

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

JUAN ALONSO, *Applicant*

vs.

**ANCA SOLAR, INC.; NEW YORK MARINE AND GENERAL INSURANCE
COMPANY administered by LWP CLAIMS SOLUTIONS, INC., *Defendants***

**Adjudication Number: ADJ13021527
Van Nuys 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 workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

With respect to the WCJ's decision to admit into evidence the transcript of the deposition of Pablo Perez, we note that the WCAB is not bound by the statutory or common law rules of evidence (Lab. Code, § 5708), and a WCJ's decision cannot be overturned merely because it relied on evidence not admissible under the common law or statutory rules of evidence as proof of any fact in dispute (Lab. Code, § 5709). Moreover, as the Supreme Court has observed, the WCAB "from its early days, has [been] allowed to receive hearsay evidence and to proceed informally...." (*French v. Rishell* (1953) 40 Cal.2d 477, 481 [18 Cal.Comp.Cases 82, 84]; see also, e.g., *Bland v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 324, 330 [35 Cal.Comp.Cases 513].)

Furthermore, defendant set the deposition of Pablo Perez and had an opportunity to cross examine him. Both applicant and defendant listed the deposition as an exhibit on the Pre-trial Conference Statement. Defendant first objected to the deposition coming into evidence at the trial. The deposition was properly admitted into evidence.

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/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 25, 2022

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

**JUAN ALONSO
PEARLMAN BROWN & WAX
ROSE KLEIN & MARIAS**

MWH/oo

I certify that I affixed the official seal of
the Workers' Compensation Appeals
Board to this original decision on this date.
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REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Defendant has filed a timely, verified Petition for Reconsideration, dated December 29, 2021 with respect to the Opinion on Decision and Findings of Fact, dated December 10, 2021, wherein it was found that Mr. Perez was the general employer and Anca Solar was the special employer for which Mr. Alonso was employed on 1/15/2020.

Petitioner contends:

1. Defendant asserts that Judge Sommer erred in admitting into evidence Mr. Perez's deposition without Mr. Perez's presence at trial, because it constitutes hearsay evidence. Moreover, the applicant did not establish that Mr. Perez was either unavailable for the reasons specified in California Code of Civil Procedure Section 2025.620(c), or that he resided more than 150 miles from where the trial was conducted.

II
FACTS

Juan Alonso, born 1/2/1965, while allegedly employed on 1/15/2020, as a solar system installer, at Phelan, California, claims to have sustained injury arising out of and in the course of employment to his thoracic spine and lumbar spine.

Pursuant to his testimony at trial, Mr. Alonso testified substantially as follows:

He received his training at Grid Alternatives as a solar installer. This is where he met Pablo Perez. His job duties included mounting panels and doing the electrical connections to the panels. He met Mr. Perez in approximately March of 2018 and estimates that he has done 150 jobs for Mr. Perez. At first he was paid cash and was later paid through Zelle, which is a cash transfer app. He was paid daily. He would be paid \$300 a day for electrical installations and \$250 a day for mounting panels. He stated he does the electrical work more often than the structural work.

He stated that Anca Solar is a construction company that sells and installs solar systems. When asked, Mr. Alonso stated that Mr. Perez worked with Anca Solar, took jobs from Anca Solar, and that Mr. Perez would take instructions from Mr. Vega, Anca Solar's owner.

When shown Applicant's Exhibit 3, a photo, he stated this shows the structural side of the installation and that Mr. Perez sent him the picture, which included the address of the construction site. He stated he started the job on January 10th, 2020 where he helped with the mounting of the panels on the roof. He stated that he returned the following Wednesday, January 15th, to do the electrical work. This included running the conduit. He met with the owner to determine access through the attic and that Mr. Perez called Mr. Vega for instructions on the install. Mr. Alonso had to run conduit on the roof as an alternative to running it through the attic. He went up a ladder where he slipped upon a tile and fell to the ground, landing on his bottom and hitting his head. He got to his truck and told Pablo that he fell, and Pablo took him to Desert Valley Hospital where he was treated for his injuries. When asked if he was a licensed contractor, he stated no, nor was he an electrical licensed contractor. He doesn't believe that Pablo was a licensed contractor, nor was he a licensed solar panel installer. He believes that Anca Solar was the general contractor on the job. He stated that the name Anca Solar appeared on Exhibit photos. Mr. Alonso stated that he was paid \$250 for the day he worked on January 10th; however, he wasn't paid for January 15th. This was the last job he did for Pablo. Mr. Alonso estimates that he did approximately eight other jobs for Anca Solar.

When asked if Mr. Perez was licensed on January 10, 2020, he stated he was not aware of him being licensed, that he doesn't really know. Also, he does not know if Mr. Perez had workers' compensation insurance. He reiterated that he was not paid for his work on January 15th, 2020, only for the date of January 10th. (Cross-examination)

Pursuant to the deposition transcript of Pablo Perez, dated 11/24/2020; (Exhibit 2) Admitted into evidence over defendant's objection, and for the reasons stated by applicant counsel.

A. I also used to install solar systems for the companies who would request that I do that for them. (Ibid. p.11)

Q. Okay, Were you an employee of those companies?

A. Well, they would give me the work. They would pay me for what I did, but they never considered me an employee.

Q. How were you being compensated for that work?

A. They would pay me cash.

Q. Okay. Do you remember some of the companies you worked for?

A. Yes. I worked for three companies last year, and I do remember them.

Q. And none of the three companies considered you to be an employee, correct?

A. That's correct. They did not consider me an employee. (Ibid. p.12)

Q. Okay. Were you working as a contractor?

A. No, because I don't have a contractor's license. It was just my labor that I did.

Q. Okay. Do you know a Juan Alonso?

A. Yes. We worked together at several jobs.

Q. Okay. Do you remember the most recent job you worked with Mr. Alonso?

A. Well, we tried to do a job in January. It was with Anca Solar, and when he was getting ready to give me a quote, that's when he had the accident. So we were not able to complete the job.

Q. How did you learn about that job in January?

A. Anca Solar called me to offer me the job, and we went to see it. That's how I got that job.

Q. And before that job in Phelan, have you worked with Mr. Alonso before?

A. Yes.

Q. And when you worked with Mr. Alonso in the past, how were you being compensated for that work?

A. They would pay us cash.

Q. Okay. Would you tender payment to Mr. Alonso for his work? (Ibid. p.14)

A. When the companies didn't want to make two separate payments, they would give me the total amount, and then it was my obligation to give Mr. Alonso the part that was his.

Q. And going back to that project in January 2020 in Phelan, while you were working there, did anybody from Anca Solar visit that project site?

A. The electrician because he was changing an electrical panel.

Q. So it is your testimony that Anca Solar had contacted you to perform solar work at the Phelan job site?

Q. Thank you. But my question was if you remember the name of that person with whom you were talking.

A. Yes, Carlos Vega. He's the one that called me.

Q. Okay. Was anybody from Anca Solar present when you inspected this project site?

A. Yes, the people who were doing the electrical panel.

Q. So it is your testimony that Anca Solar had contacted you to perform solar work at the Phelan job site?

Q. Thank you. But my question was if you remember the name of that person with whom you were talking.

A. Yes, Carlos Vega. He's the one that called me.

Q. Okay. And do you remember what Mr. Vega had said when you said you needed another person to assist you?

A. He told me to find a person, and if I wasn't able to find a person, he was going to be in charge of finding a person.

Q. Were you able to find a person, sir?

A. That's when I tried to do it with Juan, but unfortunately he had that accident when he was going to go and check to see if it was a project he could help me with.

Q. Did Mr. Alonso, prior to the date he injured himself, work at the project site?

A. Yes. He did go for some time, but then he began to feel ill. He had, like, the flu and so he left quicker than he was supposed to. He couldn't continue anymore.

Q. Did you pay Mr. Alonso at all for any time of work he performed at the project site in Phelan?

A. Not for the job in Phelan, but I did pay him money for money that I owed him from prior jobs where they had not been able to pay us yet. So I was paying him that money, but then he had the accident. I never did pay him for the job in Phelan because he was not able to complete that job. He just started it. (Ibid. p.20)

III

DISCUSSION

Defendant objected to admission of Applicant's Exhibit 2 on the basis that there is no evidence that the witness is either deceased, incapacitated, or unavailable. Applicant's attorney responds that Mr. Pablo Perez's whereabouts are unknown to the parties, that he's not a reliable source for them to contact, that he was asked to appear on several conferences before this trial and has failed to appear, and that as a party defendant, he didn't even cooperate with filling out the stips and issues, and as such is considered unavailable for the purposes of his deposition transcript being admitted into the record. (Minutes of Hearing and Summary of Evidence, p. 3)

Pursuant to the testimony of Mr. Alonso and Perez, Mr. Alonso stated that Mr. Perez worked with Anca Solar, took jobs from Anca Solar, and that Mr. Perez would take instructions from Mr. Vega, Anca Solar's owner. Mr. Perez testified that Anca Solar called him to offer him the job (in Phelen), and we went to see it. That's how I got that job. Carlos Vega stated Mr. Perez needed to find a person to help with the job and “[T]hat's when I tried to do it with Juan ...”

Mr. Alonso testified he started the job on January 10th, 2020 where he helped with the mounting of the panels on the roof. He stated that he returned the following Wednesday, January 15th, to do the electrical work. He met with the owner to determine access through the attic and that Mr. Perez called Mr. Vega for instructions on the install. Mr. Alonso had to run conduit on the roof as an alternative to running it through the attic. He went up a ladder where he slipped upon a tile and fell to the ground, landing on his bottom and hitting his head. Mr. Alonso was subsequently treated at Arrowhead Regional Medical Center on January 15, 2020. (Exhibit 1)

If a special employment relationship is found to exist, both employers are jointly and severally liable for any injuries to the employee. *County of Los Angeles v. WCAB (Conroy)* (1981) 46 CCC 1322, 1332; *McFarland v. Voorheis-Trindle Co.* (1959) 24 CCC 216, 217; *Miller v. Long Beach Oil Development Co.* (1959) 24 CCC 77, 78. The employee generally is limited to workers' compensation remedies for injuries received in the course of employment with the special employer, and may not bring a separate tort action against either employer. *McFarland v.*

Voorheis-Trindle Co. (1959) 24 CCC 216, 217; Riley v. Southwest Marine, Inc. (1988) 203 Cal. App. 3d 1242, 1248.

Mr. Alonso, according to his credible and un rebutted testimony was injured after having been hired by Mr. Perez, who was hired to install solar panels on Anca's work-site. Anca's owner, Mr. Vega could have testified to any facts in dispute but was not called by either party. The constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character," would appear to require the deposition transcript of Mr. Perez to come into evidence regarding the issue of employment. (Cal. Const., art. XIV, § 4.)

IV

RECOMMENDATION

The undersigned WCJ respectfully recommends that applicant's Petition for Reconsideration, dated, December 29, 2021 be denied.

Dated: January 6, 2022

ROBERT SOMMER
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE