

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

JOSE VELASQUEZ, *Applicant*

vs.

**THE SALVATION ARMY; COUNTY OF SANTA BARBARA, administered by
CORVEL CORPORATION, *Defendants***

**Adjudication Number: ADJ11436476
Santa Barbara District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration filed by applicant Jose Velasquez. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the July 1, 2019 Findings of Fact and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant was not an employee of the Salvation Army or the County of Santa Barbara (the County).

Applicant contends that Labor Code¹ section 3301, subdivision (b), is not applicable because the Salvation Army was not acting *solely* as applicant's sponsor. Applicant further contends that applicant should be found an employee of both the Salvation Army and the County on equitable grounds. Lastly, applicant contends that equity and due process require that a county inmate be protected under workers' compensation laws as a state inmate would be.

We have received an answer from the County. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we affirm the July 1, 2019 Findings of Fact and Order.

¹ All statutory references are to the Labor Code unless otherwise indicated.

FACTS

The facts are not in dispute here. As the WCJ states:

As part of his sentencing agreement with the Superior Court [on October 4, 2017], Applicant was placed on probation with certain terms and conditions. One of these provisions required an in-house or residential treatment program.

Applicant entered the Salvation Army's Adult Rehabilitation Center in Santa Monica, California. As part of his in-treatment regimen Applicant was performing duties in the warehouse at the Salvation Army. Applicant claims injury to various body parts due to the lifting of a dresser. Both defendants, the Probation Department of the County of Santa Barbara and the Salvation Army denied the claim.

After a finding that Applicant was not an employee based upon L.C. § 330 I (b), Applicant files this petition.
(Report, p. 2.)

DISCUSSION

Applicant here stands in an interesting position in that he is not strictly an inmate worker because he is no longer incarcerated nor is he an independent contractor in the general sense because his work emanated from a court order sentencing him to probation with the condition that he enter an in-house residential treatment program. (Defendant Exhibit AA, Sentencing Documents, p. 2.) Both applicant and defendant cite to *G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350-351 [54 Cal. Comp. Cases 80] to support their respective positions. (Petition, pp. 6:4-8:9; Answer, p. 2:10-4:13.) However, *Borello* provided guidance in distinguishing between independent contractors and employees, neither of which fit applicant's circumstances here. We find that *Arriaga v. County of Alameda* (1995) 9 Cal.4th 1055 [60 Cal. Comp. Cases 316] and *Dominguez v. County of Orange* (April 8, 2016, ADJ8935451) [2016 Cal. Wrk. Comp. P.D. LEXIS 180] are more appropriate here.

In *Arriaga, supra*, the California Supreme Court broadened the definition of employment beyond those involved in the traditional contract of hire. (*Arriaga, supra*, 9 Cal.4th 1055.) It found that a person convicted of a crime but not incarcerated who undertakes to perform community service in lieu of paying a fine is an employee protected by workers' compensation law. (*Ibid.*) The applicant in *Arriaga* was assigned by the County through the Sheriff's Department Weekender Program to work for the State as part of her sentence to work off a four

year old speeding ticket. (*Id.* at p. 1059.) The California Supreme Court found that applicant “was in the service of both the County and the State, and both entities received benefit from her work.” (*Id.* at p. 1062.) “She also was under the control of both the County, which had the power to assign her to a job through the weekender program, and the State, which assigned her to the particular task that she was performing at the time of her injury.” (*Id.* at p. 1063.)

In *Dominguez, supra*, the applicant failed a drug test while on probation following incarceration. (*Dominguez, supra*, 2016 Cal. Wrk. Comp. P.D. LEXIS 180.) His probation officer gave him the choice of arrest and returning to the county jail or entering a live-in drug rehabilitation program. (*Ibid.*) The applicant chose the latter. (*Ibid.*) Applicant enrolled in the Salvation Army live-in drug rehabilitation program and was required to work 40 hours per week at their rehabilitation center. (*Ibid.*) Applicant was injured while doing this required work. (*Ibid.*)

The *Dominguez* court found that applicant was not an employee of the Salvation Army because of Labor Code section 3301, subdivision (b), which provides:

(b) Any private, nonprofit organization while acting solely as the sponsor of a person who, as a condition of sentencing by a superior or municipal court, is performing services for the organization. (Lab. Code, § 3301, subdiv. (b).)

The court cited to *Arriaga*, which stated:

The Finance, Insurance, and Commerce Committee, whose chairman authored the amendment that added subdivision (b) to section 3301, provided the following analysis: “Quite often, a person convicted of a minor crime is given the opportunity of performing a certain amount of public service in lieu of a jail sentence. The sentence is normally satisfied by performing services under the sponsorship of a private nonprofit organization. A question has been raised as to whether these convicts are employees of the private nonprofit organization while performing these services. Since these individuals are not technically inmates, they are not eligible for workers' compensation under ... Section 3370 *nor are they 'volunteers' and thereby excluded under Sections 3363.5 or 3363.6.* Accordingly, the purpose of the amendment is to clarify that they are not employees of the sponsoring private nonprofit organization.” (Finance, Ins., and Commerce Com., Summary and Analysis of Assem. Bill No. 44 (1981-1982 Reg. Sess.) Jan. 27, 1981, p. 2, italics added.) The Legislature's belief that persons who perform service in lieu of a jail sentence are not volunteers under the Act, and its enactment of an express exclusion for private, nonprofit organizations that receive such service, supports our conclusion that *Arriaga* is not a volunteer under section 3352, subdivision (i). [That exclusion would be superfluous if the persons it refers to were also

excluded from the Act by section 3352, subdivision (i).] (*Arriaga, supra*, 9 Cal.4th at pp. 1065-1066, emphasis in original.)

The *Dominguez* court also found that applicant was not an employee of the County because the County did not exercise any control over the applicant's work.

Simply put, the Applicant cannot prove that the County of Orange assigned him to work at any location. The Applicant was ordered to attend drug rehabilitation. He was not ordered to work for the Salvation Army or any other entity. The County did not supervise, control, remunerate, provide tools and equipment for, have the right to discharge or in any other respect control the labor of the Applicant. (*Dominguez, supra*.)

We conclude that the case here is similar to *Dominguez, supra*, and for the same reasons set forth in *Dominguez*, we find that applicant here is not an employee of the Salvation Army or of the County. Applicant argues that the Salvation Army was not acting solely as a sponsor and therefore Labor Code section 3301, subdivision (b), does not apply. The panel in *Dominguez* did not make that distinction, nor did the Supreme Court in *Arriaga*, and as such, nor do we.

Accordingly, we affirm the July 1, 2019 Findings of Fact and Order.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that applicant Jose Velasquez's Petition for Reconsideration of the July 1, 2019 Findings of Fact and Order is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 31, 2022

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

**JOSE VELASQUEZ
LAW OFFICES OF DANIEL K. SIMON
ROSENBERG YUDIN & PEATMAN, LLP
BRADFORD & BARTHEL, LLP**

LSM/pc

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