

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

RASOOL GULAM, *Applicant*

vs.

**PARESH PATEL, an individual,
dba CHULA VISTA EXTENDED STAY, L.L.C.,
HOWARD JOHNSON SUITES; OASIS OUTSOURCING, INC.;
ZURICH INSURANCE, administered by ESIS;
THE DIRECTOR OF INDUSTRIAL RELATIONS,
as administrator of the UNINSURED EMPLOYERS
BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ13350822
San Diego District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
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 Report, which we adopt and incorporate, except as noted below, and for the reasons stated below, we will grant reconsideration, rescind the WCJ's decision, substitute it with new Findings of Fact, that affirm the WCJ's decision as to special and general employment and incorporate the stipulated facts included by the WCJ in the June 8, 2022 decision. However, we strike the Order that Oasis Outsourcing complete the onboarding process for applicant for the reasons stated below.

Workers' compensation law is wholly statutory. (See *DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 389 [58 Cal.Comp.Cases 286].) Therefore, the Workers' Compensation Appeals Board may not issue orders or provide remedies that are not authorized by the Labor Code. Because we find no authority for the Order that Oasis Outsourcing complete the onboarding process for applicant and because we find the order unnecessary given the finding of special

employment, we will strike that Order. We do not adopt or incorporate the report to the extent that it addresses the Order that Oasis Outsourcing complete the onboarding process for applicant.

Labor Code¹ section 3351 defines an “employee” as “every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed...” Section 3357 augments this definition in stating that: “[a]ny person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.” An employer is “every person including any public service corporation which has any natural person in service.” (Lab. Code, §3300(c).)

An employee may have more than one employer. The characteristics of such dual employment are: 1) that the employee is sent by one employer (the general employer) to perform labor for another employer (the special employer); 2) rendition of the work yields a benefit to each employer; and 3) each employer has some direction and control over the details of the work. (See *Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168 [44 Cal.Comp.Cases 134]; *Meloy v. Texas Co.* (1953) 121 Cal.App.2d 691 [18 Cal.Comp.Cases 313]; *Ridgeway v. Industrial Acc. Com.* (1955) 130 Cal.App.2d 841 [20 Cal.Comp.Cases 32]; *Doty v. Lacy* (1952) 114 Cal.App.2d 73 [17 Cal.Comp.Cases 316]; *Caso v. Nimrod Prods.* (2008) 163 Cal.App.4th 881.)

A Professional Employer Organization (PEO) acts as a general employer and typically is an entity that leases back employees to another employer, provides payroll services, and agrees to obtain workers’ compensation coverage for joint employees. Pursuant to section 3602(d), the PEO must be an employer to obtain workers’ compensation coverage for joint employees.

In this case, such a PEO service agreement existed whereby Zurich American Insurance Company provided coverage for Oasis employees and any co-employees employed by Chula Vista and Chula Vista did not have any workers’ compensation coverage independent of a contractual relationship with Oasis. (Joint Exhibits A, B & C.) Moreover, the service agreement stated, “client expressly agrees and understands that no employee shall become employed by Oasis covered by Oasis workers’ compensation insurance or any other benefit or terms and condition of employment, or issued a payroll check, unless the individual has completed I-9 Form, and prior to commencing work for Oasis, completed Oasis Employment Application and W-4 Withholding Form.” (Joint Exhibit B.) However, as stated by the WCJ in the report, “[i]n none of the cases

¹ All further statutory references are to the Labor Code, unless otherwise noted.

where the ‘on boarding’ was delayed was Mr. Patel informed that services were not applicable prior to the onboarding or that the workers’ compensation coverage was not available.” (Report, at p. 6.) “[W]here the subsequent conduct of parties is inconsistent with and clearly contrary to provisions of the written agreement, the parties’ modification setting aside the written provisions will be implied. (*Diamond Woodworks, Inc. v. Argonaut Ins. Co.* (2003) 109 Cal.App.4th 1020, 1038; see also *Wagner v. Glendale Adventist Medical Center* (1989) 216 Cal.App.3d 1379, 1388 (“When one party has, through oral representations and conduct or custom, subsequently behaved in a manner antithetical to one or more terms of an express written contract, he or she has induced the other party to rely on the representations and conduct or custom. In that circumstance, it would be equally inequitable to deny the relying party the benefit of the other party’s apparent modification of the written contract.”).)

We augment the WCJ’s report with the following summary of trial testimony:

Defendant’s PEO supervisor Alesia Davis testified that dates of hire can go back a maximum of three days but there have been instances where there have been delays of more than three days. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 1/4/22, at pp. 8:20-23; 10:5-6.)

Defendant’s PEO garnishment specialist, Barbara De Biasio testified regarding the hiring of employee Margarita Ortiz Tellez as follows: the date of hire was 2016; the paperwork was dated June 12, 2016; Oasis was contacted on July 20, 2016; Mr. Patel was contacted in June of 2017; and the onboarding was confirmed. (MOH/SOE, 4/5/22, at p. 4:23-25.) She also testified, essentially, that onboarding could be done outside the 30-day limit with supervisor approval. (*Id.* at p. 5:5-6.)

Mr. Patel testified as follows:

With regards to new hires, he used to call them in, but he did not have to do that as soon as possible. After 2017 or 2018, his contract person Lori left and so the response from Oasis for new hires was slow. Mr. Patel’s practice is not to immediately fill out the Oasis paperwork when he is doing the hiring because people do not always have the documentation on them. Usually, it takes about two weeks to process a new hire through Oasis. Mr. Gulam was hit by an automobile in the parking lot two days after he was hired. In Mr. Patel’s experience, Oasis does not onboard immediately. They take a couple of days or weeks to complete that process. Oasis knows that Mr. Patel hires the employees first and then does the onboarding. Mr. Patel was never told that workers’ compensation coverage was denied if the employee was not onboarded before

the date of injury. Mr. Patel was never told that the employees had to onboarded before workers' compensation coverage applied.

Mr. Patel has personally paid employees their salary when they were not onboarded. This is because Oasis will ask him to write checks to the employees, and then he updates the information to Oasis. He does not issue a 1099 in those cases. The payments that he makes are moved to Oasis and then Oasis issues a W-2 for the wages. Oasis does not refund any money paid for administration from the date of hire to the date of onboarding. In 2011 Mr. Patel bought the hotel. He does not call Oasis, as they do not answer by telephone. He contacts them by portal or e-mails.

Exhibit B was referenced, which shows a new hire by the name of Margarita Tellez Ortiz. June 28, 2016 was the first date that she worked. The paperwork was sent in on July 12, 2016, and then on July 27, Oasis was contacted and Mr. Patel was told that Ms. Tellez Ortiz was not compatible.

Mr. Patel issued checks to Ms. Tellez Ortiz until Oasis would tell them that the services were begun. In the meantime, Oasis did tell him that services for Ms. Tellez Ortiz were suspended until onboarding; however, he was never told that Ms. Tellez Ortiz was not covered by workers' compensation. He did not issue any 1099 to Ms. Tellez Ortiz, and there was a W-2 issued for Ms. Tellez Ortiz by Oasis. Mr. Patel still paid administrative fees for Ms. Tellez Ortiz. He was charged a \$5 fee prior to onboarding; nothing else changed. He has always been charged from the beginning as if Ms. Tellez Ortiz was onboarded, He did not get a refund.

Regarding Alejandro Quevado Reyes who was hired on August 16, 2017, Mr. Patel paid him directly, as the paperwork was not done and onboarded before he started work. He was never told that Mr. Reyes was not covered by workers' compensation during the interim period, and Mr. Patel paid the administrative charges as if Mr. Reyes had been onboarded from the beginning.

Regarding Jacquez, she was hired April 4, 2018. The paperwork was signed on April 16, 2018, and she was onboarded on April 18, 2018. Mr. Patel was not warned that services were not applicable during the two weeks prior to onboarding. He was not told that Jacquez was not covered by workers' compensation and he still paid the full administrative fees for the interim period and never got a refund for that.

The parties referenced Exhibit E. It states that a new hire by the name of Maria Felix Hernandez was hired March 15, 2018, and completed the paperwork on March 27, 2018. Oasis received the paperwork on March 28, 2018. Mr. Patel was never told there was a problem with him sending paperwork 13 days after the date of hire and was not told that the services were not applicable for 13 days

prior to the onboarding. He still paid full administrative fees and there was no refund for the interim period.

The parties referenced Exhibit F. It states that Guadalupe Cervantes showed a date of hire of July 27, 2018. The paperwork was dated August 4, 2018, and it was sent to Oasis on August 6, 2018. Mr. Patel was not told services were not applicable prior to the onboarding of Ms. Cervantes. He was not told that workers' compensation coverage does not cover her until she had been onboarded.

(MOH/SOE, 4/5/22, at pp. 6:10 – 8:2.)

Finally, we have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the June 8, 2022 Findings and Award and Orders is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that June 8, 2022 Findings and Award and Orders is **RESCINDED** and **SUBSTITUTED** with new Findings of Fact, as provided below:

FINDINGS OF FACT

1. Applicant Rasool Gulam, while employed on June 7, 2020 as a Front Desk Clerk, at Chula Vista, California by Chula Vista Extended Stay, LLC and Oasis Outsourcing, claims to have sustained injury arising out of and in the course of employment.
2. At the time of injury Paresh Patel, an individual dba as Chula Vista Extended Stay, was uninsured for workers' compensation.
3. Oasis Outsourcing was insured by Zurich American Insurance, administered by ESIS.
4. Paresh Patel, an individual, dba Chula Vista Extended Stay, Inc. was the general employer of the applicant at the time of injury.

5. Oasis Outsourcing, Inc. was the applicant's special employer at the time of the injury.
6. No attorneys' fees are assessed as there is no fund against which to assess the fees.
7. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 26, 2022

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

**RASOOL GULAM
ASRA ANJUM, GUARDIAN AD LITEM
GUY LEVY LAW
SIEGEL MORENO & STETTLER
MULLEN & FILIPPI
OFFICE OF THE DIRECTOR-LEGAL UNIT**

PAG/abs

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

- | | |
|--|--|
| 1. Applicant's Occupation: | Front Desk Clerk |
| 2. Applicant's Age: | 31 |
| 3. Date of Injury: | June 7, 2020 |
| 4. Parts of Body Alleged: | Multiple, not currently at issue |
| 5. Identity of Petitioner: | OASIS OUTSOURCING PEO FOR
CHULA VISTA EXTENDED STAY, LLC
dba WYNDHAM HOTEL AND
RESORT; ZURICH INSURANCE; ESIS |
| 6. Timeliness: | Petition is timely |
| 7. Verification: | The Petition is verified. |
| 8. Date of Issuance of Findings & Award: | June 8, 2022 |
| 9. Petitioner's Contention(s): | |
| A. | The evidence at trial does not justify the findings of fact. |
| B. | The WCJ acted without and in excess of their powers with respect to the Order based on erroneous Findings of Fact. |

STATEMENT OF FACTS

It is undisputed that applicant **RASOOL GULAM** was hired by **PARESH PATEL dba CHULA VISTA EXTENDED STAY, LLC** [hereinafter referred to as **PATEL**] who retained supervision and control over Mr. **GULAM**. (See MOH/SOE 4/5/2022 5:25-6:4; 8:2-7; See also Applicant Exhibit 2 (records of **Chula Vista Extended Stay** including pay check, time card, Application, and Oasis Paperwork). **PATEL** did not maintain a separate policy of workers' compensation insurance (See App. Ex. 2), rather they contracted with a PEO, **OASIS OUTSOURCING INC.** [hereinafter referred to as **OASIS**] to provide the payroll, W-2 reporting and workers' compensation coverage (See Joint Defendant's B and MOH/SOE 4/5/2022 Patel Testimony 5:2-9). **OASIS OUTSOURCING, INC.** has refused to provide workers' compensation coverage or defense for **PATEL** on the basis that Mr. **GULAM** was never "on boarded" as required by their contract. This issue was tried on January 4, 2022 and April 5, 2022. A Findings and Award and Order issued on June 8, 2022 finding that **OASIS** complete the onboarding process to extend the workers' compensation coverage to the applicant as the information was readily available and obtainable after the date of hire, up and including the date of injury and through the date of trial.

OASIS insured by **ZURICH AMERICAN INSURANCE COMPANY** administered by **ESIS** disagreed and filed their timely, verified Petition for Reconsideration on June 27, 2022 alleging that the findings of fact were not supported by the evidence at trial and that the Order was thus in excess of the powers of the WCJ.

III

DISCUSSION

CONTENTION A: THE EVIDENCE AT TRIAL DOES NOT JUSTIFY THE FINDINGS OF FACT.

Pursuant to Labor §3351 an employee is defined as "every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed". Under Labor Code §3357 "Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee".

It is undisputed that applicant was hired by **PARESH PATEL/CHULA VISTA EXTENDED STAY** who retained supervision and control over Mr. **GULAM**. (See MOH/SOE 4/5/2022 5:25-6:4; 8:2-7; See also Applicant Exhibit 2 (records of **Chula Vista Extended Stay** including pay check, time card, Application, and Oasis Paperwork). **PARESH PATEL individually and as CHULA VISTA EXTENDED STAY** did not maintain a separate policy of workers' compensation insurance (See App. Ex. 2), rather they contracted with a PEO, **OASIS OUTSOURCING INC.** to provide the payroll, W-2 reporting and workers' compensation coverage (See Joint Defendant's B and MOH/SOE 4/5/2022 Patel Testimony 5:2-9). **OASIS OUTSOURCING, INC.** has refused to provide workers' compensation coverage or defense for **CHULA VISTA EXTENDED STAY** on the basis that Mr. **GULAM** was never "on boarded".

There is not a fundamental dispute about the facts. The WCJ evaluated the evidence, documentary and testamentary and found that the failure to "onboard" the applicant by **OASIS** was an error and that the onboarding process should be completed so to as extend insurance coverage to the applicant. The defendants evaluated the same facts and came to the conclusion that **OASIS** was not responsible for onboarding the applicant, thus leaving the provision of workers' compensation benefits to the **UNINSURED BENEFITS TRUST FUND** and **PATEL**. This is a catastrophic injury which would place an under burden upon the State of California and **PATEL**, when **PATEL** utilized a **PEO, OASIS** to ensure compliance with wage and hours laws, workers' compensation and federal and state payroll taxes and documents. The basic facts are these:

Mr. Patel acquired an ownership interest in **CHULA VISTA EXTENDED STAY** as a limited partner in 2011. In 2017 he acquired a full ownership by buying out his other partners, one of whom was Dinesh Koret and the other was Blit Koret. Blit and Dinesh Koret were the ones that contracted with **OASIS** and signed the original contract. Mr. **Patel** had never seen the contract before the incident to Mr. **GULAM** on June 7, 2020 (MOH/SOE 4/5/2022 9:4-7).

Throughout the relationship with **OASIS OUTSOURCING** Mr. **Patel's** practice was to interview individuals and start them the same day or the next after filling out an initial application because the industry has a hard time keeping employees. He asks for identification, sometimes

people have identification on them and sometimes they do not. Mr. **Patel** has them fill out the paperwork and then bring the documentation after they start. This is the same procedure he used for Mr. **Gulam**. Mr. **Patel** then makes copies of the documents to provide them **OASIS**, which would include the documentation and identification. (See **OASIS/ZURICH Ex. NN**, includes exhibits AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, LL, MM and KK (Summary Sheet of All employees)).

In this instance, Mr. **Gulam** had a passport from the Republic of India. **Patel** asked for a Social Security Number, green card or US Passport. Mr. **Gulam** said he would bring those in. After **Gulam** filled out the application, on June 5, 2020 (Application signed 6/5/2020 App. Ex. 2). **Patel** allowed him to work. (MOH/SOE 4-5-2022 **Patel** 8:2-9:19).

Patel contacted **OASIS** the day after the accident on June 7, 2020. **OASIS** did not answer the phone. He submitted **Gulam's** documents on June 19, 2020. (MOH/SOE **Patel** 9:20-25; Ex. 7; Def. **OASIS/ZURICH Ex. LL** and part of **NN**). **Patel** remembers 1-2 emails from **OASIS** regarding the missing paperwork. These were from Caroline. He also spoke with Kelly Watkins in July of 2020. He also spoke with Ms. Kapoor attorney for defendants **OASIS** and **ZURICH**. They told him not to contact Mr. Levy or Mr. **GULAM**. He was left with no way to get the missing documentation (MOH/SOE 4-5-2022 **Patel** 10:1-12).

OASIS admits receipt of the paperwork, but rejected it because additional information was needed. There was no outreach to obtain the information to complete the onboarding process even though this was done for several other employees. (See 1/4/2022 Cross Examination Aleisia Davis MOH/SOE 1/5/2022 9:21-10:3; Cross-Examination of Barbara De Basia MOH/SOE 4/5/2022 4:23-5: 1; and MOH/SOE 4/5/2022 Def. **Patel** 7: 3-8:9 and **Patel** Exhibits A (Tellez), B (Reyes), C (Joel Jacquez), E (Maria Felix Hernandez), F (Guadalupe Cervantes). In none of the cases where the "on boarding" was delayed was Mr. **Patel** informed that services were not applicable prior to the onboarding or that the workers' compensation coverage was not available. Mr. **Patel** was charged the same fees as if the employees had been "on boarded" immediately. The failure to onboard based on missing information on the I-Form is a ruse as **OASIS OUTSOURCING** was not responsible for verifying employment status for the employees. Further workers' compensation coverage is not dependent on the immigration status of the employee. As **PATEL** relied on **OASIS** to provide the workers compensation and other services, they should be estopped from denying "coverage" after the injury occurred.

Therefore, **OASIS OUTSOURCING, INC.** should is responsible for onboarding Mr. **GULAM** immediately; and providing workers' compensation coverage as of the date of hire. This Contention should be denied.

CONTENTION B: THE WCJ ACTED WITHOUT AND IN EXCESS OF THEIR POWERS WITHE RESPECT TO THE ORDER BASED ON ERRONEOUS FINDINGS OF FACT

As the Order for **OASIS** to complete the "onboarding" process and provide insurance coverage was based on the substantial evidence detailed above the WCJ did not act without and in excess of her powers in issuing the Order. Therefore, this Contention should be denied.

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

DATE: July 11, 2022

LINDA F. ATCHERLEY
WORKERS' COMPENSATION JUDGE