

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

JORGE GUZMAN, JR., *Applicant*

vs.

**HECTOR CHAVEZ; PHILMA ALVAREZ; EDWARD W. YOUNAN;
KEVIN W. ROBLEDO; AVALON FOODS, INC.; and
UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ9746420
Los Angeles District Office**

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

Applicant seeks reconsideration of the Findings and Award (F&A) issued on June 15, 2021 by a workers' compensation administrative law judge (WCJ) wherein the WCJ found, in pertinent part, that applicant sustained injury on January 11, 2014 arising out of and in the course of his employment for Philma Alvarez aka Philma Chavez. The WCJ also found that applicant was not the employee of Hector Chavez, Avalon Foods, Inc., Edward Younan, or Kevin Robledo on the date of injury. The WCJ awarded temporary disability, further medical treatment, and ordered further development of the record on the issues of permanent disability and apportionment.

Applicant contends that the issue of who applicant's employer was on the date of injury was already determined by a jury in the civil case filed by applicant, *Jorge Guzman Jr. vs. Hector Chavez et al.*, Los Angeles Superior Court case number BC562564 (civil case), and that the doctrine of collateral estoppel prohibits relitigation of the issue. In the alternative, and given that a final judgment on the jury's verdict has yet to issue in the civil case, applicant contends that the F&A should be vacated pending final adjudication of the civil case.

The Uninsured Employers Benefits Trust Fund (UEBTF) and defendants Edward Younan, Kevin Robledo, and Avalon Foods, Inc., filed answers to applicant's Petition for Reconsideration

(Answers).¹ The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied because the jury verdict in the civil case is not yet final.

We have reviewed the record in this matter, the allegations in the Petition for Reconsideration and the Answers, as well as the contents of the Report. Based on the record and for those reasons set forth below, we grant reconsideration. It is our decision after reconsideration to rescind the F&A in its entirety and to defer proceedings related to the issue of employment pending final resolution of phase I of the civil case.

BACKGROUND

Applicant claims to have sustained an injury on January 11, 2014 arising out of and in the course of his employment as a cashier and food driver for defendants Philma Alvarez, Hector Chavez, Avalon Foods, Inc., Edward Younan, and Keven Robledo. (Minutes of Hearing and Summary of Evidence, July 7, 2020 (July 2020 MOH), p. 3.) None of the alleged employer defendants were insured for workers' compensation injuries on the date of injury. (*Id.*)

On October 30, 2014, applicant filed a civil complaint in Los Angeles Superior Court for personal injury damages caused by the January 11, 2014 injury accident (civil case). (UEBTF Exh. W, Civil Docket LA Superior Court in Case BC562564, p. 1; see UEBTF Exh. T, First Amended Complaint case number BC562564, pp. 4-5.) Applicant filed the civil case against Hector Chavez, Philma Alvarez, Edward W. Younan, Kevin W. Robledo, and Avalon Foods, Inc. (UEBTF Exh. T, p. 1.)

On November 20, 2014, applicant filed his Application for Adjudication of Claim (Application) in this case, alleging a specific injury on January 11, 2014 resulting from his employment with Hector Chavez and Philma Alvarez dba Hector's Catering. (Application, filed November 20, 2014.)²

¹ There are fifteen days allowed within which to file an answer to a petition for reconsideration that has been served by mail upon an address in California. (Lab. Code, §§ 5905; Cal. Code Regs., tit. 8, § 10605(a).) The answer filed by UEBTF was filed sixteen days after applicant's served the Petition for Reconsideration. Regardless, our disposition in this matter is not dependent on consideration of UEBTF's Answer.

² Defendants in their Answer erroneously allege that the Application was filed on June 15, 2014. (Answer, p. 2.) The document was signed on June 15, 2014, but it was not *filed* until November 20, 2014 as is clearly evidenced by the "received" stamp from the Los Angeles District Office on the cover page, and first two pages of the Application. (Application, cover page, pp. 1-2.) In addition, the filing date is clearly indicated in the Electronic Adjudication Management System (EAMS) as November 20, 2014. We caution defendants and their attorneys to exercise diligence

On February 9, 2015, applicant filed a Request for Entry of Default and Statement of Damages in the civil case; the default was entered on the same date. (UEBTF Exh. W, p. 36.)

On February 20, 2015, and based on information from the WCIRB that neither Hector Chavez or Philma Alvarez had workers' compensation insurance coverage on the date of injury, applicant petitioned to join UEBTF and served and filed a Special Notice of Lawsuit. (Petition to Join UEBTF, filed February 20, 2015, WCIRB Correspondence, filed February 20, 2015; Special Notice of Lawsuit, February 20, 2015.) On March 17, 2015, the WCJ issued an order joining UEBTF (Guzman Order Joinder (UEF), March 17, 2015). Thereafter, UEBTF petitioned and the WCJ joined Avalon Foods, Inc., and Edward W. Younan and Kevin W. Robledo as substantial shareholder of Avalon Foods, Inc. (Order Joining Party Defendant, March 7, 2016, Order Joining Substantial Shareholders, May 19, 2016).

On April 9, 2015, the Director of Industrial Relations filed a Notice of Lien in the civil case. (UEBTF Exh. W, p. 36.)

Between October 21 and 24, 2019, the first phase of the bifurcated civil case went to trial. (Defendants' Answer, p. 2.) The only issue to be determined in the first phase of the civil case was whether applicant was an employee of Philma Alvarez and/or Hector Chavez, individually and/or dba Hector Catering; and/or, Edward Younan, individually and/or as substantial shareholder of Avalon Foods, Inc.³ (Defendants' Answer, p. 2.) The jury entered a special verdict, finding that on the date of injury, applicant was an employee of Edward Younan and Avalon Foods, Inc. (Answer, pp. 2-3; UEBTF Ex. Y, Minute Order in BC562564, October 24, 2019.) The jury's verdict is not yet a final judgment. (Answer, pp. 2-3; Petition for Reconsideration, pp. 4-6.)

The above captioned workers' compensation case went to trial on July 7, 2020, November 10, 2020, December 8, 2020, and April 6, 2021. (July 2020 MOH, Minutes of Hearing and Summary of Evidence dated November 10, 2020 (November 2020 MOH), December 8, 2020 (December 2020 MOH), and April 6, 2021 (April 2021 MOH). One of the issues to be tried was,

in review of pleadings filed with the Workers' Compensation Appeals Board, as false and/or misleading statements can result in the imposition of sanctions. (See Lab. Code, § 5813, Cal. Code Regs., tit. 8, § 10421.)

³ Defendant Kevin Robledo was dismissed without prejudice on the second day of trial. (Answer, p. 3.) In addition, given the prior default of defendant Philma Chavez, the jury was not offered the option of determining whether Philma Chavez was applicant's employer. (*Id.*, p. 3, fn. 2.)

“1. Employment. THE MINUTES SHALL REFLECT that employment is disputed by all Defendants appearing today.” (July 2020 MOH, p. 3.)

At the beginning of trial, defendants and UEBTF requested that trial be continued “because of the raising of a collateral estoppel issue based on a related civil case in Los Angeles Superior Court, BC562564.” (July 2020 MOH, p. 2.) The WCJ found no good cause to grant the continuance “because the parties will have ample opportunity between now and the next trial date to brief that issue if they wish to.” (*Ibid.*) Defendant filed a “Pocket Brief” on November 6, 2020 stating that although “UEBTF seeks to use the jury’s finding in the Civil Action as res judicata/collateral estoppel as to the issue of whether the Moving Defendants were Applicant’s employers,” the jury verdict in the civil action remained interlocutory, i.e., not yet final, and therefore could not serve as the basis for res judicata or collateral estoppel. (Defendants’ Pocket Brief, November 6, 2020, p. 4.)

The WCJ issued the F&A on June 15, 2021, finding in pertinent part that on the date of injury, applicant was employed by Philma Alvarez aka Philma Chavez, but was *not* employed by Hector Chavez, Avalon Foods, Inc., Edward Younan, or Kevin Robledo. (F&A, Finding of Fact no. 2.) This finding was clarified in the Opinion on Decision wherein the WCJ stated:

One of defendant UEBTF’s primary contentions arises in connection with a recent and apparently unconcluded civil trial involving Avalon Foods, Inc. arising from the same injury. UEBTF has presented a docket entry and other materials showing that the jury in that case issued a “special verdict” which gave an affirmative answer, by a 10 to 1 vote to the question of whether “Avalon Foods” was the applicant’s employer at the time of the injury. (On the same date, the same jury voted 8-3 that Ed Younan was also the applicant’s employer.)

UEBTF now asserts these special verdicts somehow have a collateral estoppel effect on the present matter. With all due respect, I believe this issue to be arguably frivolous. It is quite evident from the docket entries placed in evidence (Exh. W) that this was merely an interlocutory determination of the jury and that the case was ongoing after that date. There is no indication anywhere that this finding has been reduced to a final judgment that is now immune from appellate attack.

Accordingly, as correctly noted in codefendant’s self-styled “pocket” trial brief, UEBTF cannot sustain their burden of demonstrating that this non-finalized jury verdict in a related, still-pending civil matter has a preclusive or collateral estoppel effect on a similar or even on an identical employment issue in this case. (citations) (F&A, Opinion on Decision, pp. 10-11.)

Applicant admits that the WCAB is not bound by the jury verdict, but seeks reconsideration and rescission of the F&A based on the doctrine of collateral estoppel, or at least the spirit behind the doctrine to avoid “a scenario where the same parties receive inconsistent results in different venues on the same legal issue.” (Petition for Reconsideration, pp. 4-5.)

DISCUSSION

There is no dispute that the jury verdict in the civil case is not yet a final judgment. In addition, both the jury verdict and the F&A in this matter are still subject to appellate review. Consequently, neither decision is currently sufficient to support the imposition of claim preclusion (*res judicata*) or issue preclusion against one or the other tribunal.⁴

Issue preclusion prohibits the relitigation of issues argued and decided in a previous case, even if the second suit raises different causes of action. (*Mycogen, supra*, 28 Cal.4th at p. 896.) Under issue preclusion, the prior judgment conclusively resolves an issue actually litigated and determined in the first action. (*Boeken, supra*, 48 Cal.4th at p. 797.) There is a limit to the reach of issue preclusion, however. In accordance with due process, it can be asserted only against a party to the first lawsuit, or one in privity with a party. (*Bernhard v. Bank of America, supra*, 19 Cal.2d at p. 812.)

...

In summary, issue preclusion applies (1) **after final adjudication** (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 [272 Cal. Rptr. 767, 795 P.2d 1223]; *Vandenberg*, at p. 828; *Teitelbaum Furs, supra*, 58 Cal.2d at p. 604.) (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824-825 [2015 Cal. LEXIS 4652], italics in the original, bold added.)

⁴ The terms “collateral estoppel” and “issue preclusion” have been used interchangeably in the past. In 2015, the California Supreme Court determined that to avoid confusion, the term “issue preclusion” should be used when describing “collateral estoppel.” (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824 [2015 Cal. LEXIS 4652] (*Faerber*)). “We have sometimes described ‘res judicata’ as synonymous with claim preclusion, while reserving the term ‘collateral estoppel’ for issue preclusion. (See *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 [123 Cal. Rptr. 2d 432, 51 P.3d 297] (*Mycogen*)). On occasion, however, we have used the term ‘res judicata’ more broadly, even in a case involving only issue preclusion, or collateral estoppel. (See *Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 813 [122 P.2d 892].) We are not the only court to sometimes use the term ‘res judicata’ with imprecision. (See, e.g., *Migra v. Warren City School Dist. Bd. of Ed.* (1984) 465 U.S. 75, 77, fn. 1 [79 L. Ed. 2d 56, 104 S. Ct. 892].) To avoid future confusion, we will follow the example of other courts and use the terms ‘claim preclusion’ to describe the primary aspect of the res judicata doctrine and ‘issue preclusion’ to encompass the notion of collateral estoppel...” (*Faerber, supra*, at p. 824)

We therefore decline to grant reconsideration on the basis that the jury verdict in the civil case precludes the WCJ's findings related to applicant's employment on the date of injury.

However, the unique circumstances of this case necessarily raise an issue of concurrent jurisdiction that was unfortunately not addressed by the WCJ before trial proceeded in this matter. (See *Scott v. Industrial Acci. Com.* (1956) 46 Cal.2d 76 [1956 Cal. LEXIS 155]; *Taylor v. Superior Court of Los Angeles County* (1956) 47 Cal.2d 148, 149 [1956 Cal. LEXIS 262].) There appears to be no dispute that applicant's claim falls within the Uninsured Employers Fund provisions of the Labor Code⁵ (Lab. Code, § 3710, et seq.). Labor Code section 3715, subdivision (a), permits such an applicant to file both a civil claim and a workers' compensation claim.

- (a) Any employee, except an employee as defined in subdivision (d) of Section 3351, whose employer has failed to secure the payment of compensation as required by this division, or his or her dependents in case death has ensued, **may, in addition to proceeding against his or her employer by civil action in the courts as provided in Section 3706, file his or her application with the appeals board for compensation** and the appeals board shall hear and determine the application for compensation in like manner as in other claims and shall make the award to the claimant as he or she would be entitled to receive if the employer had secured the payment of compensation as required, and the employer shall pay the award in the manner and amount fixed thereby or shall furnish to the appeals board a bond, in any amount and with any sureties as the appeals board requires, to pay the employee the award in the manner and amount fixed thereby. (Lab. Code, § 3715(a), emphasis added.)⁶

This is precisely what applicant did in this matter. Here, applicant filed the civil case and the Application against the same defendants, both of which alleged harm resulting from the same injury accident of January 11, 2014. (UEBTF Exh. T, pp. 3-5; Application.) Normally, when an injured worker files both a civil action and a workers' compensation claim, the only point of concurrent jurisdiction between the tribunals is the jurisdiction to determine jurisdiction:

[T]he two tribunals involved...do *not* have concurrent jurisdiction over the whole of the controversy, and one of them will be without jurisdiction to grant

⁵ All further references are to the Labor Code unless otherwise noted.

⁶ There do not appear to be facts in this case suggesting that applicant's duties included work incidental to the ownership, maintenance, or use of any residential dwelling owned or occupied by the alleged employers pursuant to section 3351, subdivision (d). Section 3706 states: "If any employer fails to secure the payment of compensation, any injured employee or his dependents may bring an action at law against such employer for damages, as if this division did not apply." (Lab. Code, § 3706.)

any relief whatsoever, depending upon whether or not the injuries were suffered within the course and scope of an employment relationship and so covered by the workmen's compensation laws...the only point of concurrent jurisdiction of the two tribunals appears to be jurisdiction to determine jurisdiction; jurisdiction once determined will be exclusive, not concurrent." (*Scott, supra*, 46 Cal.2d at pp. 82-83.)

However, in the unique circumstances of workers' compensation claims involving uninsured employers and the UEBTF, the Workers' Compensation Appeals Board (WCAB) does not possess exclusive jurisdiction over the controversy. Thus, when a workers' compensation applicant files a civil action pursuant to sections 3706 and 3715, as well as a workers' compensation claim against the same parties for the same work injury, we must consider the "[g]eneral principles applicable to controversies in which the same parties and the same subject matter are involved..." (*Scott, supra*, 46 Cal.2d at pp. 81.)

General principles applicable to controversies in which the same parties and the same subject matter are involved are these: **When two or more tribunals in this state have concurrent jurisdiction, the tribunal first assuming jurisdiction retains it to the exclusion of all other tribunals in which the action might have been initiated.** Thereafter another tribunal, although it might originally have taken jurisdiction, may be restrained by prohibition if it attempts to proceed. (citations) **One reason for the rule is to avoid unseemly conflict between courts that might arise if they were free to make contradictory decisions or awards at the same time or relating to the same controversy; another reason is to protect litigants from the expense and harassment of multiple litigation.** (*Greene v. Superior Court* (1951), *supra*, 37 Cal.2d 307, 311, 312; *Simmons v. Superior Court* (1950), 96 Cal.App.2d 119, 130 [214 P.2d 844, 19 A.L.R.2d 288]; *Gorman v. Superior Court* (1937), *supra*, 23 Cal.App.2d 173, 178.) (*Scott, supra*, 46 Cal.2d at pp. 81-82, emphasis added.)

Here, the civil case was brought against the same defendants as in the above captioned matter, and alleged harm resulting from the same injury accident of January 11, 2014. (UEBTF Exh. T, pp. 3-5.) The civil complaint was filed on October 30, 2014, and the Application was filed on November 20, 2014. In addition, filings were commenced in the civil court on February 9, 2015, which was prior to filings in this matter which commenced on February 20, 2015.⁷ Clearly, the

⁷ See *Hollingsworth v. Superior Court* (2019) 37 Cal.App.5th 927, 934-935 [84 Cal.Comp.Cases 718]. ["Here, the superior court exercised jurisdiction first. Plaintiffs' complaint was filed on January 22, 2018, and defendants' demurrer was filed on March 5, 2018. Defendants' WCAB application was filed on March 14, 2018. Under *Scott*, the appropriate tribunal to determine the question of exclusive jurisdiction is the superior court, because that tribunal exercised jurisdiction first."].

Los Angeles Superior court first assumed jurisdiction over these matters, and should therefore retain jurisdiction of issues over which both tribunals may exercise jurisdiction, i.e., where there is concurrent jurisdiction. (See *Scott, supra.*)

The civil case was bifurcated into two phases: phase I of the civil case was to determine who applicant was employed by on the date of injury, and was tried to jury verdict between October 21 and October 24, 2019. The phase I jury verdict recorded in the civil case found that applicant was employed by defendants Avalon Goods, Inc., and Edward W. Younan. (UEBTF Exh. Y.)⁸

Nine months later, this matter proceeded to trial on the identical issue determined in phase I of the civil trial. After four days of trial, the WCJ issued findings contradictory to the civil trial's jury verdict, i.e., that applicant was *not* employed by defendants Avalon Goods, Inc., and Edward W. Younan. As a result, in addition to duplicative proceedings on the issue, there now exists the very "unseemly conflict between courts" meant to be avoided in cases involving concurrent jurisdiction. (*Scott, supra*, 46 Cal.2d at p. 81.)

On the first day of trial, July 7, 2020, defendant and UEBTF both requested a continuance because the civil case raised the potential for issue preclusion as to the employment issues determined by the jury on October 24, 2019 (see UEBTF Exh. Y). In other words, the continuance was requested in order to avoid contradictory decisions between the tribunals by allowing the civil case to proceed to a final decision as to who applicant was employed by on the date of his injury. This was a sound request and stated good cause for a continuance, or more specifically, a stay of proceedings pending finality of the civil court proceedings on this issue. (See *Scott, supra*, 46 Cal.2d. at p. 83 [superior court determinations "are res judicata in all subsequent proceedings...between the same parties or those privy to them. (citations)"].)

We therefore grant reconsideration in order to rescind the F&A and to defer proceedings related to the issue of employment in this matter pending final judgment in phase I of the civil case.

Accordingly, Los Angeles Superior Court exercised jurisdiction prior to the WCAB, and therefore retains jurisdiction over the issue of concurrent jurisdiction at issue herein, i.e.,

⁸ Phase II of the civil case was set to "deal with AOE/COE, negligence, and damages." (Answer, p. 3.) Phase II of the civil case is currently in pre-trial litigation. (UEBTF Exh. W.) For reasons of due process, we currently make no findings as to whether there are issues involved in phase II over which both tribunals may exercise jurisdiction, i.e., where there is concurrent jurisdiction. (*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).

employment. We therefore grant applicant's Petition for Reconsideration in order to recognize that retention of jurisdiction and to prevent any further "unseemly conflict between courts," or any further duplicative litigation. It is our decision after reconsideration to rescind the F&A in its entirety, and to issue an order deferring proceedings in this matter related to the issue of employment pending final judgment in Phase I of the civil case.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Award issued on June 15, 2021 by a workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued on June 15, 2021 by a workers' compensation administrative law judge is **RESCINDED**.

IT IS FURTHER ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that proceedings in the above captioned matter related to the issue of employment are **DEFERRED** pending final judgment in phase I of the bifurcated matter of *Jorge Guzman Jr. vs. Hector Chavez et al.*, Los Angeles Superior Court case number BC562564, wherein the sole issue for determination was which individual and/or entities employed applicant on the January 11, 2014 date of injury.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DEIDRA E. LOWE, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 10, 2021

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

**JORGE GUZMAN, JR.
LAW OFFICES OF ALEXANDER J. PEREZ
WILLIAMS, BECK & FORBES
HECTOR CHAVEZ
PHILMA ALVAREZ
HECTOR CHAVEZ AND PHILMA ALVAREZ DBA HECTORS CATERING
ANDERSON & ASSOCIATES
OD LEGAL LOS ANGELES, UNINSURED EMPLOYERS BENEFITS TRUST FUND**

AJF/abs

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