WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FRANCISCO CAMACHO, *Applicant*

vs.

GREG OPINSKI CONSTRUCTION, INC./OP DEVELOPMENT, INC.; EVEREST NATIONAL INSURANCE CO., administered by AMERICAN CLAIMS SAN DIEGO, *Defendants*

Adjudication Number: ADJ8558686
Fresno District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted defendant's Petition for Reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.[1]

Defendants Greg Opinski, Greg Opinski Construction, Inc. (GOC), and OP Development, Inc. (OPD) seek reconsideration of the Findings of Fact, Order and Opinion on Decision (F&O) issued on October 18, 2021, wherein the workers' compensation administrative law judge (WCJ) found that (1) the stipulations contained in the Minutes of Hearing from August 16, 2021 are accepted as fact; (2) all exhibits submitted at trial are admitted into evidence; (3) Greg Opinski's trial testimony is found to have limited credibility and weight, primarily due to the fact that his trial testimony is contradicted by his earlier deposition testimony; (4) applicant is found to be an employee of OPD; and (5) alter ego theory is inapplicable under the facts of the immediate case.

The WCJ ordered that applicant was an employee of OPD.

Defendants contend that the WCJ erroneously found that applicant was employed by OPD based upon an inaccurate assessment of Mr. Opinski's credibility while testifying at trial. In the alternative, defendants contend that the WCJ erroneously failed to find that applicant was employed by GOC under the doctrine of alter ego or Labor Code section 2750.5.

We received an Answer from defendant Everest National Insurance Company (Everest).

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[1] Commissioner Lowe is no longer a member of the Workers' Compensation Appeals Board. Commissioner Capurro has been substituted in her place.

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

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, as our Decision After Reconsideration, we will affirm the F&O, except that we will amend to find that (1) the parties' August 16, 2021 stipulation that applicant, while allegedly employed on October 23, 2011 by GOC, or OPD, (Everest denied that applicant was an employee of GOC) sustained injury arising out of and in the course of employment to the wrist, arm, leg, and foot resulting from a fall from a ladder while painting at 1536 Figueroa Drive in Merced, California is accepted as fact; (2) the parties' August 16, 2021 stipulation that the case-in-chief was resolved by Compromise and Release is accepted as fact; and (3) at the time of injury, GOC's workers' compensation carrier was Everest (Everest denied coverage for OPD).

FACTUAL BACKGROUND

On September 26, 2012, applicant filed an Application for Adjudication of Claim (Application), alleging that he sustained injury to the lower extremity and multiple body parts on October 23, 2021, when he fell from a ladder while employed as a painter by GOC. (Application, September 26, 2012.)

On September 13, 2013, the WCJ ordered that Greg Opinski, individually and as a substantial shareholder of OPD, be joined as a defendant. (Order Joining Party Defendant, September 13, 2013.)

On March 7, 2014, applicant requested that his Application be amended to name OPD as a defendant and to assert an alter ego theory of liability against GOC and OPD. (Amended Application, March 7, 2014.)

On February 13, 2019, applicant and defendants Greg Opinski and OPD filed an executed Third Party Compromise and Release, settling applicant's claim and reserving defendants' rights to pursue any "claims they may have against . . . [GOC's] insurers, including . . . Everest." (Third Party Compromise and Release, February 13, 2019, p. 9.) The Third Party Compromise and Release was approved by the WCJ. (Order Approving Compromise and Release, February 13, 2019.)

On July 12, 2021, the WCJ prepared a final Pre-Trial Conference Statement based upon

the proposed Pre-Trial Conference Statements of the parties. (Pre-Trial Conference Statement, July 12, 2021, p. 4.) The WCJ states therein that Everest denies that applicant was employed by GOC at the time of injury, denies coverage on applicant's claim, and asserts the right to arbitration of the coverage issue under Labor Code section 5275.

On August 16, 2021, the matter proceeded to trial. The parties stipulated that (1) while allegedly employed on October 23, 2011 by GOC or OPD, applicant sustained injury AOE/COE to the wrist, arm, leg, and foot resulting from a fall from a ladder while painting at 1536 Figueroa Drive, Merced, California; (2) at "the time of injury the employer's workers' compensation carrier was Everest National Insurance Company (Everest National denied coverage for OP Development)"; and (3) the case-in-chief was resolved. (Minutes of Hearing/Summary of Evidence, August 16, 2023, p. 2:3-9.)

The relevant issues were:

1. Employment; including employment by operation of law; alter ego/single enterprise;

Other issues:

(a) Provisions of Labor Code Section 3351 and Labor Code Section 3357 and provisions of Labor Code Section 2750.5; . . .

(*Id.*, p. 2:13-20.)

The WCJ admitted several documents into evidence including the transcript of the deposition of Greg Opinski dated March 25, 2013. The transcript states that Mr. Opinski testified as follows:

Q. On October 23rd -- let me go back. When Greg Opinski Construction was actually doing construction work, did it exclusively do construction work for third parties? By "third party" I am referring to any one or any company or any entity that you did not have an interest in.

A. No. We did -- I believe, we did a couple of private projects. You know, I am not sure. I would have to go back. I would have to see how those were written. They might have been if there was – there was a couple of projects. We did private projects for some business people I know in Merced, and I had purchased a piece of property, split it up, and then sold them the property and did the work for them. But I don't know from an entity standpoint how all that shook out. But the overwhelming, if not all the work, was done for third parties that I had no interest in.

(Ex. Q, Deposition Transcript of Greg Opinski, March 25, 2013, pp. 22:5-21.)

At trial, Mr. Opinski testified in substance as follows:

Mr. Camacho was paid by check from OPD. The recipient of Mr. Camacho's work was GOC. Thereafter, OPD, when the property was sold, the profits went to the OPD checking account which were to be used for future investments. (Question: When was GOC repaid?) When GOC received payments from OPD, they were not required to be reported.

(Minutes of Hearing/Summary of Evidence, August 16, 2023, p. 7:4-7.)

In the Opinion on Decision, the WCJ states:

It appears clear from all of the testimony, but especially the deposition testimony of Mr. Opinski (Exhibit Q), that the applicant was employed to paint houses owned by OPD (and prep for same), and nothing else. It must be remembered that Greg Opinski has three identities in this matter: the owner/operator/licensed general contractor of GOC; the owner/operator of unlicensed OPD; and the individual Greg Opinski.
. . .
In the summary of evidence, Mr. Opinski offered somewhat confusing testimony, beginning with the statement that he, Mr. Opinski, was acting as an employee of GOC when he dealt with the applicant, and then immediately reversed his stance and stated he was not an employee of GOC, he was the owner. (SOE 6:19-22).

Yet in the deposition, the opposite was stated by Mr. Opinski: GOC never bought properties (25:19-20); Applicant never worked on properties owned by Mr./Mrs. Opinski (as opposed to OPD homes) (26:15-17); or on GOC properties (26:18-21); GOC never worked on OPD owned homes (30:18/25).

So, if Mr. Opinski was working as the owner of GOC when he was dealing with the applicant, but GOC never worked on OPD homes, and the applicant only worked on OPD homes, Mr. Opinski and the applicant would never have spoken/dealt with one another. OPD was the employer of the applicant Francisco Camacho.

Alter ego status is an important concept most often associated with piercing the corporate veil of parent and subsidiary corporations. The veil is set-up to insulate the parent corporation from the subsidiary and limit the liability of (often) both corporations. Piercing the corporate veil is an action of the third or injured party. However, here it is the principal, Mr. Opinski, who wants to pierce the veil to shift the liability of OPD onto the shoulders of GOC. The court can find no authority which would allow such to occur.

(Opinion on Decision, pp. 4-5.)

In the Report, the WCJ states:

FACTS
. . .

1) Greg Opinski Construction (herein after GOC) was an entity involved in the construction of public works jobs, and NOT commercial or housing construction in 2011 (admitted);
2) In 2011, GOC had only one or two employees who performed clerical duties (admitted);
3) In the summer on 2011, GOC was closing down its business, and was only involved in obtaining payment for jobs that had already been completed, but payment was still pending (admitted);
4) Aside from general employees, when GOC was operating, it routinely employed subcontractors on the public works jobs, and the subcontractors had to be reported and vetted by the government agencies (SOE 5:19-21);
5) On the advice of his accountant, Mr. Opinski opened another company, OP Development (herein after OPD) and began the business of buying, refurbishing, and reselling distressed or undervalued houses, OPD was owned by Mr. and Mrs. Opinski (SOE 5:21-24);
6) OPD, by all accounts, was created to be independent from GOC and was financially insulated from GOC (SOE 6:7-1 0);
7) Mr. Opinski testified in deposition on March 25, 2013 (Exhibit Q), that:
a) GOC never bought properties (25: 19-20); b) the applicant never worked on properties that he and Mrs. Opinski owned (26:15-17); c) applicant never worked on properties that were under construction by GOC (26:18-21); d) GOC never performed work on OPD owned homes (31:18-25); 8) Mr. Opinski testified in the same deposition that the applicant:
a) Never had in his possession any document showing proof of a contractor's license (40:16-23);
b) Never produced any type of document to indicate he held a contractor's license (41:4-18);
c) Mr. Opinski knew of the Contractor's Licensing Board and that he could have contacted same to confirm the applicant's status, but never did because Mr. Opinski was satisfied on the applicant's say-so that he was licensed (41:19-44:12);
9) Mr. Opinski testified in deposition that he told the insurance investigator the applicant was an independent contractor, and that he (Opinski) did not know about who hired Applicant, but did state OPD paid the applicant for the work performed for OPD, and was paid with OPD checks (49:1-50:10);
10) Mr. Opinski testified in deposition that, upon receiving the application for adjudication of claim, he took no action other than calling his attorney because the claim was against GOC, but the applicant was an independent contractor and never worked for GOC, and that GOC had nothing to do with the accident (80:5-13);
11) There has been no evidence presented from the California Secretary of State to show any type of umbrella coverage for the corporations/companies identified as GOC and/or OPD that would lend support to the theory of "Alter Ego" to describe the business relationship of the two companies;
12) It is undisputed that the payment for work performed by the applicant on behalf of OPD was made by OPD checks, delivered by OPD owner Mr. Greg Opinski.
. . .
Petitioner finds himself in a unique situation of being the owner and general contractor for Greg Opinski Construction (herein after GOC); the owner of Opinski Property Development (OPD); and the individual Greg Opinski. It is not abundantly clear exactly what measures/safeguards were taken when he was conducting business with the public (non-Opinski personnel), so that the public would know exactly with whom they were dealing, or more to the point, with whom they were doing business; or if they ever knew. As can be seen by the facts and circumstances of the immediate case, this uncertainty would have significant consequences.

> . . .
> Petitioner admits "[a]ll payments made to applicant for each job were paid out of the OPD account, as funded and directed by GOC." (Recon; 6:13-14).
> . . .
> GOC claims it was functioning as a general contractor, and yet as a general contractor, there is no paper trail to corroborate the testimony. GOC was in business for years, where the primary client was a public entity. It cannot be said that GOC didn't know how to document its work. The bottom line is, the judge did not find the petitioner to be credible.

(Report, pp. 1-4.)

DISCUSSION

We note preliminarily that the WCJ found as Finding of Fact number 1 that the stipulations contained in the Minutes of Hearing from August 16, 2021 are accepted as fact. This finding includes stipulation number 2, which states that at "the time of injury the employer's workers' compensation carrier was Everest National Insurance Company (Everest National denied coverage for OP Development)." (Minutes of Hearing/Summary of Evidence, August 16, 2021, p. 2:3-9.) This stipulation appears inaptly phrased in that it states that Everest was the insurer of applicant's employer when the issue of employment was yet to be determined.

Accordingly, we correct this clerical error by amending the F&O to find that (1) the parties' August 16, 2021 stipulation that applicant, while allegedly employed on October 23, 2011 by GOC, or OPD, (Everest denied that applicant was an employee of GOC) sustained injury arising out of and in the course of employment to the wrist, arm, leg, and foot resulting from a fall from a ladder while painting at 1536 Figueroa Drive in Merced, California is accepted as fact; (2) the parties' August 16, 2021 stipulation that the case-in-chief was resolved by Compromise and Release is accepted as fact; and (3) at the time of injury, GOC's workers' compensation carrier was Everest (Everest denied coverage for OPD). (*Toccalino v. Worker's Comp. Appeals Bd.* (1982) 128 Cal.App.3d 543, 558 [47 Cal.Comp.Cases 145]; see also 2 Cal. Workers' Comp. Practice (Cont. Ed. Bar, March 2018 Update) Supplemental Proceedings, § 23.74, p. 23-76.) We otherwise affirm the findings of the WCJ.

We observe that California has a no-fault workers' compensation system. With few exceptions, all California employers are liable for the compensation provided by the system to employees injured or disabled in the course of and arising out of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms of

'service to an employer' and by including a general presumption that any person 'in service to another' is a covered 'employee.'" (Lab. Code, § 3351;[2] S. *G. Borello & Sons, Inc. v. Dept. of Ind. Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].)

An "employee" is defined as "every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed." (§ 3351.) Any person rendering service for another, other than as an independent contractor or other excluded classification, is presumed to be an employee. (§ 3357.)

Defendants contend that the WCJ erroneously determined that applicant rendered service to and was thus employed by OPD based upon an inaccurate assessment of Mr. Opinski's credibility while testifying at trial. Specifically, defendants argue that Mr. Opinski testified that he was acting as a general contractor for GOC when he "paid applicant by checks drawn on the OPD account[] and funded by GOC" and that this testimony was uncontroverted by evidence that OPD had "dealings with applicant." (Petition, p. 9:6-12.)

When a WCJ's findings are supported by solid, credible evidence, they are to be accorded great weight by the Appeals Board and rejected only on the basis of contrary evidence of considerable substantiality. (*Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500].)

In this regard, the WCJ determined that Mr. Opinski's testimony that GOC was functioning as a general contractor was not credible because it conflicted with his deposition testimony and there was no documentary evidence to corroborate it. (Report, p. 4.) Although Mr. Opinski sought to explain the lack of documentary evidence that OPD paid GOC for general contractor's work by testifying that GOC was not required to report such payments, we are unpersuaded that this explanation amounts to evidence of considerable substantiality warranting rejection of the WCJ's credibility determination. (Minutes of Hearing/Summary of Evidence, August 16, 2023, p. 7:4-7.)

Additionally, Mr. Opinski was asked in deposition whether GOC had ever worked on a project in which he had a personal interest and he responded that it had not, with one or two possible exceptions not including OPD. (Ex. Q, Deposition Transcript of Greg Opinski, March 25, 2013, pp. 22:5-21.) Given that Mr. Opinski had an early opportunity to testify that GOC had

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

worked as a general contractor for OPD but did not do so, we discern additional grounds to conclude that his inconsistent testimony at trial was not credible.

Accordingly, we are unable to discern merit to the contention that the WCJ erroneously found that applicant was employed by OPD based upon an inaccurate assessment of Mr. Opinski's credibility while testifying at trial.

In the alternative, defendants contend that the WCJ erroneously failed to find that applicant was employed by GOC under the doctrine of alter ego.

"The essence of the alter ego doctrine is that justice be done." (*Mesler v. Bragg Management Co*. (1985) 39 Cal.3d 290, 301.) "The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests." (*Id.*, p. 300.) The critical question is "'whether in the particular case presented and for the purposes of such case justice and equity can best be accomplished and fraud and unfairness defeated by a disregard of the distinct entity of the corporate form.'" (*Id*., p. 301.) The alter ego doctrine is strictly limited by the demands of equity; it applies "only in narrowly defined circumstances and only when the ends of justice so require." (*Id*., p. 301.)

The alter ego doctrine is applicable in workers' compensation proceedings. For example, an Appeals Board panel applied the alter ego doctrine to allow an applicant to recover workers' compensation benefits from an alleged employer for whom the applicant was working at the time of injury where the applicant was hired by another alleged employer and both alleged employers operated under an "umbrella organization." (See, e.g., *Brock v. KS Industries, LP, ACIG Insurance Company*, 2013 Cal. Wrk. Comp. P.D. LEXIS 595.)

In the present case, defendants argue that the alter ego doctrine should apply not to allow applicant to defeat unfairness arising from unjust use of the corporate form, but to impute applicant's employer's liability to defendant GOC to allow Mr. Opinski and OPD to seek reimbursement from GOC's workers' compensation carrier for the costs of settling applicant's workers' compensation claim. (Third Party Compromise and Release, February 13, 2019, p. 9.)

Yet like the WCJ, we are unable to find legal authority for the alter ego doctrine to be applied to these circumstance and unconvinced that doing so could accomplish justice. (See also, Opinion on Decision, p. 5.)

Accordingly, we discern no support for defendants' alternative contention that the WCJ erroneously failed to find that applicant was employed by GOC under the doctrine of alter ego.

Lastly, defendants contend in the alternative that the WCJ erroneously failed to find that applicant was employed by GOC under section 2750.5 and *Rinaldi v. Workers' Comp. Appeals Bd*. (*Curry*) (1987) 196 Cal.App.3d 571, 574 [52 Cal.Comp.Cases 366].

Business & Professions Code section 7026.1(a)(2)(A) provides that a contractor's license is required for "any person, . . . corporation, or company, who or which undertakes . . . to construct any . . . home improvement project, or part thereof." (B&P, § 7026.1(a)(2)(A).) A worker who performs services for which a contractor's license is required, or who performs such services for a person who is required to obtain such a license, is rebuttably presumed to be an employee rather than an independent contractor for purposes of workers' compensation. (See § 2750.5.)

Where a subcontractor is unlicensed and performs work for which a license is required, section 2750.5 requires that workers' compensation liability for the subcontractor's employees be imposed on the general contractor as a matter of law. (*Curry*, *supra*.)

Here, we have explained that the record shows that applicant was OPD's employee and there is no credible evidence that GOC served as general contractor on any OPD project. Since defendants failed to establish that GOC served as general contractor on the project where applicant sustained injury or that applicant was an independent contractor, there are no grounds to impose workers' compensation liability upon GOC under section 2750.5 and *Curry*.

Accordingly, we are unable to discern support for the alternative contention that the WCJ erroneously failed to find that applicant was employed by GOC under section 2750.5 and *Curry*.

Accordingly, as our Decision After Reconsideration, we will affirm the F&O, except that we will amend to find that (1) the parties' August 16, 2021 stipulation that applicant, while allegedly employed on October 23, 2011 by GOC, or OPD, (Everest denied that applicant was an employee of GOC) sustained injury arising out of and in the course of employment to the wrist, arm, leg, and foot resulting from a fall from a ladder while painting at 1536 Figueroa Drive in Merced, California is accepted as fact; (2) the parties' August 16, 2021 stipulation that the case-in-chief was resolved by Compromise and Release is accepted as fact; and (3) at the time of injury, GOC's workers' compensation carrier was Everest (Everest denied coverage for OPD).

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact, Order and Opinion on Decision issued on October 18, 2021 is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. The parties' August 16, 2021 stipulation that applicant, while allegedly employed on October 23, 2011 by Greg Opinski Construction, Inc., or OP Development, Inc., (Everest National Insurance Company denied that applicant was an employee of Greg Opinski Construction, Inc.) sustained injury arising out of and in the course of employment to the wrist, arm, leg, and foot resulting from a fall from a ladder while painting at 1536 Figueroa Drive in Merced, California is accepted as fact.

2. The parties' August 16, 2021 stipulation that the case-in-chief was resolved by Compromise and Release is accepted as fact.

3. At the time of injury, Greg Opinski Construction Inc.'s workers' compensation carrier was Everest National Insurance Company (Everest National Insurance Company denied coverage for OP Development, Inc.).

4. All exhibits submitted at trial are admitted into evidence.

5. Greg Opinski's trial testimony is found to have limited credibility and weight, primarily due to the fact that his trial testimony is contradicted by his earlier deposition testimony.

6. The applicant is found to be an employee of OP Development, Inc.
7. "Alter ego" theory is inapplicable under the facts of the immediate case.

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WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 25, 2026

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

FRANCISCO CAMACHO
SELMAN BREITMAN
BLACK AND ROSE LLP
YRULEGUI & ROBERTS
CARELON SUBROGATION LLC
PEREZ, WILLIAMS, MEDINA & RODRIGUEZ LLP

SRO/*kl*

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