

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

WALTER AMAYA CANO (Deceased), *Applicant*

vs.

**APEX DESIGN BUILDERS, INC.; BELLA TOLUCA, LLC; NILE NIAMI;
STATE COMPENSATION INSURANCE FUND for APEX DESIGN BUILDERS;
others uninsured, *Defendants***

**Adjudication Number: ADJ659445 (VNO 0538764)
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

Defendant State Compensation Insurance Fund filed a Petition for Reconsideration (Petition) of the Findings of Fact, Orders, and Award issued by the workers' compensation administrative law judge (WCJ) on November 28, 2023.

In that decision, the WCJ found that decedent sustained industrial injury arising out of and in the course of employment on June 30, 2006 resulting in his death. The WCJ further found that applicant was dually employed by Bella Toluca, LLC/Nile Niami and Apex Design Builders, Inc. with joint and several liability.

The WCJ rejected defendant's affirmative defense of intoxication when finding industrial causation for decedent's death, and further found that applicant had three total dependents, his brother, his sister, and his mother. The dependents were awarded the full death benefit of \$320,000, to be divided equally by the dependents, with a special death benefit awarded to decedent's brother to be adjusted by the parties. Reasonable attorney fees of \$48,000 were awarded, payable to decedent's attorney. Burial expenses were also awarded in the sum of \$5,000.

Petitioner contends that the WCJ erred in finding decedent's death to be industrial, that each of the applicants failed to prove dependency, and that decedent's brother did not qualify for the conclusive presumption of dependency under Labor Code¹ section 3501(a) as he was not

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

decedent's child, nor was he entitled to the continuing payment allotted to totally dependent minor children per section 4703.5(a).

Petitioner further contends that decedent's wife was a named applicant in this matter, however there was no finding as to her claim for dependency, and there is no indication that she voluntarily withdrew her claim for a portion of the death benefits.

Applicant filed an Answer to the Petition.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending the petition be granted solely to amend the findings of fact number 10 to state that decedent's brother is not entitled to the special death benefit per section 4703.5, and the findings otherwise be affirmed.

On February 15, 2024, we issued an interim non-final order granting the petition, and further ordered that the matter be referred to a WCJ at the Appeals Board for a status conference.

Thereafter, the parties attended the aforementioned status conference to discuss the issues raised.

On November 27, 2024, the parties advised that a proposed settlement by Compromise and Release (C&R) has been reached in this matter, and signed a stipulation to return the matter to the trial level for review of the proposed settlement, and further proceedings if necessary.

In order to expedite review and approval of the parties' settlement agreement, we will rescind the November 28, 2023 Findings of Fact, Orders, and Award, and return this matter to the WCJ to consider the C&R of the parties. The WCJ may conduct such further proceedings as is deemed appropriate.

Our decision should not be construed as a ruling on the merits of the petition for reconsideration. If the WCJ does not approve the settlement, he can issue an order reinstating his decision and any aggrieved party may timely seek reconsideration from the reinstated decision.

Finally, we commend the parties for successfully resolving this matter by joint agreement, without the need for further action by the Appeals Board.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Orders and Award issued in this matter on October 28, 2023, be **RESCINDED**, and that this matter be **RETURNED** to the workers' compensation administrative law judge to consider the Compromise and Release and for such further proceedings as is deemed appropriate.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 6, 2024

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

**VERONICA CHAVARRIA
SPARAGNA & SPARAGNA
STATE COMPENSATION INSURANCE FUND
TOBIN LUCKS, LLP
OFFICE OF THE DIRECTOR – LEGAL UNIT (LOS ANGELES)**

LAS/abs

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