

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

RICARDO CHINCHILLA, *Applicant*

vs.

**PROTECTIVE SERVICES OF SOUTHERN CALIFORNIA;
UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ1866471
Marina del Rey District Office**

**OPINION AND ORDER DENYING
PETITION FOR RECONSIDERATION**

The Director of Industrial Relations, as Administrator of the Uninsured Employers Benefits Trust Fund (UEBTF) seeks reconsideration of the Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration¹ (Decision) issued by the Workers' Compensation Appeals Board (Appeals Board), on November 7, 2023.

UEBTF contends that the Decision was issued in violation of Labor Code² section 5804 because once a finding of employment becomes final, the Appeals Board lacks the authority to find no employment "upon a petition to reopen;" that Protective Services, Inc. (PSI) failed to seek specific relief pursuant to section 5506 and therefore was not entitled to the relief issued by the Decision; and, that the Decision was issued despite the determination by the workers' compensation administrative law judge (WCJ) that there was no substantial issue with jurisdiction when the April 6, 2011 Award (Award) was issued approving the March 3, 2011 Stipulations with Request for Award (Stipulations) between applicant and UEBTF.

We have reviewed the record in this matter and the allegations in the Petition for Reconsideration. Based on the same grounds set forth in the Decision, which we adopt and incorporate herein, we deny reconsideration.

¹ Commissioner Palugyai, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

² All further references are to the Labor Code unless otherwise noted.

In seeking reconsideration of the Decision, UEBTF does not allege new evidence that the workers' compensation appeals board (WCAB) "acquired jurisdiction" over PSI and/or Robert Olguin, Jr., and Sandra H. Burke as officers of PSI (collectively referred to as PSI) as required under section 3715, subdivision (e) (section 3715(e)). (Lab. Code, § 3715(e).) Instead, UEBTF contends that because PSI was on "actual notice" of applicant's workers' compensation claim, the WCAB was somehow authorized to issue an award, approve a compromise and release, and record liens against PSI and Roberto Olguin, Jr., as employers of applicant. We disagree for the reasons set forth in the Decision.

In sum, and as stated in the Decision, a workers' compensation administrative law judge (WCJ) issued an Award (Award) April 6, 2011 based on the March 3, 2011 Stipulations with Request for Award (Stipulations) between applicant and UEBTF. PSI was *not* a party to the Stipulations. The Stipulations included a stipulation that PSI was applicant's employer.

Also as stated in the Decision, UEBTF may only resolve claims for workers' compensation against uninsured employers through stipulated findings and award or compromise and release if the Appeals Board "has acquired jurisdiction over the employer." (Lab. Code, § 3715(e).) In order to acquire jurisdiction over such an employer, the requirements for formal service of process of an application for adjudication of claim and special notice of lawsuit, which include a detailed notice that a lien may be imposed *are not optional*, unless the employer makes a general appearance. (Lab. Code, §§ 3715-3716.) It is undisputed that PSI did *not* make a general appearance at any time prior to April 6, 2011.

As set forth in the Decision, at the time the Stipulations were presented to the WCJ for review and approval, the Appeals Board had not "acquired jurisdiction" over PSI. Jurisdiction is, as conceded by UEBTF, a substantial issue. It is therefore quite unfortunate that the WCJ did not discover the lack of jurisdiction over PSI when conducting review of the Stipulations for adequacy. However, the Decision did not violate section 5804 given that the Award was issued without jurisdiction and, as a natural consequence, was void ab initio. In other words, the stipulation between applicant and UEBTF that PSI was applicant's employer was not issued as part of a final order of employment in this matter, and therefore cannot be relied on to apply section 5804.³

³ In the Answer, PSI raised an additional contention that UEBTF was not joined into any claim against PSI (presumably as there is no evidence that any claim was ever filed against PSI). (Answer, p. 2.) We note that UEBTF "shall have no liability to pay compensation, nor shall it be joined in any appeals board proceeding" unless the applicant complies with the procedural requirements of sections 3715 and 3716. (Lab. Code, § 3716(d).) On the other hand, UEBTF

UEBTF also contends that the WCJ who approved the November 29, 2014 Compromise and Release between UEBTF and applicant did not find a substantial issue related to jurisdiction over PSI. However, as stated in the Decision,

[T]he Opinion and Order Approving Compromise and Release (Joint Ex. Z, OACR), approved the proposed settlement of future medical care against Protective Services of Southern California (PSSC), the employer named in applicant's Application for Adjudication of Claim (UEBTF Exh. A). Petitioners herein do not seek relief from the OACR given that it issued against PSSC and not PSI. We disagree with the WCJ's conclusion in the Report that issuing the OACR against PSSC was an inadvertent clerical error needing correction. However, as petitioners do not seek relief from the OACR, and as there was no order issued by the WCJ correcting the OACR, we do not address the OACR in our orders.

(Decision, p. 4, fn. 2.)

UEBTF contends that the OACR was issued against "Protective Services of Southern California, et. al....," and therefore, that PSI was included within the "et al." As this was not an issue raised below and the Decision did not issue any findings or orders related to the OACR, we decline to address this interpretation. We do note however that section 3715, subdivision (e), applies equally to resolution of claims against uninsured employers through compromise and release.

Next, given that the Appeals Board never acquired jurisdiction over PSI in this matter, PSI was never a defendant in these proceedings. If PSI was never a defendant in these proceedings, then it follows that section 5506 does not apply to PSI. (Lab. Code, § 5506 ["If the defendant fails to appear or answer..."].) Therefore, PSI was not required to request relief pursuant to the provisions of Code of Civil Procedure section 473 as required by section 5506. Even so, we note that the Petition for Dismissal filed by PSI on September 9, 2022 could be considered such a request given the informality of proceedings in workers' compensation. (Lab. Code, § 5709.)

Finally, and contrary to petitioner's intemperate argument, the Appeals Board is not advocating for any "side" in this dispute. The California legislature has plenary power to enact a system of workers' compensation "exclusive of all other statutory and common law remedies,"

appears to be properly joined into a claim filed by applicant against Protective Services of Southern California (PSSC), *who has admitted that it was the employer of applicant on the date of injury*. (See Decision, p. 3 citing Joint Ex. O, Jay Burke's January 26, 2010 ex parte letter; and, p. 9, fn. 5.) UEBTF still has a valid compromise and release against PSSC.

substituting “a new system of rights and obligations for the common law rules governing liability of employers for injuries to their employees.” (*Graczyk v. Workers’ Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1002-1003 citing (Cal. Const., art. XIV, § 4 and Lab. Code, § 3201; see *People v. Lopez* (2003) 31 Cal.4th 1051, 1056 [when a statute’s language is clear and unambiguous, the plain meaning of the statute governs].) It is not within the authority of the Appeals Board to contravene the clear and unambiguous language of sections 3715 and 3716.

Accordingly, as no new evidence was produced by UEBTF to establish that the Appeals Board acquired jurisdiction over PSI prior to the April 6, 2011 Award (Lab. Code, § 3716(e)), we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Director of Industrial Relations, as Administrator of the Uninsured Employers Benefits Trust Fund's Petition for Reconsideration of the Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration issued by the Workers' Compensation Appeals Board on November 7, 2023 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 2, 2024

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

**RICARDO CHINCHILLA
PEARLMAN, BROWN & WAX
OFFICE OF THE DIRECTOR-LEGAL UNIT (LOS ANGELES)
ROBERT OLGUIN, JR.
SANDRA BURKE
PROTECTIVE SERVICES OF SOUTHERN CALIFORNIA c/o JAY BURKE**

AJF/abs

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