sup>9</sup> Cal Evid Code § 453

<sup>10</sup> California Code of Judicial Conduct, Canon 3 (B)(7)

Additionally, the undersigned lastly notes that Defendant introduced no exhibits at the time of trial and offered no witnesses. The conclusions in the underlying F&O were reached based on un rebutted exhibits from the Applicant and Applicant's credible, and un rebutted, testimony.

**IV**  
**CONCLUSION**

The undersigned respectfully recommends that Defendant's Petition for Reconsideration be DENIED.

Additionally, the undersigned respectfully recommends that the Appeals Board review the attaching of exhibits to the Petition and take any appropriate action.

DATE: December 21, 2022

**Michael Joy**  
WORKERS' COMPENSATION JUDGE