

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

FRANCISCO SANCHEZ, *Applicant*

vs.

**WEST COAST DOCKS, INC.;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ9272943
Sacramento 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 arbitrator with respect thereto. Based on our review of the record, and for the reasons stated in the arbitrator's report, which we adopt and incorporate, we will deny reconsideration.

We have given the arbitrator's credibility determination(s) great weight because the arbitrator had the opportunity to observe the demeanor of the witness(es). (*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 arbitrator's credibility determination(s). (*Id.*)

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/ ANNE SCHMITZ, DEPUTY COMMISSIONER

JOSEPH V. CAPURRO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 6, 2023

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

**FRANCISCO SANCHEZ
MCMONAGLE STEINBERG
STATE COMPENSATION INSURANCE FUND
WILLIAM J. PURSLEY, ARBITRATOR**

AJF/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 ON
PETITION FOR RECOMMENDATION**

INTRODUCTION:

Date of Injury: CT 12/12/2014

Age on DOI: 51

Occupation: To Be Determined

Body Parts Alleged Injured: Back and Heart

Identity of Petitioner: Applicant

Timeliness and Verification: Timely filed and verified

Date of Findings and Order: 07/14/2023 (served same day)

Petitioner's Contentions: Petitioner contends that the Arbitrator erred by: 1) finding Applicant was excluded from Workers' Compensation coverage because he was an officer of the corporation who had opted out of coverage; 2) finding that Applicant signed a valid Corporate Officers or Directors Exclusion Letter on February 28, 2002; 3) finding that Applicant is bound by the terms of said letter because he had constructive if not actual knowledge of the meaning of said letter; and 4) finding that Applicant's becoming a shareholder and officer of the corporation and his exclusion from Workers' Compensation benefits was not a sham perpetrated by the majority shareholder and president.

STATEMENT OF FACTS:

The threshold issue submitted for trial is whether Applicant was covered by Workers' Compensation insurance on the date of injury, CT 12/12/2014. Applicant does not dispute that he received stock worth 10% of West Coast Docks, Inc. or that he was named a vice-president of the corporation. Rather, Applicant claims that he did not knowingly waive his rights to Workers' Compensation coverage when he executed a corporate officers exclusion letter, that he did not perform any corporate duties and that he did not get any share of corporate profits. In summary, Applicant claims he should therefore be covered by the State Compensation Insurance Fund policy.

Applicant worked as an employee for a short time for West Coast Docks, Inc., a newly formed corporation, when the owner, Jon Morais, offered the Applicant a share of ownership and officer status on February 28, 2002. Applicant accepted stock and the title of vice-president. West Coast Docks built and installed boat docks. Prior to and after becoming a shareholder/officer, Applicant ran the shop which built the docks, and transported them to a location and then connected them. Mr Morais ran the business side which included marketing, contracting, permitting, drawing up plans and purchasing of the materials. There is a dispute as to whether Applicant's duties increased after he became an officer (Morais stated that Applicant was given more complete control of the shop) and whether this is even relevant because Applicant already had the benefits and responsibilities commensurate with a minority shareholder.

Applicant alleges that his stock ownership and officer status was a sham which allowed Mr Morais to avoid having to pay Workers' Compensation insurance premiums. Mr Morais alleges that there was no sham in that he wanted to grow his new business and needed the Applicant's involvement. Applicant was given a disability insurance policy which covered work and non-work injuries which was held in place for 10 years until needed when applicant left work following his alleged cumulative trauma injury ending December 12, 2014; a truck for business and personal use and gas cards; use of the shop at all times for personal use; business cards; a local newspaper announcement of his new title; applicant could set his own hours; and Applicant was paid his full salary even in lean times during the 10 years between his officer status and his last day of work. There is a dispute as to whether or not Applicant was a rank and file worker. The facts show that Applicant ran the shop and installation of the docks. He supervised at least two shopworkers. He had authority to hire and fire employees. There was an office worker not under his authority. He was the only employee who was offered shareholder/officer status.

Present at the meeting of February 28, 2002 were Applicant, majority shareholder Jon Morais, the father of Jon Morais, and board member Noel Aflague. Mr Aflague signed the form dated that same day which appointed Sanchez as a Vice President of Operations (SCIF Ex. B) and he witnessed the transfer of stock dated that same day to Sanchez (SCIF Ex. C). Applicant signed the officers exclusion letter without reading it, and while he can read English slowly, he wanted to get back to the shop. He was not forced to sign the letter. He asked no questions. He had no fear of losing his job if he didn't sign it. He testified that he never looks at stuff, just signs. Either at the meeting or very shortly thereafter, Aflague, who was also a licensed insurance broker, discussed with Sanchez what becoming a shareholder and officer was all about, including insurance ramifications. Aflague stated that they discussed the waiver of Workers' Compensation insurance and the trade off of obtaining a disability insurance policy.

Aflague and Sanchez had known each other for several years. Aflague also speaks Spanish. The disability insurance policy with The Standard was brokered by Aflague.

DISCUSSION:

The undersigned looked at whether the offer of shareholder and officer status was a sham perpetrated by Mr Morais to avoid having to pay Worker's Compensation insurance premiums, and then looked at whether Applicant should be bound by the terms of the officer exclusion letter.

NO SHAM: Applicant was not a rank and file worker. He was not an ordinary worker. He was a manager and a leader. He was the only employee of the corporation who was offered shareholder and officer status. He ran the shop and installation of docks. He held himself out as a vice president. He was given company assets and benefits not offered to any other employees. He was paid a full salary during lean times. He controlled his own schedule. The corporation provided him with a private disability insurance policy to cover any on or off the job injuries or disabilities. The instant case is distinguishable from the case cited by petitioner, *Pie-A-Bagel, Inc. v. Workers' Comp Appeals Bd.*, 74 Cal. Comp. Cases 307, (writ denied). *Pie-A-Bagel* held for the employee. The employee and two other employees were offered stock and officer titles: vice president of dough making, vice president of baking and vice president of packaging, respectively. They all were excluded from Workers' Comp coverage and their duties did not change. The Arbitrator in *Pie-A-Bagel* reasoned that there is a compelling public interest to make sure employers don't undermine workers' compensation safeguards by designating rank and file workers as officers and thus excluding them from coverage. In the instant case, and as noted and explained above, Applicant was simply not a rank and file worker, whose position in West Coast Docks was far from the positions of those in *Pie-A-Bagel*.

The instant case is similar to the holding and reasoning in *Fowlks v. Lube Pit Stop, Inc.*, 2014 Cal. Wrk. Comp. P.D. LEXIS 93, which was also cited by the petitioner. In the *Fowlks* case the Applicant was a 10% shareholder and a vice president. He was a day to day general manager. He wasn't a rank and file worker. He was not provided with Workers' Compensation insurance, however, he was provided with a disability insurance policy in its place. The WCJ ruled against the Applicant. In the instant case, Mr Sanchez was not a rank and file worker. He was the only other shareholder of the company. According to Morais and director Aflague, it was a new and exciting venture, and it was important to include the Applicant in the growth of the business. Unfortunately, the business had its ups and downs, but Applicant was nevertheless paid his full salary. Once applicant left the company in 2014, the business shut down because it could no longer operate without Mr Sanchez.

APPLICANT IS BOUND BY THE EXCLUSION LETTER:

The undersigned found that the Applicant knew what the meeting of February 28, 2002 was about. He knew he was going to be made a shareholder and officer. He signed the exclusion letter without any pressure or fear of losing his job. He admitted that he didn't read it, but he also said he was in a hurry to return to the shop and that he never reads things anyway, just signs. He stated that it was his own fault for not reading it. He is presumed to have read what he signed and he should be bound by its terms. As to whether he actually understood what he signed, I found that the testimony of majority owner Morais, and especially the testimony of board director and licensed insurance agent Aflague, was persuasive. Aflague stated that he explained the waiver of compensation coverage and the replacement of it with a disability insurance policy. The policy provided by the corporation stayed in place for 10 years until Applicant went off work and started receiving the benefits.

RECOMMENDATION:

The undersigned Workers' Compensation Arbitrator recommends that Applicant's Petition for Reconsideration dated August 7, 2023, be denied.

DATED: August 20, 2023

WILLIAM J. PURSLEY, ARBITRATOR

FILED AND SERVED: August 20,2023