

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

**MARITZA CANALES, *Applicant***

**vs.**

**EAST WEST EYE INSTITUTE, INC. and NOVA CASUALTY COMPANY  
ADMINISTERED BY TRISTAR RISK  
MANAGEMENT, *Defendants***

**Adjudication Number: ADJ13571625  
Long Beach 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.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 12, 2023**

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

**MARITZA CANALES  
ROSE, KLEIN & MARIAS, LLP  
BRADFORD & BARTHEL, LLP  
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN, LLP**

**MWH/mc**

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

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION**  
**JUDGE ON PETITION FOR RECONSIDERATION**

**I**

**INTRODUCTION**

- 1. Applicant's Occupation:** Nanny / Housekeeper
- Applicant's Age:** 54 on the DOI
- Date of Injury:** CT ending July 20, 2020
- Parts of Body Claimed:** Neck, back, hips, shoulders, elbows, wrists, hands, psyche, and sleep
- 2. Identity of Petitioner:** Defendant, Nova Casualty
- Company Timeliness:** Yes
- Verification:** Yes
- 3. Date of Findings:** January 25, 2023
- 4. Petitioner's Contentions:** That the finding of joint employment was in error and that employment should solely rest with the homeowner.

**II**

**STATEMENT OF THE CASE AND FACTS**

The Applicant was hired originally by East West Eye Institute (East West), where she worked with the Kurata family on a part time basis as a nanny/housekeeper. East West is an ophthalmological surgical facility, where Dr. Fred Kurata practiced. From there, the Applicant was eventually transitioned to full time employment, where payments came from the company (East West Eye) and from Naomi Kurata (as an individual and Dr. Kurata's wife), simultaneously. Payments to the Applicant eventually transitioned from East West to Premier Practice Management (PPM), with payments also still coming from Naomi Kurata. PPM served as a management company for administrative functions for East West.

During Applicant's employment, she cared for the Kurata's child. Job duties in this regard included teaching the child Spanish, shopping, picking the child up, providing transportation, and other general nanny duties. The Kurata family used their home as a space for East West patients to convalesce after surgery, and the home was also used for business meetings. The Applicant cleaned the convalescent space and the home office meeting space. She also would meet with IT people to have them work on the business computers. Eventually, the Kuratas sold the medical practice and Applicant's employment ended. When this happened, the Applicant's employment with PPM and the Kurata family ended simultaneously. She received a termination notice from PPM, along with a letter of recommendation from Naomi Kurata as an individual, discussing the Applicant's job performance as a nanny.

The matter proceeded to a one day trial on the issue of employment on November 7, 2022. The parties submitted various exhibits, along with testimony from the Applicant and Naomi Kurata. The undersigned then issued a Findings of Fact (FOF), dated January 25, 2023, finding that the Applicant was jointly employed by East West / PPM, with coverage by Nova Casualty Company, and Naomi Kurata as a residential employee, with coverage under the homeowner's insurance policy. It is from this decision that Nova Casualty Company (carrier for East West & PPM, administered by Tristar Risk Management) filed the instant Petition for Reconsideration (Petition).

### **III**

#### **DISCUSSION**

The Petition contains multiple incorrect legal citations.

Petitions for Reconsideration are required to set forth specifically and in full detail the grounds that the final order, decision or award is unjust or unlawful.<sup>1</sup> It is also required that contentions shall be clearly set forth.<sup>2</sup>

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<sup>1</sup> Labor Code §5902

<sup>2</sup> CCR § 10945

The Petition relies on the “Fieldhouse” decision, but the citation provided directs the undersigned to an entirely different case discussing Permanent Disability and res judicata.<sup>3</sup> The Petition then inaccurately cites to “Fieldhouse” again. (Petition, Page 3, Lines 14-15 & Line 26).

The Petition then relies on the “Janda” decision, but the citation provided is also incorrect. (Petition, Page 5, Lines 19-20). The citation leads to an entirely different case discussing scope of employment and tortious acts, nothing to do with witness credibility or testimony.<sup>4</sup>

The Petition then inaccurately cites to a Findings and Order, when no such document exists. (Petition, Page 5, Lines 18 & 21). Rather, the undersigned issued a Finding of Fact and Opinion on Decision.

The undersigned has had to go to great lengths to verify the numerous inaccurate citations in the Petition to accomplish Due Process. The failure to accurately cite to the record and authority offered in the Petition has made it difficult for the undersigned to properly evaluate the merits of the Petition.

#### An Employment relationship exists with East West / PPM

The Labor Code presumes that anyone performing services for another is an employee.<sup>5</sup> In analyzing the status of an Applicant as an “employee,” the substance and essence of the relationship between the Applicant and the purported employer must be examined.<sup>6</sup> There is no special test, fact, or circumstance that is conclusive in the analysis; each case must be examined on its own peculiar facts and circumstances.<sup>7</sup> An Applicant can be subject to joint employment, where two or more people engage the services of the Applicant and the Applicant is subject to the control of both.<sup>8</sup> Additionally, joint employment exists where services are performed for the mutual benefit of two or more persons.<sup>9</sup>

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<sup>3</sup> The citation provided in the Petition, 68 Cal.Comp.Cases 1212, directs the undersigned to the following case: Foster Farms v. Workers' Compensation Appeals Bd., 68 Cal. Comp. Cases 1208 (Cal. App. 5th Dist. July 10, 2003).

<sup>4</sup> The citation provided in the Petition, 11 Cal.Comp.Cases 212, directs the undersigned to the following case: CARR v. WM. C. CROWELL CO., 11 Cal. Comp. Cases 212 (Cal. July 30, 1946).

<sup>5</sup> Labor Code §3357

<sup>6</sup> Pruitt v. Workers' Comp. Appeals Bd., 261 Cal. App. 2d 546, 552

<sup>7</sup> Schaller v. Industrial Acc. Com., 11 Cal.2d 46, 52; Bates v. Industrial Acc. Com., 156 Cal.App.2d 713, 719

<sup>8</sup> See National Auto. & Casualty Ins. Co. v. Industrial Acci. Com., 80 Cal. App. 2d 769 (Cal. App. 2d Dist. July 8, 1947)

<sup>9</sup> de Avila v. Holy Care Group, 2014 Cal. Wrk. Comp. P.D. LEXIS 277, 12 (Cal. Workers' Comp. App. Bd. May 27, 2014)

It is undisputed that the Applicant received payments from East West / PPM and was on the payroll of these entities after being formally hired by them. The entities paid her, provided deductions in the payments, and provided additional benefits to the Applicant. It is well established that employment follows payroll in California workers' compensation matters. Moreover, PPM provided the Applicant's termination notice. (Defendant's Exhibit C).

The Applicant's work conferred a benefit on the employer. She testified that she cleaned and prepared space in the Kurata family home that served as a convalescent space for the medical facility's patients. (MOH/SOE, Page 6, Lines 9-16). Additionally, she prepared the home office space for meetings and also worked with the IT support people to let them in to work on the computers. (MOH/SOE, Page 8, Lines 1-5). These actions were a direct benefit to the corporate entities East West / PPM and were distinct from any actions in caring for the Kurata family child.

The argument that the Kurata family was using the corporate entities as an "alter ego" for their own personal purposes is not persuasive. The assertion that the employment arrangement here was to facilitate an avoidance of paying fair overtime wages is unsupported by the record. The effect of the employment arrangement may have potentially resulted in noncompliance with overtime laws, but there is nothing showing that this was the intent of this employment arrangement. As stated in the underlying Opinion, nothing shows any intent in this regard, and an equally reasonable inference regarding this arrangement is that this was just a poor human resources practice facilitated between a corporate entity and a homeowner employer.

Moreover, the amount of overtime payments was not mischaracterized, despite the Petition's assertions to the contrary and instead may be imprecisely phrased. The undersigned also notes that the Minutes of Hearing and Summary of Evidence (MOH/SOE), dated November 7, 2022, was served by the court reporter on November 15, 2022. No objection was tendered to the MOH/SOE and no request for any correction was made. The "pay rate" would change in the sense that it would then be \$25.00 per hour changed to personal check by Naomi Kurata, instead of formal paycheck. This does not demonstrate a "misunderstanding of the facts" as asserted by the Petition. Irrespective of this tangential discussion, it does not change the analysis and result herein.

On balance, there is a sufficient connection between the Applicant and East West / PPM to support a finding of employment.

Naomi Kurata was a credible witness

The trial judge is the sole determiner of witness credibility.<sup>10</sup> The undersigned was able to observe the witnesses making their statements while testifying in connection with their demeanor making them.<sup>11</sup>

Generally, Naomi Kurata presented in a straightforward and forthright manner. She seemed genuine and forthcoming in her testimony. The Petition's assertions that the witness contradicted herself regarding her credentials is misplaced. The witness did testify that she was the CFO for the corporate entities, but upon cross-examination clarified that she was an independent contractor and that the title was essentially in theory. This line of testimony is not the objective contradiction that the Petition asserts that it is. When this testimony was taking place, the witness spoke in a calm, collected, and sincere tone. The undersigned observed this line of questioning closely and the witness did not display any hallmarks of someone being impeached.<sup>12</sup>

Additionally, the Petition's further assertion of impeaching her own testimony by saying that she could not be CFO of East West because it was a medical organization is misplaced. Instead, the presentation portrayed someone who used the terminology casually and colloquially, so the cross-examination served as clarification of the testimony rather than impeachment.<sup>13</sup> The Petition's assertion that the witness was not credible because the Applicant did not see people coming and going for business purposes is misplaced as well. The Applicant not seeing people coming and going for business purposes does not establish that it did not happen, it just establishes that she did not observe it. No other substantial evidence is offered in this regard.

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<sup>10</sup> Schmidt v. Superior Court, 44 Cal. App. 5th 570, 582

<sup>11</sup> Garza v. Workers' Comp. Appeals Bd., 3 Cal. 3d 312, 318-319

<sup>12</sup> The undersigned would expect someone being untruthful to be not making eye contact, shifting around in their seat, changing the tone of their voice, and/or displaying other behaviors that portray untruthfulness.

<sup>13</sup> Many such instances of this exist in the practice of workers' compensation law in California. E.g., parties often refer to court appointed physicians under LC 5701 as Independent Medical Evaluators / IME, when in reality the current proper name per the code would be a Regular Physician

**IV**  
**CONCLUSION**

In conclusion, the evidence is sufficient to establish employment with East West / PPM and the undersigned respectfully recommends that the Petition for Reconsideration be DENIED.

DATE: March 1, 2023

**Michael Joy**  
WORKERS' COMPENSATION JUDGE

Served by mail/email on all parties listed on the  
Official Address record/Proof of Service.

ON: March 1, 2023  
BY: *Danielle Williams*