

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

LATOYA WALKER, *Applicant*

vs.

**ARARAT ADULT DAY HEALTH CARE, INC.,
dba RANCHO CORDOVA ADULT DAY HEALTH CARE, *Defendants***

**Adjudication Number: ADJ9174528
Sacramento District Office**

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted applicant's Petition for Reconsideration in order to further study the legal and factual issues raised by the Petition for Reconsideration, and to enable us to reach a just and reasoned decision.¹ This is our opinion and decision after reconsideration.²

Applicant seeks reconsideration of the Findings and Award (F&A) issued on May 14, 2020 by a workers' compensation administrative law judge (WCJ). The WCJ found in pertinent part that the Workers' Compensation Appeals Board (WCAB) does not have jurisdiction to "pierce the corporate veil" in a Labor Code³ section 132a proceeding, and therefore issued the section 132a award only against Ararat Day Health Care, Inc. dba Rancho Cordova Adult Day Health Care (Rancho), a dissolved corporation.

Applicant contends that the WCJ frustrated applicant's ability to recover under the F&A by issuing the award only against Rancho, a dissolved corporation, and not against Rancho owner,

¹ Labor Code section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (Lab. Code, § 5909.) Section 5315 provides the Appeals Board with 60 days within which to confirm, adopt, modify or set aside the findings, order, decision or award of a workers' compensation administrative law judge. (Lab. Code, § 5315.) On June 5, 2020, the State of California's Governor, Gavin Newsom, issued Executive Order N-68-20, wherein he ordered that the deadlines in sections 5909 and 5315 shall be extended for a period of 60 days. Pursuant to Executive Order N-68-20, the time within which the Appeals Board must act was extended by 60 days. (Governor Newsom's Executive Order N-68-20 may be accessed here: <https://www.gov.ca.gov/wp-content/uploads/2020/06/6.5.20-EO-N-68-20.pdf>; see Evid. Code, § 452(c).) Thus, since the Petition for Reconsideration was filed on May 28, 2020, and we granted it for study 119 days later on September 24, 2020, our grant for study was timely.

² Following the grant of reconsideration, Commissioner Katherine Williams Dodd became unavailable to participate in this decision. Another commissioner was assigned in her place.

³ All further references are to the Labor Code unless otherwise noted.

Yervant Krgatbashian. Applicant contends that the WCJ had authority to issue the award against Krgatbashian under the doctrine of “alter ego” because there was no difference between Krgatbashian and Rancho; and, as an individual because he had direction, management, and control over the employer pursuant to section 6304 and *Jackson v. Georgia-Pacific, Inc.* (1961) 26 Cal.Comp.Cases 223, 227 [1961 Cal.Wrk.Comp. LEXIS 160] (*Jackson*).

Neither Rancho nor Krgatbashian filed an answer to the Petition for Reconsideration. The WCJ filed a Report and Recommendation (Report) recommending that the Petition for Reconsideration be denied. Applicant filed a Reply to Trial Judge Michael Geller’s Report and Recommendation on Petition for Reconsideration Dated 07/10/2020 (Reply), but did not request permission to file the supplemental response pursuant to WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964). We therefore will not consider the Reply.

We have reviewed the record in this case, the allegations of the Petition for Reconsideration and the contents of the Report. For the reasons set forth below, it is our decision after reconsideration to amend the F&A (Finding of Fact number 3) to defer the issue of whether or not application of the alter ego doctrine is warranted to prevent an injustice against applicant under the circumstances of this case, and to return this matter to the trial level for further proceedings consistent with this decision. If the WCJ issues new findings, orders, and/or awards in this case, any aggrieved person may timely seek reconsideration.

FACTS

Applicant filed a Petition for Increased Benefits & Remedies Pursuant to Labor Code § 132a (132a Petition) on January 27, 2014. A mandatory settlement conference (MSC) was held on September 10, 2019. (Minutes of Hearing, September 10, 2019.) Rancho did not appear, and the WCJ ordered Rancho to appear at the next MSC, which was set for October 10, 2019. (*Ibid.*)

Krgatbashian was deposed on the section 132a claim on April 22, 2014. (App. Exh. 12, Deposition of Yervand Krgatbashian (Krgatbashian Deposition), April 22, 2014.) At that time, Krgatbashian was president of Rancho Cordova Adult Day Health Care, and had been for three years. (*Id.*, pp. 8-10.) He supervised the program director, who managed personnel matters. (*Ibid.*) His job duties were “controlling the employees” and how they served their disabled, elderly clients. (*Ibid.*) Hiring and firing was discussed by the corporation’s board including Monet Airian, Anait Krgatbashian, and himself. (*Id.*, pp. 10-13.) However, all decisions went through Krgatbashian,

and he had the final say on all decisions related to the hiring and firing of employees. (*Ibid.*) Although Krgatbashian recalled applicant asking him every day or every other day for a job before he hired her to fill in an on-call position for another employee, he cannot recall whether he spoke to her about more work, or full-time work after her accident. (*Id.*, pp. 15-18.)

Krgatbashian was asked about whether his employers were trained on what to do if an employee was injured on the job, including specific questions about the requirement to provide a claim form and notice of rights; Krgatbashian did not give any clear answers to these questions, and stated that he hired the program director to take care of such matters. (Krgatbashian Deposition, e.g., p. 23.) Krgatbashian offered that in 12 years of business, there had only been one claim for workers' compensation injury. (*Id.*, 26.) Krgatbashian testified that he was upset at applicant because he thought her claim was fraudulent. (Krgatbashian Deposition, p. 53.) He also testified that he did not give her a gift card to cover her medical expenses, and did not offer her a full-time job after her injury accident. (*Id.*, pp. 25-26.)

On October 10, 2019, the MSC went forward and Rancho failed to appear. (Pre-Trial Conference Statement (PTCS), October 10, 2020.) The WCJ concluded that Rancho waived its right to produce evidence at trial. (*Id.*, p. 4.) Sacramento County Department of Finance, Fictitious Business Name Unit, confirmed that dba Rancho Cordova Adult Day Health Care remained licensed to operate at 10086 Mills Station Road, Sacramento, California; that the dba name change did not necessarily change ownership; and, that the address of Rancho remains the license business address. (*Id.*, p. 2.) The Secretary of State confirmed that the license business address of Ararat Adult Day Health Care remained at 2170 Century Park E, #1205, Los Angeles, California. (*Ibid.*) The issues were identified as: liability under 132a, and whether prior 132a defense attorney properly withdrew from representing the employer. (*Id.*, p. 3.) Trial was set for November 14, 2019. (*Id.*, p. 1.)

Also on October 10, 2019, Krgatbashian executed a Certification of Dissolution for Ararat Adult Day Health Care, Inc. (Dissolution), under the penalty of perjury and as the "sole director or a majority of the directors now in office." (App. Exh. 14.) The Dissolution was then filed with the Secretary of State on October 21, 2019. (App. Exh. 14.) The Dissolution was made by a vote of all of the shareholders, and all "known debts and liabilities have been actually paid or paid as far as its assets permitted." (*Ibid.*) The Dissolution also swore that the corporation was "completely

wound up,” and the “known assets have been distributed to the persons entitled thereto or the corporation acquired no known assets.” (*Ibid.*)

As of November 14, 2019, Krgatbashian’s address was 2170 Century Park E, Apt. 1205, Los Angeles, California, and had been since July 2005. (App. Exh. 15, p. 4.) It appears that he owned the premises at that address. (*Id.*, pp. 4-5.)⁴

Rancho again failed to appear at the November 14, 2019 trial date. (Minutes of Hearing, November 14, 2019.) The WCJ ruled that Rancho’s section 132a attorney was relieved as attorney of record, and continued the matter to an MSC on January 13, 2020 “in order to fully identify all persons and entities liable for the 132a petition.” (*Id.*, p. 2.) Krgatbashian was ordered to appear at the MSC as president of Rancho. (*Ibid.*)

Krgatbashian avoided personal service of applicant’s subpoenas to appear at the January 13, 2020 MSC. (App. Exhs. 16, 18.) It appears that the “custodian of records” for Rancho was personally served with a subpoena to appear at the January 13, 2020 MSC on December 3, 2019. (App. Exh. 15.)

Krgatbashian again failed to appear at the January 13, 2020 MSC. (PTCS, January 13, 2020, p. 1.) The matter was set for trial on March 3, 2020, and the issues were identified as liability under section 132a, and whether Krgatbashian is jointly, severally, and personally liable under a piercing the corporate veil theory, and/or section 132a. (*Id.*, p. 3.)

Trial proceeded on March 3, 2020. (Minutes of Hearing and Summary of Evidence (MOH), March 3, 2020.) Once again, Krgatbashian failed to appear at the March 3, 2020 trial. (*Id.*, p. 2.) The WCJ made the decision to proceed with trial:

There has been no appearance today by anyone representing Ararat Adult Day Health Care, Inc., doing business as Rancho Cordova Adult Day Health Care. On September 10, 2019, Judge Cleveland ordered them to appear at the next conference on October 10, 2019. They did not appear once again. At a further hearing of November 14, 2019, the case was continued. Rancho Cordova Adult Day Health Care was ordered to appear and Yervant Krgatbashian was ordered to appear. They did not appear at the Mandatory Settlement Conference of January 13, 2020. It is now 9:50 on the scheduled date, March 3rd. They still have not appeared. The trial will proceed in their absence. (*Ibid.*)

⁴ We note that Krgatbashian went by “Henry” at Rancho. (App. Exh. 12, Deposition of Yervand Krgatbashian, April 22, 2014, p. 5.)

The issues determined at the March 3, 2020 trial were those identified on January 13, 2020, i.e., “Liability pursuant to Labor Code 132a. Additionally, whether Yervant Krgatbashian is jointly, severally and personally liable under a piercing the corporate veil theory and/or Labor Code 132a.” (MOH, p. 2.) Applicant testified that Krgatbashian was the owner of the facility and that he was in charge; that Krgatbashian gave her a gift card to pay for her medical treatment; and, offered a full time job in lieu of filing a workers’ compensation claim. (*Id.*, pp. 5-6.)

The WCJ issued the F&A on May 14, 2020 finding, in pertinent part, that the actions of the employer violated section 132a, but that the “Court does not have jurisdiction to ‘pierce the corporate veil’ in a Labor Code section 132a proceeding.” (F&A, Findings of Fact nos. 2-3.) The WCJ therefore only awarded applicant increased compensation and lost wages pursuant to section 132a against Rancho. (*Id.*, Award.) In making his findings, the WCJ relied on applicant’s testimony. (*Id.*, Opinion on Decision, p. 3.) The WCJ found Krgatbashian’s answers in deposition to be “generally evasive,” and “not seen as credible.” (*Ibid.*) The WCJ also explained his finding that a WCJ lacks authority to apply the doctrine of alter ego in order to award damages against an individual in a section 132a claim:

Generally jurisdiction to “pierce the corporate veil” and impose liability on individual members of a corporation lies with the civil courts. The legislature has given the Workers’ Compensation Appeals Board authority to impose liability on shareholders and beneficial members of corporations in situations where there is no workers’ compensation insurance. (Labor Code section 3720.) However, the employer in this case did have workers’ compensation insurance. Because the provisions granting authority to impose individual liability on corporate members in workers’ compensation cases do not extend to insured cases, this Court does not have jurisdiction to do so. (*Id.*, p. 4.)

In the Report, the WCJ explains the decision further:

Applicant argues that the Court has general authority to do “all things necessary and convenient” to provide a remedy to applicant. However, such general authority does not confer jurisdiction on the Court to range beyond its specified powers. The Court cannot garnish wages or impound property or otherwise take measures which would undoubtedly be of benefit to the applicant because these measures are within the jurisdiction of other tribunals. Likewise, the Court cannot “pierce the corporate veil.”

The Legislature has enacted the Corporations Code to allow the formation of corporations, the primary purpose to allow individuals to separate their individual lives and the corporate identity created. It would defeat the purpose

of the Corporations Code to impose individual liability on corporate shareholders simply because it would be of benefit to the injured worker. (Report, pp. 2-3.)

Applicant now seeks reconsideration of the WCJ's finding that the WCJ lacked authority to apply the doctrine of alter ego to find Krgatbashian individually liable for section 132a damages.

DISCUSSION

“[T]he WCAB has broad equitable powers with respect to matters within its jurisdiction.” (*Truck Ins. Exchange v. Workers' Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401-402 [81 Cal.Comp.Cases 685]; *Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [1942 Cal. LEXIS 342].)⁵ An equitable doctrine which “sound[s] in fairness and produces substantial justice” is consistent with the mission of the WCAB. (*School for the Deaf et al.*, 83 Cal.App.3d at p. 418.)

First, claims brought under section 132a are expressly within the WCAB's jurisdiction. (Lab. Code, § 132a [“The appeals board is vested with full power, authority, and jurisdiction to try and determine finally all matters specified in this section subject only to judicial review...”].) In addition, and given that section 132a defines liability against an “employer,” it is also clearly within the authority and jurisdiction of the WCAB to adjudicate the identity of the employer in a section 132a claim. (See Lab. Code, § 3300; (*Mason v. Case* (1963) 220 Cal. App. 2d 170, 180 [28 Cal.Comp.Cases 293] [“Section 3300 (in division IV of the Labor Code) defines the term ‘employer’ for purposes of the workmen's compensation statutes.”].)⁶

⁵ “The board is a creature of the ‘plenary power’ with which the people have ‘expressly vested’ the Legislature. (Cal. Const., art. XIV, § 4.) The Legislature has in turn vested it with powers which are both plenary and ancillary. (§§ 133, 5300, 5301.) The Supreme Court has explicitly held that the board (i.e., its statutory predecessor) is invested with broad equitable powers. (*Bankers Indem. Ins. Co. v. Indus. Acc. Com.* (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719].)” (*Kaiser Foundation Hospitals v. Workers' Compensation Appeals Board (California School for the Deaf et al.)* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] (*School for the Deaf*).

⁶ Pursuant to Labor Code section 3300, an “employer” includes, in relevant part, every “person . . . which has any natural person in service.” (Lab. Code, § 3300(c).) A person rendering service for another is presumed to be an employee unless “the one for whom the service was rendered” affirmatively proves otherwise. (Lab. Code, § 3357; *Jones v. Workmen's Comp. Appeals Bd.* (1971) 20 Cal.App.3d 124 [36 Cal.Comp.Cases 563] citing *Gale v. Industrial Acc. Com.* (1930) 211 Cal.137, 141; see also, *Yellow Cab v. Workers' Comp. Appeals Bd. (Edwinson)* (1991) 226 Cal.App.3d 1288 [56 Cal.Comp.Cases 34].) We note that contrary to applicant's contention, the definition of employer in workers' compensation is *not* expanded by section 6304. “The expanded definition of ‘employer’ in section 6304 is expressly restricted to division V, part 1, dealing with workmen's safety. (Lab. Code, § 6301; *Hard v. Hollywood Turf Club*, 112 Cal.App.2d 263, 267-270 [246 P.2d 716].)” (*Mason, supra*, 220 Cal. App. 2d at p. 180.)

Next, the alter ego doctrine is an equitable doctrine (*Stark v. Coker* (1942) 20 Cal.2d 839, 846 [1942 Cal. LEXIS 342]), and “affords protection where some conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form” (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 539 (*Sonora Diamond*)).⁷

“The two requirements are that there be such **unity of interest and ownership** that the separate personalities of the corporation and the individual no longer exist and that **adherence to the fiction of separate existence would, under the circumstances, promote fraud or injustice**. On the second score it is sufficient that it appear that recognition of the acts as those of a corporation only will produce inequitable results.” (*Stark, supra*, 20 Cal.2d at p. 846, emphasis added.)

“[C]ourts now give more weight to whether ‘the corporation is, in fact, controlled by the individual sought to be held [liable] and **[whether] recognition of the separate existence of the controlled corporation would work a fraud or an injustice.**’” (*Tatung Co. v. Shu Tze Hsu* (C.D.Cal. 2016) 217 F.Supp.3d 1138, 1177, emphasis added [The “unity of interest and ownership” does not have to be “complete ownership.”].)

The alter ego doctrine “sound[s] in fairness” and furthers substantial justice, and is therefore consistent with the mission of the WCAB. (See *School for the Deaf, et al.*, 83 Cal.App.3d at p. 418.) Application of the alter ego doctrine may therefore be warranted in a section 132a claim where, under the circumstances, to do otherwise would promote a fraud or injustice against an injured worker. (Cal Const, Art. XIV § 4 [Mandating “substantial justice” in all workers’ compensation cases.]; *Webb v. Workers’ Comp. Appeals Bd.* (1980) 28 Cal. 3d 621, 626–627 [45 Cal. Comp. Cases 1282] citing *Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 233 [“[T]he underlying policy of [the workers’ compensation statutes and their constitutional foundation...] as well as the recurrent theme of countless appellate decisions on the matter has been one of a pervasive and abiding solicitude for the workman.”].)

In this case, applicant raised the issue of whether Krgatbashian is “jointly, severally and personally liable” under the alter ego doctrine. (See MOH, p. 2.) The “conditions under which the corporate entity may be disregarded, or the corporation be regarded as the alter ego of the stockholders, necessarily vary according to the circumstances in each case...” (*Stark v. Coker*

⁷ We note that “[d]ifficulty in enforcing a judgment or collecting a debt” alone cannot support the imposition of the doctrine. (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 539.)

(1942) 20 Cal.2d 839, 846 [1942 Cal. LEXIS 342.] Consequently, its determination is “particularly within the province of the trial court.” (*Ibid.*)

Applicant contends that there is no difference between Krgatbashian and Rancho:

What Honorable Michael Geller failed to acknowledge was that owner Yervant Krgatbashian signed dissolution papers on October 10, 2019 on the exact same date a Conference was set. Under the totality of the circumstance, a reasonable person would find owner Yervant Krgatbashian’s corporation as an alter ego of himself, an artifice to defraud the applicant from workers’ compensation benefits that was on the hook at the commencement of proceedings but manipulated the system to escape liability and defraud the applicant. Owner Yervant Krgatbashian’s home address was the same as the corporation’s headquarters address, no defendant appeared in court, owner Yervant Krgatbashian signed the Certificate of Dissolution with the Secretary of State on October 10, 2019, and the Certificate of Dissolution was signed on the same day the discrimination matter was set to be heard. Further, Yervant Krgatbashian committed the discriminatory acts himself and in substance and in form and violated Labor Code section 132 subd.,(a) personally. There was no difference between Yervant Krgatbashian and his corporation. (Petition for Reconsideration, pp. 5-6.)

In addition, we note that Krgatbashian testified that he controlled the employees of Rancho, the services provided by Rancho, and that he had the last say in all personnel matters. Krgatbashian also signed the Dissolution of Rancho under the penalty of perjury and as the “sole director or a majority of the directors now in office.” (App. Exh. 14.)

However, the WCJ found that the WCAB had no authority to “pierce the corporate veil,” i.e., to apply the alter ego doctrine. (F&A, Finding no. 3.) Therefore, the WCJ did not consider all the evidence and issue findings of fact regarding whether or not Krgatbashian sufficiently controlled Rancho and/or whether application of the alter ego doctrine is warranted to prevent an injustice against applicant under the circumstances of this case. Given that all parties are entitled to due process and a fair hearing, we cannot interpose our own findings on the issue without running afoul of the parties’ rights to due process (*Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584] citing *Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158).

Therefore, this matter will be returned to the trial level for further proceedings consistent with this decision. We note that in order to comply with the dictates of due process, and prior to

further proceedings as found necessary by this decision, a notice of intention to join Krgatbashian should be served by the WCJ on all parties and Krgatbashian.⁸

Accordingly, it is our decision after reconsideration to amend the F&A (Finding of Fact number 3) to defer the issue of whether or not Krgatbashian sufficiently controlled Rancho and/or whether or not application of the alter ego doctrine is warranted to prevent an injustice against applicant under the circumstances of this case, and to return this matter to the trial level for further proceedings consistent with this decision. If the WCJ issues new findings, orders, and/or awards in this case, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that it is the decision after reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued on May 14, 2020 by a workers' compensation administrative law judge is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

...

3. The issue of whether or not Krgatbashian sufficiently controlled Rancho and/or whether or not application of the alter ego doctrine is warranted to prevent an injustice against applicant under the circumstances of this case is deferred.

⁸ “Section 5307.5 authorizes joinder ‘in the same proceeding of all persons interested therein, whether as employer, insurer, employee, dependent, creditor, or otherwise.’ (Lab. Code, § 5307.5(b).) Once an application for adjudication of claim has been filed, a WCJ ‘may order the joinder of additional parties necessary for the full adjudication of the case...’ (Cal. Code Regs., tit. 8, § 10380 [now Cal. Code Regs., tit. 8, § 10382].) Any party ‘against whom any right to relief is alleged to exist’ may be joined as a defendant. (Cal. Code Regs., tit. 8, § 10364(b) [now Cal. Code Regs., tit. 8, § 10382(b)].) Joinder in a workers’ compensation proceeding is liberally granted. (See Lab. Code, §§ 133, 3202.)” (*Cunnington v. Viacom Bus. Network*, 2020 Cal. Wrk. Comp. P.D. LEXIS 151, *33-34.)

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings consistent with this Decision after Reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 22, 2021

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

**LATOYA WALKER
MASTAGNI HOLSTEDT
ARARAT ADULT DAY HEALTH CARE, INC., dba RANCHO CORDOVA ADULT
DAY HEALTH CARE
MULLEN & FILIPPI**

AJF/abs

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