

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

LUIS FIGUEROA, *Applicant*

vs.

**GREEN ZONE TRUCKING, INC.; PACGRAN, INC., and UNINSURED EMPLOYERS
BENEFITS TRUST FUND (UEBTF), *Defendants***

**Adjudication Number: ADJ8894930
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND DECISION AFTER RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Award (F&A) issued and served on October 10, 2023, wherein the workers' compensation administrative law judge (WCJ) found as relevant that (1) while employed as a driver by Green Zone Trucking, Inc. and Pacgran, Inc. on December 18, 2012, applicant sustained injury to his neck, right shoulder, head and face; (2) at the time of injury, Green Zone Trucking was illegally uninsured; (3) applicant's occupational code is 350; (4) applicant's earnings at the time of injury were \$1,500.00 per week, rendering a temporary disability rate of \$1,000.00 per week (\$142.86 per day) and a permanent disability rate of \$230.00 per week (\$32.86 per day); (5) applicant is entitled to temporary total disability benefits for the time period from February 2, 2013 through March 4, 2014, a total of 396 days, for a gross total owed of \$56,572.56, less \$8,485.88, which is awarded to applicant's attorney; (6) applicant became permanent and stationary, and reached maximum medical improvement, on March 4, 2014; (7) there is valid apportionment to non-industrial causes; (8) applicant's injury caused combined permanent partial disability of 21 percent after apportionment, entitling applicant to 80.5 weeks of indemnity, payable at the statutory maximum rate of \$230.00.00 per week, for a total of \$18,515.00, less an attorney fee of \$2,777.25, which is awarded to applicant's attorney; (9) applicant will require further medical treatment to cure or relieve the effects of injury; (10) as applicant previously entered into a compromise and release agreement with an insured jointly and severally liable defendant for \$50,000.00, an order that UEBTF provide additional benefits to applicant under such circumstances would be contrary to public policy and the stated intent of the

legislature and, therefore, UEBTF has no liability to applicant despite the findings of injury and entitlement to benefits; (11) Green Zone Trucking is liable to applicant, and applicant's award shall be against Green Zone Trucking, Inc. only; (12) it is reasonable to award attorney's fees on both accrued temporary disability and permanent disability indemnity, and a reasonable fee on temporary disability indemnity is 15 percent of gross, or \$8,485.88, and a reasonable fee on permanent disability indemnity is 15 percent of gross, or \$2,777.25, payable to applicant's attorney by Green Zone Trucking Inc. only.

The WCJ issued an award in applicant's favor and against Green Zone Trucking, Inc. in accordance with these findings.

Applicant contends that the WCJ erroneously failed to find that UEBTF is derivatively liable for illegally uninsured employer Green Zone Trucking, Inc.

We received an Answer from UEBTF.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that the Petition be denied.

We have reviewed the contents of the Petition, the Answer, and the Report. Based upon our review of the record, and for the reasons discussed below, we will grant reconsideration; and, as our Decision After Reconsideration, we will rescind the F&A, and substitute findings that omit the findings that UEBTF has no liability and that liability is found "only" as to Green Zone Trucking, Inc.

FACTUAL BACKGROUND

On October 6, 2014, applicant and Pacgran, Inc. entered into an agreement entitled "Compromise and Release as to Pacgran Only," whereby the parties settled applicant's claim for \$50,000.00 based in part upon Pacgran's denial of the "claim on the grounds Applicant was an independent contractor and not an employee. If this matter proceeded to trial . . . Applicant could have received a Take-nothing." (Compromise and Release, October 6, 2014, pp. 1, 6.) The compromise and release includes a provision stating, "Applicant reserves his right to proceed against Green Zone." (*Id.*, p. 7.)

Also on October 6, 2014, the WCJ approved the compromise and release, noting that Pacgran "made an offer of proof regarding good faith issues which, if resolved in favor of defendants, would defeat the applicant's claim for compensation." (Order Approving Compromise and Release, October 6, 2014.)

On January 14, 2019, the WCJ issued the following finding of fact:

Luis Figueroa, born . . . while employed on December 18, 2012 as a Driver at Long Beach, California, by Green Zone Trucking, Inc., uninsured, claims to have sustained injury arising out of and in the course of employment to his head, face, neck and right shoulder.
(Findings of Fact and Orders, January 14, 2019.)

Also on January 14, 2019, the WCJ issued an opinion on decision, which states:

Based upon applicant's credible testimony it is found that applicant was an employee of Green Zone Trucking, Inc.

. . .

In the case herein, it is not disputed that the applicant was providing a service. The question remains as to which entity, or both, was the employer, Green Zone or Pacgran, and whether or not the applicant was an independent contractor. Applicant credibly testified, which was unrebutted, that "he worked at Pacgran for Green Zone Trucking". Green Zone at least in part directed his activities. The 1099 (Exhibit 1) was issued by Green Zone Trucking, Inc. The agreement (Exhibit 2) mentions both Pacgran and Green Zone. Based on the evidence submitted, Green Zone and Pacgran were joint employers, absent a finding of independent contractor status, with joint and several liability.

(Opinion on Decision, January 14, 2019, pp. 1-2.)

On October 6, 2023, the WCJ issued the F&A and Opinion on Decision. The Opinion on Decision includes the following:

WHETHER UEBTF IS ENTITLED TO A CREDIT AGAINST THE SETTLEMENT PROCEEDS FROM THE PACGRAN SETTLEMENT OR IS OTHERWISE LIABLE FOR PAYMENT OF BENEFITS

The facts of this particular case are fairly unusual. Although the relationship between Green Zone Trucking and Pacgran has not been well explained, evidence was presented and in fact the Court found that each company dually employed the applicant on his date of injury. WCJ Brotman found that both employers were jointly and severally liable.

. . .

UEBTF additionally argues that as Pacgran was jointly and severally liable with Green Zone, applicant's claim was previously satisfied when he entered into the settlement with Pacgran. Specifically, UEBTF states, "Under joint and several liability, the applicant can only proceed against one of the two defendants for one recovery." [fn] That statement is incorrect; joint and several liability provides that each liable defendant is liable for the whole of any obligation, and that either may satisfy the entirety of that obligation. That Green Zone shares joint and several liability with Pacgran does not forbid applicant from settling with Pacgran and then

proceeding against Green Zone, especially considering that the amount of the joint and several obligation on the part of both defendants had not yet been adjudicated. (Opinion on Decision, pp. 6, 8.)

In the Report, the WCJ states:

This matter was previously heard and submitted by WCJ Brotman on the issue of employment and derivative defendant Uninsured Employers Benefits Trust Fund's (UEBTF's) petition for dismissal. WCJ Brotman issued his Findings of Fact and Order on January 14, 2019. In pertinent part, WCJ Brotman found that applicant was an employee of both Green Zone Trucking, Inc., and Pacgran, Inc., and that both employers had joint and several liability. The issue of injury AOE/COE was not tried in that proceeding. Derivative defendant UEBTF's petition for dismissal was denied. WCJ Brotman has since retired.

...

Petitioner contends the WCJ erred by only finding liability against Green Zone Trucking, Inc. rather than both the uninsured defendant and the UEBTF.

...

Applicant testified at the 12/11/18 employment trial that the location where he worked was the Pacgran warehouse, but he worked for Green Zone Trucking and was paid and controlled by Green Zone. Both employers took the position that the applicant was an independent contractor and relied upon a written agreement which so stated. Pacgran had workers' compensation insurance, and Green Zone was uninsured. In 2014, without admitting or adjudicating the employment issue or the merits of the claimed injury, applicant settled with the insured defendant, Pacgran, Inc., for \$50,000.00. Settlement was by Compromise and Release[fn], with an Order Approving[fn] issuing on October 14, 2014. As per the terms of the settlement, without waiving any defenses, Pacgran resolved any liability on its own part in exchange for the payment of \$50,000. Applicant purported to reserve the right to proceed against Green Zone.

Thereafter, UEBTF was joined into the case as a derivative defendant for the uninsured Green Zone Trucking Company. Although it was properly served with special notice of lawsuit and received notice of all proceedings, Green Zone never participated in the case in its own right. The following is a timeline of key events that are relevant to the instant litigation:

Timeline of key events

12/18/12 - Date of alleged injury

10/6/14 - Order approving C&R with Pacgran, Inc. (insured defendant)

8/20/15 - UEBTF joined to case

12/2/16- UEBTF files petition to be dismissed due to prior settlement with other insured defendant

12/11/18 - Case proceeds to trial on issues of employment and UEBTF's petition for dismissal

1/14/19 - WCJ Brotman finds employment by Green Zone Trucking, Inc. and joint and several liability between Green Zone Trucking, Inc. and Pacgran, Inc. Petition for dismissal denied.

7/25/23 - Case proceeds to trial against UEBTF on remaining case-in-chief issues

...
The Court found that applicant's testimony was consistent with the reporting of all medical evaluators whose reports have been introduced into evidence. Accordingly, the Court found injury AOE/COE and awarded benefits to applicant, payable by applicant's employer, Green Zone Trucking, Inc.

However, the Court declined to find UEBTF liable for the payment of these benefits, as in this unusual factual scenario, applicant had an insured, participating employer who ultimately would have been liable to provide workers' compensation benefits, and before applicant even attempted to join UEBTF into the matter on behalf of the uninsured defendant, applicant chose to enter into a Compromise and Release agreement with the insured employer and resolve its potential liability. The Court found that to order UEBTF to provide additional benefits to applicant under such circumstances would be contrary to public policy and the stated intent of the legislature. It is from this portion of the Court's decision alone that applicant seeks Reconsideration.

...
It is Against Public Policy to Impose Liability Upon UEBTF When Applicant First Settled with an Insured, Jointly and Severally Liable Defendant

...
The Court fully imposed liability against the uninsured defendant, Green Zone Trucking, Inc., which applicant may have entered as a judgment against defendant Green Zone Trucking, Inc. in accordance with Labor Code §5806 *et seq.*

But applicant argues that "to require the petitioner to pursue the uninsured employer would be costly, unreasonable and unconscionable."^[fn] Instead, applicant argues that the Court should have imposed liability against UEBTF regardless, because "[t]he UEBTF has available, under the applicable Labor Code sections, enumerated procedures, and the means for pursuing Green Zone Trucking Inc (as an uninsured employer) for reimbursement of worker's compensation benefits it may pay ... "^[fn]

...
In this case, only *one* of the two defendants, Green Zone Trucking, Inc., was illegally uninsured. For that specific reason, applicant initially proceeded only against the insured defendant, Pacgran, Inc. and did not seek the joinder of UEBTF. Applicant engaged in discovery with Pacgran, participated in a PQME

evaluation[fn] with Pacgran, and then used that record to settle with them by Compromise and Release for \$50,000, reserving his right to proceed in the future against the uninsured defendant as well.

It was nearly one year later that applicant joined the UEBTF as derivative defendant, arguing that UEBTF should provide benefits without consideration of applicant's prior settlement. This was only legally possible due to a statutory anomaly; although Labor Code §3716(b) expressly forbids contribution from or election against UEBTF/uninsured employers when other insured parties are potentially liable in cases of occupational disease or cumulative trauma, it does not make any mention of claims of specific injury. The only situations where there could be multiple potentially liable parties in claims of specific injuries are situations involving multiple employers. Further, the only situation where this particular anomaly could possibly present itself is one where there is a specific injury, with multiple employers, *and* one of the employers is illegally uninsured. Such is the rare case at bar.

...

Applicant has a ready-made mechanism[fn] to seek additional satisfaction directly from the uninsured employer. Applicant's preference that the UEBTF be made to pay and then further use public resources to seek reimbursement from the uninsured employer does not justify the perversion of a program that is intended to be used as a safety net of last resort.

Applicant had an insured, participating employer who ultimately would have been liable to provide workers' compensation benefits. Applicant chose to enter into a Compromise and Release agreement with that employer and resolve its potential liability before that determination could be made. The Court found that to order UEBTF to provide additional benefits to applicant under such circumstances would be contrary to public policy and the stated intent of the legislature, and the Court maintains that finding.

(Report, pp. 1-6.)

DISCUSSION

Labor Code section 3716 provides, as relevant:

(a) If the employer fails to pay the compensation required by Section 3715 to the person entitled thereto, or fails to furnish the bond required by Section 3715 within a period of 10 days after notification of the award, the award, upon application by the person entitled thereto, shall be paid by the director from the Uninsured Employers Benefits Trust Fund. The expenses of the director in administering these provisions, directly or by contract pursuant to Section 3716.1, shall be paid from the Workers' Compensation Administration Revolving Fund. Refunds may be paid from the Uninsured Employers Benefits Trust Fund for amounts remitted erroneously to the fund, or the director may authorize offsetting subsequent remittances to the fund.

(b) It is the intent of the Legislature that the Uninsured Employers Benefits Trust Fund is created to ensure that workers who happen to be employed by illegally uninsured employers are not deprived of workers' compensation benefits, and is not created as a source of contribution to insurance carriers, or self-insured, or legally insured employers. The Uninsured Employers Benefits Trust Fund has no liability for claims of occupational disease or cumulative injury unless no employer during the period of the occupational disease or cumulative injury during which liability is imposed under Section 5500.5 was insured for workers' compensation, was permissibly self-insured, or was legally uninsured. No employer has a right of contribution against the Uninsured Employers Benefits Trust Fund for the liability of an illegally uninsured employer under an award of benefits for occupational disease or cumulative injury, nor may an employee in a claim of occupational disease or cumulative injury elect to proceed against an illegally uninsured employer.

(Labor Code § 3716(a)-(b).)

In *Jenkins v. Workmen's Comp. Appeals Bd.*, (1973) 31 Cal. App. 3d 259 [38 Cal.Comp.Cases 201], the court states:

[S]ection 3716 of the Labor Code established the Uninsured Employers Fund. The purpose of this fund is to provide an injured employee with immediate benefits if an employer fails to pay an award of compensation for such injury within 10 days after notification thereof. These provisions were obviously enacted to fulfill the public policy declared in article XX, section 21 of the California Constitution that mandates the creation of a system of workmen's compensation that, in the words of the Constitution, will be so administered to "accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character; . . ." The provisions of said section 3716 appear to be founded on the maxim that "justice delayed is justice denied" -- a maxim peculiarly applicable in workmen's compensation law.

When an employee or his dependent has obtained an award from the appeals board against an uninsured employer pursuant to section 3715, the employer is required to pay the award or furnish the board with a sufficient bond for its payment. If the employer fails to pay the award or furnish the required bond within 10 days after notification thereof, the award, upon application of the employee or dependent, shall be paid by the Director of Industrial Relations from the Uninsured Employers Fund. This is the essence of section 3716. There is thus created an immediately available fund from which an injured employee's award shall be paid if an employer does not pay it within said 10-day period.

The provision does not create a new right having its origin in the initial injury. Rather, the right created is based upon the fact of nonpayment of an obligation already in existence, i.e., the award of compensation. It is this time (nonpayment within 10 days after entry of award), and not the time of injury, that effectuates section 3716.

(*Jenkins, supra*, at pp. 263-264.)

The Legislature intended that the employer be primarily responsible for the payment of the award even in a case in which the UEBTF has participated and ultimately may be required to pay the award, and nothing in the statutory scheme suggests the Legislature intended the UEBTF to pay any amount in excess of, or different from, the amount awarded against the uninsured employer. (*Dubois v. Workers Comp. Appeals Bd.*, (1993) 5 Cal.4th 382 [58 Cal.Comp.Cases 286, 291].)

In the case before us, applicant and Pacgran entered into a compromise and release which the WCJ approved based upon an offer of proof of a good faith dispute as to whether applicant was an employee or independent contractor. (Compromise and Release, October 6, 2014, pp. 1, 6; Order Approving Compromise and Release, October 6, 2014.) The compromise and release expressly reserved applicant's right to pursue his claim against Green Zone Trucking. (Compromise and Release, October 6, 2014, p. 7.)

After approval of the release of Pacgran, WCJ Brotman held trial on the issue of employment and found that applicant was employed by "Green Zone Trucking, Inc., uninsured." (Finding of Fact and Orders, January 14, 2019.) WCJ Brotman's findings on the issue of employment referred solely to Green Zone Trucking, though his opinion on decision stated his conclusion that Green Zone Trucking and Pacgran were applicant's "joint employers." (*Id.*; Opinion on Decision, January 14, 2019, pp. 2-3.)

Following trial of applicant's claim against Green Zone Trucking and UEBTF herein, the WCJ found that UEBTF was not liable for the compensation owed by Green Zone Trucking on the grounds that Pacgran was "jointly and severally liable" for applicant's injury. (F&A, Finding No. 10; Report, p. 4.)

But since Pacgran was released from liability prior to trial of the issue of employment, and since WCJ Brotman did not issue findings that Pacgran was applicant's employer or that it was jointly and severally liable for his injury, the WCJ lacked a factual basis to foreclose applicant from recovering compensation from UEBTF in the event that Green Zone Trucking fails to comply with any demand for payment of award made pursuant Labor Code section 3716. (Order Approving Compromise and Release, October 6, 2014; Finding of Fact and Orders, January 14, 2019.)

Accordingly, we will substitute findings that omit the findings that UEBTF has no liability and that liability is found “only” as to Green Zone Trucking.

Having concluded that the findings that UEBTF has no liability and that liability is found “only” as to Green Zone Trucking are without support, we are also persuaded that the Legislature’s reasons for creating the UEBTF suggest that applicant may not be foreclosed from seeking its benefits.

Specifically, the Legislature’s overall intent was to create “an immediately available fund” so that employees of illegally uninsured employers may not be deprived or subjected to delay of compensation. (*Jenkins, supra*; Labor Code § 3716(b)). To effectuate that intent, the Legislature fashioned a “statutory creature”—the UEBTF—which operates immediately upon the fulfillment of certain conditions, i.e., the imposition of an award against an illegally uninsured employer and the employer’s failure to pay a compensation award within 10 days of notification. (See *Ortiz v. Workers' Comp. Appeals Bd.*, (1992) 4 Cal.App.4th 392, 396, 5 Cal. Rptr. 2d 484.) In the absence of a mandate, we may not alter its operation.

Moreover, we are unpersuaded that the equities suggest that applicant should bear the burden of enforcing the award against Green Zone Trucking. To the extent that the UEBTF may be required to provide compensation to applicant, it has various and efficacious means to recover reimbursement which are unavailable to applicant. (See, e.g., Labor Code §§ 3716.3, 3717, 3717.1, 3718, 3719, 3720, 3720.1, 3732.)

Accordingly, we will grant reconsideration; and, as our Decision After Reconsideration, we will substitute findings that omit the findings that UEBTF has no liability and that liability is found “only” as to Green Zone Trucking.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Award issued on October 6, 2023 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued on October 6, 2023 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. On December 18, 2012, Luis Figueroa, born _____, while employed as a driver at Long Beach, California, by Green Zone Trucking, Inc., and Pacgran, Inc., sustained injury AOE/COE to his neck, right shoulder, head, and face.
2. At the time of injury, Green Zone Trucking, Inc. was illegally uninsured.
3. Applicant's Occupational Code is 350, for "Truck Driver".
4. Applicant's earnings at the time of injury were \$1,500 per week, rendering a temporary disability rate of \$1000.00 per week (\$142.86 per day) and a permanent disability rate of \$230.00 per week (\$32.86 per day).
5. Applicant is entitled to temporary total disability benefits for the time period from February 2, 2013 through March 4, 2014, a total of 396 days, for a gross total owed of \$56,572.56 (396 days x \$142.86/day = \$56,572.56), less \$8,485.88, which is awarded to EQUITABLE LAW TARZANA as a reasonable attorney fee. The net to applicant will be \$48,086.68.
6. Applicant became permanent and stationary, and reached maximum medical improvement, on March 4, 2014.
7. There is valid apportionment to non-industrial causes.
8. Applicant's injury caused combined permanent partial disability of 21% after apportionment, entitling applicant to 80.5 weeks of indemnity, payable at the statutory maximum rate of \$230.00 per week, for a total of \$18,515.00, less an attorney fee of \$2,777.25, which is awarded to EQUITABLE LAW TARZANA as a reasonable attorney fee. Benefits are payable retroactive to March 4, 2014. As all benefits owed have accrued, no commutation is necessary.
9. Applicant will require further medical treatment to cure or relieve from the effects of this injury.

10. Green Zone Trucking, Inc. is liable to applicant as described in the preceding Findings of Fact, and applicant's Award shall be as against Green Zone Trucking, Inc.

11. Based on the criteria regarding reasonable attorney fees set forth in Title 8, Cal. Code of Regs., §10775 and Index Number 1.140 of the WCAB Policy and Procedural Manual, it is reasonable to award attorney fees on both accrued temporary disability and permanent disability indemnity. For the fee on temporary disability indemnity, it is found that a reasonable attorney fee is 15% of gross, or \$8,485.88. For the fee on permanent disability indemnity, it is found that a reasonable attorney fee is 15% of gross, or \$2,777.25. As set forth *supra*, these fees are payable to EQUITABLE LAW TARZAN A, by Green Zone Trucking, Inc.

AWARD:

AWARD IS MADE in favor of LUIS FIGUEROA against GREEN ZONE TRUCKING, INC. of:

a. Accrued retroactive temporary total disability benefits for the time period from February 2, 2013 through March 4, 2014, a total of 396 days, for a gross total owed of \$56,572.56 (396 days x \$142.86/day = \$56,572.56), less \$8,485.88, which is awarded to EQUITABLE LAW TARZANA as a reasonable attorney fee. The net to applicant will be \$48,086.68.

b. Permanent disability of 21% after apportionment, entitling applicant to 80.5 weeks of indemnity, payable at the statutory maximum rate of \$230.00 per week, for a total of \$18,515.00, less an attorney fee of \$2,777.25. Benefits are payable retroactive to March 4, 2014. As all benefits owed have accrued, no commutation is necessary.

c. Future medical treatment reasonably required to cure or relieve from the effects of the injury herein.

d. The Board shall retain jurisdiction of unpaid medical-legal, self-procured medical, other liens, and penalty and interest claims.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 5, 2024

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

**LUIS FIGUEROA
EQUITABLE LAW
OFFICE OF THE DIRECTOR – LEGAL UNIT**

SRO/cs



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