

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

ISMAEL ALBARRAN MORALES, *Applicant*

vs.

**COSMIC CONCEPTS dba MEDIA STAR PROMOTIONS;
SELECTIVE INSURANCE COMPANY OF SOUTH CAROLINA,
administered by BROADSPIRE SERVICES, INC., *Defendants***

**Adjudication Number: ADJ14628621
San Diego District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendants, Cosmic Concepts, LTD (Cosmic Concepts), trading as Media Star Promotions, and Selective Insurance Company of South Carolina (Selective Insurance)¹, each seek reconsideration of the October 4, 2024 Findings and Award (F&A) wherein the workers' compensation arbitrator (WCA) found that Cosmic Concepts "did not have insurance by a duly licensed and authorized workers' compensation carrier in California" at the time of applicant's October 29, 2020 work injury and any "extraterritorial coverage divisions" stemming from Selective Insurance's policy with Cosmic Concepts applied only to temporary workers, not permanent employees such as applicant. (F&A and Opinion on Decision, pp. 7, 9-10.; Report, p. 10.)

Defendants contend that whether applicant was a temporary or permanent employee is irrelevant, and per *Hunter v. Louisiana Workers' Compensation Corporation* (2023) 89 Cal.Comp Cases 259, 266 [2023 Cal. Work. Comp. P.D. LEXIS 300] and *Watkins v. New York Giants* [2015 Cal. Wrk. Comp. P.D. LEXIS 291], an insurer need not be an admitted workers' compensation carrier in the state of California to provide coverage.

¹ Selective Insurance filed a Petition for Reconsideration (Petition) on October 28, 2024. On the same date, Cosmic Concepts, dba Media Star Promotions, filed an Amended Petition for Reconsideration (Amended Petition).

We have received an Answer from applicant. The WCA prepared a Report and Recommendation on Petition for Reconsideration (Report) and Amended Recommendation on Petition for Reconsideration (Amended Report), recommending that the Petitions be denied.

We have considered the Petitions for Reconsideration (Petitions), the Answer, and the contents of the Reports, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petitions.

FACTS

From December 31, 2019 through December 31, 2020, Selective Insurance provided an insurance policy to Cosmic Concepts, a Maryland based employer. Under item 3A of the policy, worker' compensation insurance was provided to the following states: Georgia, Indiana, Maryland, Michigan, Missouri, North Carolina, New Jersey, Pennsylvania, Tennessee, and Virginia. (Exhibit A, p. 13.) California was not listed as a covered state under item 3A. Under item 3C of the policy, for "other states insurance," it was noted that the coverage applied to "all states except" North Dakota, Ohio, Washington, Wyoming, and Florida. (Ibid.) California was not listed as an exempted state. As such, California was covered under item 3C.

On August 1, 2020, Cosmic Concepts hired applicant as brand ambassador in California, and on October 29, 2020, applicant sustained an industrial injury to his bilateral hips and knees, neck, back, right arm, pelvis, and psyche. The claim was filed against Cosmic Concepts and Selective Insurance. At the time of the injury, applicant had been working for Cosmic Concepts for 90 days.

On January 1, 2021, claims administrator Broadspire issued a denial notice to applicant indicating that the claim was denied because Selective Insurance was "not licensed" or "admitted to write insurance in the State of California." (Exhibit 1, p.1.) Broadspire deduced that Cosmic Concepts was "either uninsured" or had a "different workers compensation carrier." (Ibid.)

On March 17, 2021, applicant filed a Notice of Special Lawsuit alleging Cosmic Concepts was illegally uninsured.

On June 23, 2021, applicant filed a petition to join the Uninsured Employers Benefit Trust Fund (UEBTF). UEBTF was subsequently joined by the workers' compensation judge on September 28, 2021.

The issue of whether Cosmic Concepts had coverage at the time of injury proceeded to arbitration and on October 4, 2024, the WCA issued a F&A determining that at the time of applicant’s injury, “Cosmic Concepts was not legally insured in the State of California for workers’ compensation coverage.” (F&A, p. 3.) The WCA further explained that since applicant had been working for “90 days at the time of incident,” he was to be considered a permanent employee and therefore did not qualify for extraterritorial coverage under the policy or based upon current case or statutory law as those exceptions applied only to temporary workers. (F&A and OOD, pp. 3, 7-10; Report, p. 5.)

DISCUSSION

I.

Preliminarily, former Labor Code² 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. (Lab. Code, § 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 under the Events tab 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.”

² All further statutory references will be to the Labor Code unless otherwise indicated.

Here, according to Events, the case was transmitted to the Appeals Board on November 7, 2024, and 60 days from the date of transmission is January 6, 2025. This decision was issued by or on January 6, 2025, so that we have timely acted on the petition as required by section 5909(a).

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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on November 15, 2024, and the case was transmitted to the Appeals Board on November 7, 2024. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on November 15, 2024.

However, a notice of transmission was served by the district office on November 7, 2024 which is the same day as the transmission of the case to the Appeals Board on November 7, 2024. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1), and consequently they had actual notice as to the commencement of the 60-day period on November 7, 2024.

II.

Turning now to the Petition, section 3700 provides guidance with respect to workers' compensation coverage requirements for employers in the state of California. It states, in relevant part, that:

Every employer except the state shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof of satisfactory to the Director of Industrial Relations of ability to

self-insure and to pay any compensation that may become due to his or her employees.

(Lab. Code, §3700.)

In the instant case, Cosmic Concepts was not permissibly self-insured. As such, it was required to obtain insurance from an insurer duly authorized to write compensation insurance in the state.

The Insurance Code sets forth the requirements for insurers to become authorized to write policies in California. They include, among other requirements, certain deposits in “order to provide protection to the workers’ of the state in the event the insurers issuing workers’ compensation insurance to employers fail to pay compensable workers’ compensation claims when due.” (Ins. Code, § 11691.) In addition, insurers are expected to become members of rating organizations. (Ins. Code, § 11751.4.) Workers’ compensation insurance policies in California are also subject to regulation by the Department of Insurance (Ins. Code, §§ 11651, 11657, 11658.) and all workers’ compensation policies must “contain a clause to the effect that the insurer will be directly and primarily liable to any proper claimant for payment of ...compensation.” (Ins. Code, § 11651.)

In the instant case, Selective Insurance had apparently not met all of the necessary statutory and regulatory requirements. As such, Selective Insurance admitted that it was not licensed or authorized to write insurance for workers’ compensation in the state of California. (F&A and OOD, p. 3.) The WCA therefore found that at the time of applicant’s October 29, 2020 work injury, Cosmic Concepts “did not have insurance by a duly licensed and authorized workers’ compensation carrier in California.” (F&A and OOD, p. 10.)

Defendants argue that pursuant to *Hunter v. Louisiana Workers’ Compensation Corporation* (2023) 89 Cal.Comp.Cases 259, 266 [2023 Cal. Wrk. Comp. P.D. LEXIS 300] and *Watkins v. New York Giants* [2015 Cal. Wrk. Comp. P.D. LEXIS 291], an insurer need not be an admitted workers’ compensation carrier in the state of California to provide coverage. Defendants contend that per *Hunter* and *Watkins*, “in the absence of a clear exclusion the insurance policy will be read to cover all injuries.” (Amended Petition, p. 6.) As such, defendants argue that “irrespective of the out of state employee’s temporary or permanent work status,” Selective Insurance should be held liable for applicant’s alleged injury as Cosmic Concept’s workers’ compensation carrier. (*Id.*)

We disagree. The holdings in *Hunter* and *Watkins* do not establish that coverage should be found for out-of-state workers irrespective of temporary or permanent work status. In *Hunter*, we agreed with the WCA that the insurer ““need not be licensed to write insurance in the state account in order to have an insurance policy that has extraterritorial coverage for injuries to employees temporarily in another state on business.”” (*Hunter, supra*, at p. 266, emphasis added.) We noted that as per *Watkins*, where a policy is unclear in describing exclusions and limitations on coverage, the policy will be interpreted as including such coverage. In *Watkins*, the issue was whether the insurer in the case was required to indemnify the employer against claims filed by employees temporarily working in California. We held that since the insurer knew or should have known that industrial injuries would have occurred outside of New York, it was not entitled to claim sovereign immunity. In *Watkins*, as in *Hunter*, the applicants were professional athletes required to work temporarily in other states during football games.

In the instant case, applicant had been working for “90 days at the time of his accident.” (Report, p. 4.) As such, the WCA found that applicant was not a temporary worker, but rather, a permanent one. (F&A and OOD, p. 9.) We would tend to agree. Particularly since defendants failed to provide evidence that applicant was in fact a temporary employee, there exists no reason for us to find otherwise.

As a final point, we note that the WCA in his Opinion on Decision and Amended Report indicated that with respect to defendant’s policy, “California would be covered under Section 3C, at least to the extent employees of Cosmic are ‘temporarily’ working in California.” (F&A and OOD, p. 7.; Amended Report, p. 4.) We note that the language of item 3C does not limit coverage under this section to temporary workers. However, as noted above, given that Selective Insurance is not a duly licensed and authorized workers’ compensation carrier in California and therefore cannot provide coverage, this is a moot issue. Accordingly, we deny defendants’ Petitions for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant Cosmic Concepts, LTD., trading as Media Star Promotions' Petition for Reconsideration of the October 4, 2024 Findings and Award is **DENIED**.

IT IS FURTHER ORDERED that defendant Selective Insurance Company's Petition for Reconsideration of the October 4, 2024 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



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.

**ISMAEL ALBARRAN MORALES
LAW OFFICES OF MATTHEW E. RUSSELL
PATRICO LAW GROUP
THE LAW OFFICE OF ERIC GRITZ
MISA STEFEN KOLLER WARD
OFFICE OF THE DIRECTOR – LEGAL UNIT**

RL/cs

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