

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

**LUIS FIGUEROA, *Applicant***

**vs.**

**GREEN ZONE TRUCKING, INC.; PACGRAN, INC., and UNINSURED EMPLOYERS  
BENEFITS TRUST FUND (UEBTF), *Defendants***

**Adjudication Number: ADJ8894930  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant Uninsured Employers Benefits Trust Fund (UEBTF) seeks reconsideration of the Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration issued on January 5, 2024, wherein we rescinded the Findings and Award issued on October 10, 2023, and substituted findings that omitted the findings that UEBTF has no liability and that liability is found “only” as to Green Zone Trucking.

Defendant contends that we erred by (1) rescinding the findings that UEBTF has no liability and that liability is found “only” as to Green Zone Trucking; (2) failing to read Labor Code section 3716(b) to preclude UEBTF from derivative liability upon a showing that an alleged second employer is legally insured; and (3) concluding that the equities did not lie with imposing the burden of enforcing the award against Green Zone Trucking upon applicant.

We received an Answer from applicant.

We have reviewed the contents of the Petition and the Answer. Based upon our review of the record, and for the reasons discussed below and in our January 5, 2024 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration which we incorporate herein, we will deny the Petition.

We turn first to defendant’s contention that we erred by rescinding the findings that UEBTF has no liability and that liability is found “only” as to Green Zone Trucking. Specifically, defendant argues that because (1) applicant and Green Zone Trucking stipulated at trial herein that applicant was employed by both Green Zone Trucking and Pacgran at the time of his injury; (2)

WCJ Brotman previously concluded that applicant was employed by both of those parties but failed to issue a finding to that effect through an “oversight”; and (3) we did not disturb the stipulated finding that applicant was employed by both Green Zone Trucking and Pacgran, UEBTF may not be held derivatively liable for Green Zone Trucking. (Petition, p. 6:25.)

Here, as we previously explained, Pacgran was released from liability based upon a good faith dispute over whether it employed applicant prior to the trial on the issue of employment held by WCJ Brotman and prior to the trial herein at which applicant and Green Zone Trucking stipulated (and the WCJ accepted) that both Green Zone Trucking and Pacgran employed applicant. (Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, January 5, 2023, pp. 4, 8.)

Because Pacgran’s release preceded these trials, neither WCJ Brotman nor the WCJ herein could exercise jurisdiction over it and, therefore, the WCJs’ conclusions and acceptance of the remaining parties’ stipulation as to Pacgran’s status are without legal effect. It follows that WCJ Brotman’s decision not to issue a finding that Pacgran employed applicant was not the result of “oversight” but because to do so would have been error.

Accordingly, we discern no merit to defendant’s contention that we erred by rescinding the findings that UEBTF has no liability and that liability is found “only” as to Green Zone Trucking.

We next address defendant’s contention that we erred by failing to read Labor Code section 3716(b) to preclude UEBTF from derivative liability upon a showing that an alleged second employer is legally insured.

Here, defendant argues that since Labor Code section 3716(b) precludes UEBTF from derivative liability on cumulative injury claims unless the injured worker demonstrates that none of his or her employers during the period of injury held workers’ compensation insurance, it must follow that the Legislature also intended to preclude UEBTF from derivative liability on specific injury claims unless applicant demonstrates that none of his two alleged employers held workers’ compensation insurance.

However, Labor Code section 3716(b) explicitly states that it is the Legislature’s intent to limit UEBTF’s derivative liability with respect to cumulative injury claims—and expresses no intent to limit UEBTF’s derivative liability with respect to specific injury claims, including claims in which an unproven allegation has been made that an injured worker had a second, insured employer on the date of injury.

And as we have explained, we read Labor Code section 3716(b)'s explicitly stated intent to limit UEBTF's derivative liability with respect to cumulative injury claims on the one hand, and silence as to specific injury claims on the other, in the context of the Legislature's overall intent to create an immediately available fund so that employees of illegally uninsured employers may not be deprived or subjected to delay of compensation. (Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, January 5, 2024, p. 9 (citation omitted).) Hence our view is that "[s]omething more than legislative silence . . . is necessary to justify an interpretation inconsistent with the statutory scheme and legislative history." (See *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 981 [ 90 Cal.Rptr.2d 260] (citing *People v. Daniels* (1969) 71 Cal.2d 1119, 1127-1128 [80 Cal.Rptr. 897]).)

Lastly, we address defendant's contention that we erred by concluding that the equities did not lie with imposing the burden of enforcing the award against Green Zone Trucking upon applicant. Specifically, defendant argues that applicant should hold the burden of enforcing the award against Green Zone Trucking because he made the "litigation decision" to settle his claim against Pacgran. (Petition, p. 9:11.)

Here, defendant cites no legal support, and we are aware of none, for the proposition that applicant's poor litigation judgment, if any, should serve to balance the equities between the parties.

Additionally, apart from the fact that Pacgran held workers' compensation insurance, defendant avers no evidence that applicant exercised poor litigation judgment by releasing it in exchange for \$50,000.00 from its insurance carrier.

Rather, the record suggests that applicant made his decision with sound basis to conclude his claim against Pacgran had a settlement value of \$50,000.00. After all, he testified "that the location where he worked was the Pacgran warehouse, but he worked for Green Zone Trucking and was paid and controlled by Green Zone . . . [and] both employers took the position that the applicant was an independent contractor and relied upon a written agreement which so stated." (Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, January 5, 2024, p. 4.)

Accordingly, we discern no support for defendant's contention that we erred by concluding that the equities did not lie with imposing the burden of enforcing the award against Green Zone Trucking upon applicant.

Accordingly, we will deny the Petition.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration of Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration issued on January 5, 2024 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

I CONCUR,

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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



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

**APRIL 2, 2024**

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

**LUIS FIGUEROA  
EQUITABLE LAW  
OFFICE OF THE DIRECTOR – LEGAL UNIT**

**SRO/cs**

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