

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

ADAN ALVAREZ, *Applicant*

vs.

**VICTOR MANUEL MARTINEZ, individually and dba BOB WILLIAMS MOVING;
JUSTINE MARIE MARTINEZ, individually and dba TRI STAR MOVING, *Defendants***

**Adjudication Number: ADJ10037291
Los Angeles District Office**

**OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Applicant Adan Alavarez seeks reconsideration of the October 8, 2024 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant is enjoined from obtaining an award in a workers' compensation proceeding that is enforceable against defendants Victor Manuel Martinez and Justine Marie Martinez, personally, or against the Uninsured Employers Benefits Trust Fund (UEBTF), because applicant failed to file a proof of claim in the bankruptcy proceedings against Victor Manuel Martinez and Justine Marie Martinez.

Applicant contends that the trial court's reliance in *Ortiz v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 392 is misplaced because the employee in *Ortiz*, unlike applicant here, had an award of temporary disability and reimbursement for medical treatment. Applicant further argues laches because UEBTF participated in discovery and was aware of the bankruptcy court's lifting of the automatic stay and applicant's failure to file a proof of claim in the bankruptcy proceedings. Applicant contends UEBTF should have alerted applicant of the requirements set forth in *Ortiz*.

We received an answer from UEBTF. UEBTF contends that per *Ortiz*, once applicant received relief from the automatic bankruptcy stay, applicant was required to file proof of claim in the bankruptcy case. The proof of claim would have acted as a formal demand of payment of

an award against defendants per Labor Code¹ section 3716(a), a prerequisite to UEBT's liability for payment. UEETF contends that if a finding and award issued after the discharge of debts in the bankruptcy proceedings, it is then liable for the difference between the amount of the award and the amount paid by the bankruptcy estate prior to the discharge. UEETF argues that applicant's failure to file a proof of claim in the bankruptcy proceedings precluded the WCJ from making an award of benefits to applicant against defendants, thus precluding the possibility that UEETF would have any liability as its liability is derivative.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we grant reconsideration, rescind the October 8, 2024 Findings and Order, and return this matter to the trial level for further proceedings.

FACTS

As the WCJ stated in his Report:

Applicant, Adan Alvarez, [], while allegedly employed on June 11, 2015, as a mover, at Palos Verdes, California, by Victor Manuel Martinez, individually and doing business as Bob Williams Moving, and Justine Marie Martinez, individually and doing business as Tristar Moving, claims to have sustained an injury arising out of and in the course of employment to his head, bilateral arms, bilateral upper extremities, bilateral lower extremities, ribs, right leg, right elbow, right hand, and right hip. Pursuant to the parties' stipulation, at the time of the above injury the alleged employer was uninsured. Applicant concedes he failed to file a proof of claim in the bankruptcy proceeding against alleged employers Victor Manuel Martinez and Justine Marie Martinez.

On September 24, 2024 the matter proceeded to Trial to address the Petition to Dismiss the Uninsured Employers Fund (UEF) as party defendant with prejudice due to applicant's alleged failure to file a proof of claim in the alleged employer's bankruptcy proceedings.

After reviewing all evidence the undersigned WCJ found applicant failed to file a proof of claim in the bankruptcy proceeding against alleged employers Victor Manuel Martinez and Justine Marie Martinez. Applicant did not strictly meet the statutory conditions that would render the Uninsured Employers Fund

¹ All statutory references are to the Labor Code unless otherwise indicated.

(UEF) liable for payment, and is now enjoined from obtaining an award in a workers' compensation proceeding enforceable against Victor Manuel Martinez and Justine Marie Martinez personally or the UEF. Therefore, the undersigned WCJ found good cause to dismiss applicant's claim with prejudice.

In response to the Findings and Order dismissing applicant's claim with prejudice applicant filed the current Petition for Reconsideration dated October 29, 2024. (Report, pp. 2-3.)

DISCUSSION

I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on November 5, 2024 and 60 days from the date of transmission is Saturday, January 4, 2025. The next business day that is 60 days from the date of transmission is Monday, January 6, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, January 6, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on November 5, 2024, and the case was transmitted to the Appeals Board on November 5, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on November 5, 2024.

II.

Section 3716(a) states:

(a) If the employer fails to pay the compensation required by Section 3715 to the person entitled thereto, or fails to furnish the bond required by Section 3715 within a period of 10 days after notification of the award, the award, upon application by the person entitled thereto, shall be paid by the director from the Uninsured Employers Benefits Trust Fund. . . . (§ 3716(a).)

“It is the public policy of this state ‘to ensure that workers who happen to be employed by illegally uninsured employers are not deprived of workers' compensation benefits’” (*Ortiz, supra*, 4 Cal.App.4th at p. 396 citing § 3716(b).) To render the UEBTF liable, “the primary conditions are that *there be an award* against an employer who has failed to secure the payment of compensation [citation omitted] and a failure by the employer to pay the award or to furnish the bond required by section 3715 within a period of 10 days after notification of such award [citation omitted].” (*Ibid.* citing *Symmar, Inc. v. Workers' Comp. Appeals Bd.* (1982) 135 Cal.App.3d 65, 70-71; emphasis added.)

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

In *Ortiz, supra*, the employee secured a workers' compensation award before the bankruptcy court discharged the employer's debts but failed to file a proof of claim with the bankruptcy court before the discharge. (*Ortiz, supra*, at p. 395.) The Court held that the employee's failure to file a proof of claim in the bankruptcy proceedings enjoined him from enforcing his workers' compensation award against the employer or against UEBTF.

In this case, applicant failed to file a proof of claim in [employer] Capone's bankruptcy proceeding. As a result, applicant was not entitled to receive any payment of his claim from the bankruptcy estate before Capone was discharged from personal liability. As a further consequence, prior to the discharge, applicant never made a proper demand on Capone for payment of an award, a prerequisite to the UEF's liability for payment pursuant to Labor Code section 3716, subdivision (a). That is, applicant did not strictly meet the statutory conditions that would render the UEF liable for payment. Having failed to make a proper demand for payment prior to the discharge of applicant's claim in the bankruptcy proceeding, applicant is now enjoined from obtaining an award in a workers' compensation proceeding enforceable against either Capone personally or the UEF. (*Id.* at pp. 398-399.)

The facts here however are distinguishable from those in *Ortiz*. Of significance, applicant here does not have a workers' compensation award against defendant to trigger the requisite events in section 3716(a) that lead to UEBTF's liability. In other words, there is no compensation award here from which defendant failed to pay within 10 days after the defendant was notified of an award against it. It is also unclear how applicant is supposed to file a proof of claim in the bankruptcy proceedings without an award.

Defendant contends that this situation was addressed in *Ortiz*:

Applicant asserts that *Ortiz* and the present case are distinguishable because in *Ortiz* the WCJ had already issued an award of temporary disability, and reimbursement before the discharge, yet in the present case the defendant's bankruptcy was discharged before an award issued. Applicant ignores that the Court in *Ortiz* directly addressed this situation. The Court in [the] *Ortiz* decision explains that once Applicant receives relief from the automatic stay, Applicant is required to file proof of claim in a bankruptcy case. (*Ortiz* at 397.) The proof of claim would have acted as a formal demand for payment of an award against the Defendants. (*Id.*) The demand is required under Labor Code section 3716, subdivision (a), before UEF's liability for payment arises. (*Id.*) If a finding and award issues after the discharge, UEF is liable for the difference between the amount of the award and that amount paid by the bankruptcy estate, if any, prior to discharge. (*Id.* at 398.) Therefore, Applicant's argument fails. (Answer, p. 6:16-27.)

The *Ortiz* court stated:

Assuming the prerequisites to payment by the UEF have been met, if a findings and award in a workers' compensation proceeding issues prior to a discharge of an employee's claim in bankruptcy, the UEF would pay the award, become a creditor, and thus be able to file its own proof of claim in the bankruptcy proceeding. (Lab. Code, § 3717; 11 U.S.C. § 362(d).) With an exception not applicable here, “discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.” (11 U.S.C. § 524(c).) Thus, a findings and award may issue even after the discharge. (*Matthews Cadillac, Inc. v. Phoenix of Hartford Ins. Co.* (1979) 90 Cal.App.3d 393, 397-398 [153 Cal.Rptr. 267].) If it does, the UEF is liable for the difference between the amount of the award and that amount paid by the bankruptcy estate prior to the discharge. (Lab. Code, § 3716, subd. (a).) The discharge in bankruptcy operates as an injunction prohibiting any proceeding against the employer for personal liability based on the award, however, including the UEF's right to seek reimbursement pursuant to Labor Code section 3717. (11 U.S.C. § 524(a)(1),(2); *Wilcox v. Rohr* (1947) 81 Cal.App.2d 312 [183 P.2d 916].) (*Ortiz, supra*, 4 Cal.App.4th at p. 398.)

The *Ortiz* court explained that a discharge of a debtor's debt does not affect the liability of other entities like UEBTF and that a workers' compensation award may issue after the discharge. The *Ortiz* court, however, did not address whether an employee is required to file a proof of claim in the bankruptcy proceedings in this situation—when there is no workers' compensation award before the discharge.

We find *Slali v. Ruiz* (2002) 282 B.R. 225 [67 Cal.Comp.Cases 634] instructive. In *Ruiz*, just as in this case, the employee did not file a proof of claim in the Chapter 7 bankruptcy proceedings of the employers. (*Id.* at p. 636.) The bankruptcy court entered discharges in favor of both employers as there were no assets to distribute. (*Ibid.*) The employee then petitioned for relief in the bankruptcy proceedings in order to pursue his workers' compensation claims. (*Ibid.*) The bankruptcy court provided such relief and entered an order that (1) allowed the employee to pursue an award against the employers in his workers' compensation case; (2) no personal liability on behalf of the employers to the employee would be created; (3) the employee would not be allowed to seek satisfaction of any award against the employers absent further orders from the bankruptcy court; (4) the employee's claim remained open and pending before the WCAB and had not been resolved or decided; and (5) the employers' participation in the litigation before the WCAB would not be affected by the bankruptcy order. (*Ibid.*)

The bankruptcy court's order was appealed to the United States District Court, which affirmed the bankruptcy court's order. The District Court applied the following test:

In order to obtain modification of the discharge injunction to allow litigation to proceed in another forum, the moving party must establish that (1) the debtor is a necessary party in the pending litigation and dismissal of the debtor will result in the moving party not being able to pursue its remedies against the non-debtors, (2) pursuit of the action with the debtor involved will not impose a financial hardship on the debtor that derogates the sweeping effect of the discharge; and (3) the parties agree that the modification is confined to establishing liability for damages and does not allow pursuit of a judgment against the discharged doctor. (*Ruiz, supra*, 67 Cal.Comp.Cases at p. 637, citing *In re Czuba* (Bkrcty. D. Minn. 1992) 146 B.R. 225, 228–29 and *In re Dorner* (Bkrcty. N.D. Ohio 1991) 125 B.R. 198, 201–02.)

The District Court then found that the employee in *Ruiz* met the test:

(1) “In order to liquidate his claim for worker's compensation benefits, Ruiz must first obtain an award from the WCAB holding his employer liable for his injuries. Thus, Appellants are necessary parties to the litigation before that body. Moreover, Ruiz cannot obtain benefits from the UEF until he has a valid award against his employer, makes a demand for payment, and the award remains unpaid for ten days. [citations omitted] Without a valid award, neither Appellants nor any other party has any obligation to compensate Ruiz for his injuries. Thus, if Ruiz cannot proceed against the debtors before the WCAB, he will have no remedy for whatever work-related injuries he has suffered.” (*Ruiz, supra*, at p. 639);

(2) the litigation before the WCAB will not impose a financial hardship against the employers because the employee will not be able to enforce an award against them. The litigation itself does not impose a financial hardship on the employers. If there is any financial hardship, it will be because a later court may hold that UEBTF's claim for reimbursement is nondischargeable. However, this would have happened whether the employee pursued his workers' compensation claim before or after the discharge and, furthermore, to conclude otherwise would be forcing the employee to pay for the employers' failure to carry workers' compensation insurance as they were legally obligated to do; and

(3) the employee will not be allowed to seek satisfaction of any award against the employers due to the discharge. It would be UEBTF that would seek reimbursement from the employers but as explained above, it would be inequitable to deny the employee from pursuing his workers' compensation claim. (*Ruiz* at pp. 639-640.)

The District Court further explained that although it does not believe that the employee needed relief from the discharge injunction, it was prudent for the employee to seek such relief to serve as a clarification regarding the scope of the discharge injunction and avoid conflict between the workers' compensation and bankruptcy proceedings. (*Ruiz* at p. 638.) A bankruptcy discharge operates as an injunction against any action to collect or recover any discharged debts as a personal liability of the debtor, but it does not affect the liability of any other entity that may be liable for such a debt. (*Ibid.*) "It is well established that this provision permits a creditor to bring or continue an action directly against the debtor to establish the debtor's liability when establishing that liability is a prerequisite to recovery from another entity." (*Ibid.*)

Ruiz instructs us that a failure to file a claim of proof in the bankruptcy proceedings when an employee does not yet have a compensation award from which to file a proof of claim is not fatal. We, therefore, conclude that the trial court's finding that applicant here is enjoined from pursuing his workers' compensation claim was in error. Accordingly, we grant reconsideration, rescind the October 8, 2024 Findings and Order, and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that applicant Adan Alvarez's Petition for Reconsideration of the October 8, 2024 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 8, 2024 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 3, 2025

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

**ADAN ALVAREZ
FEINSTEIN-GELBER LOS ANGELES
OD LEGAL**

LSM/oo

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