

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

**DANIEL RAMIREZ GONZALEZ, *Applicant***

**vs.**

**MATA'S TIRE SERVICE, LLC.; AMTRUST, *Defendants***

**Adjudication Number: ADJ16367120  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the July 12, 2024 Findings and Award wherein the workers' compensation administrative law judge (WCJ) found that applicant was employed by defendant as a mechanic and sustained an industrial injury on December 31, 2021 to the right ribcage, neck, bilateral shoulders, right elbow, right hand/wrist, low back, right hip, right knee, and right foot.

Defendant contends that applicant's testimony regarding employment was inconsistent and lacking in credibility and defense witness testimony did not establish applicant was employed by defendant. As such, applicant did not meet his burden of proof.

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

We have considered the Petition, the Answer, and have reviewed the record in this matter. Based upon our review of the record and the WCJ's Report, which we adopt and incorporate, and for the reasons discussed below, we deny defendant's Petition.

Preliminarily, 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. (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.” The date appearing within this section is the transmission date.

Here, according to Events, the case was transmitted to the Appeals Board on August 15, 2024, and 60 days from this date is October 14, 2024. This decision was issued on or by October 14, 2024. As such, we have timely acted on the Petition as required under section 5909(a).

Further, section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. This ensures that parties are notified of the accurate date for the commencement of the 60-day period upon which the Appeals Board is to act on a petition. As noted above under section 5909(b)(1), transmission of the case to the Appeals Board in EAMS constitutes notice to the Appeals Board, and as noted under section 5909(b)(2), service of the Report constitutes notice of transmission to the parties.

According to the proof of service, the Report in this case was served on August 15, 2024. The case was also transmitted to the Appeals Board on August 15, 2024. Service of the Report and transmission of the case to the Appeals Board occurred the same day. As such, parties were provided with notice of transmission per section 5909(b)(1) since the Report was served per section 5909(b)(2). Parties were therefore provided with actual notice as to commencement of the 60-day period.

Turning now to the issue of credibility, such determinations by a WCJ, as the trier of fact, are entitled to great weight based upon the WCJ’s opportunity to observe the demeanor of the witnesses and weigh the witnesses’ statements in connection with their manner on the stand.

(*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) A WCJ's credibility determinations may be disturbed, but only where there is contrary evidence of considerable substantiality. (*Id.*) There was no such evidence here. Defendant argues applicant did not have specific knowledge of the work environment, but applicant's testimony was consistent with what was reported to Dr. Edwin Haronian and defense witnesses appeared to confirm this. (Opinion on Decision (OOD), July 12, 2024, p. 1.) As to questions regarding hiring and employment practices, however, defense witnesses appeared inconsistent and suspicious. (*Id.* at p. 2.) Since defendant provided no contrary evidence of considerable substantiality, we find no reason to disturb the WCJ's credibility findings.

Labor Code section 5313 provides further guidance as to decisions issued by a WCJ. It states, in relevant part, that the WCJ must indicate the "reasons or grounds upon which the determination was made." This "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision "must be based on admitted evidence in the record" (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]; *Garza, supra*, at p. 312.) As required by Section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at p. 475.)

Defendant contends that the WCJ ignored facts which show applicant "could not have possibly worked" for the employer and relied instead on information that "could be obtained by anyone standing outside the place of employment." (Petition, p. 9.)

In his July 12, 2024 OOD, however, the WCJ clearly indicates that his decision was based upon careful review of "testimony offered by all witnesses" as well as "medical evidence offered by applicant" and a "letter offered by defendant." (OOD, *supra*, at p. 1.) As such, we find that the WCJ's decision is supported by substantial evidence. Accordingly, we deny defendant's Petition.

As a final point, we underscore the fact that defendant's Petition is 94 pages long and contains several exhibits previously submitted and easily located within in the record. This is a

violation of WCAB Rule 10945. (Cal. Code Regs., tit. 8, § 10945.) The duplication of these records is excessive and a waste of court resources. Defendant is therefore admonished to follow the Board's Rules of Practice and Procedure, including but not limited to WCAB Rule 10945, in all future matters.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the July 12, 2024 Findings and Award is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**OCTOBER 2, 2024**

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

**DANIEL RAMIREZ GONZALEZ  
LA LAWYERS  
CIPOLLA, BHATTI, HOYAL & ROACH**

**RL/cs**

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

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**I**

**INTRODUCTION**

- |  |                    |
|--|--------------------|
| 1. Award   | 7/12/2024          |
| 2. Identity of Petitioner  | Defendant          |
| 3. Verification  | Yes                |
| 4. Timeliness  | Petition is timely |
| 5. Petition for Reconsideration Filed  | 8/02/2024          |
| 6. Petitioner's Contentions:   |                    |
| a. The Judge ignored facts that show that applicant could not have possibly worked at the store; and   |                    |
| b. The admitted inconsistencies in the testimony of defense witnesses do not bear on whether or not the applicant worked at Mata's Tire Service. |                    |

This matter came on for multiple days of trial before the undersigned, with testimony received from multiple witnesses. On November 2, 2023, and January 4, 2024, Applicant testified on his own behalf, with additional testimony offered by witness Juan Antonio Cuenca Lopez. Defendant offered testimony from witnesses Leticia Mata, Juan Ramirez Chavarria (AKA Juan Palma), Miguel Ceja, Mario Ramirez, and Alfredo Mata. The parties each filed post-trial briefs, which were reviewed and considered. Award issued on July 12, 2024. This was served by mail on the same date.

Defendant filed a timely verified petition for reconsideration of the Findings and Award. Petitioner chiefly contends that the WCJ made the wrong determination as to credibility, and that therefore, the applicant should take nothing.

**II**

**FACTS**

Applicant alleges that on December 31, 2021, he was employed by Mata's Tire Service, LLC. Applicant testified that he began working for Juan Ramirez Chavarria (Juan Palma) in 2017.<sup>1</sup> He alleged that he was paid in cash, and that he was moved around between tire stores based upon

---

<sup>1</sup> 11/2/23 SOE/MOH at 3:7-8.

need.<sup>2</sup> He believed that Mr. Palma and Mr. Mata were partners.<sup>3</sup> He described the work that he performed.<sup>4</sup> He testified that he was injured while changing a tire at Mata's Tire Service.<sup>5</sup> The Court found that his description of the incident was consistent with what the applicant reported to Dr. Haronian.

Key features of applicant's story were corroborated by his witness Mr. Juan Antonio Cuenca Lopez, as well as defense witnesses. Mr. Cuenca Lopez testified that he personally saw applicant working outside at Mata's Tires.<sup>6</sup> He testified that applicant told him he was injured while working at Mata's.<sup>7</sup> He testified that applicant, applicant's son, and applicant's daughter-in-law all told him that applicant was working for Mata's Tires.<sup>8</sup> He testified<sup>9</sup> about the "union-like" relationship between all of the tire shops in the area, which Ms. Leticia Mata corroborated<sup>10</sup>. He testified about the apparent disagreement between Palma and Mata where Palma's name was removed<sup>11</sup>, and he confirmed the existence of the sign<sup>12</sup> at Mata's that previously had Palma's name. The Court found all of this testimony to be credible and ultimately found both employment and injury in favor of applicant.

### III

#### DISCUSSION

##### A.

#### **Defendant makes a key and material misrepresentation as to the content of Leticia Mata's letter which directly bears on her credibility at trial**

On page two of its Petition, in its recitation of facts, defendant makes reference to a letter written by Leticia Mata, admitted into Evidence as Defense Exhibit "A". Defendant portrays this letter as stating that "It was noted that the only employees that are still employed by the shop from

---

<sup>2</sup> 11/2/23 SOE/MOH at 4:1-8.

<sup>3</sup> 1/4/24 SOE/MOH at 2:19-24

<sup>4</sup> 11/2/23 SOE/MOH at 3:13-18.

<sup>5</sup> 11/2/23 SOE/MOH at pgs 4-5.

<sup>6</sup> 1/4/24 SOE/MOH at 8:18-23; 9:21-22

<sup>7</sup> 1/4/24 SOE/MOH at 9:9-10.

<sup>8</sup> 1/4/24 SOE/MOH at 10:9-12.

<sup>9</sup> 1/4/24 SOE/MOH at 8:9-11.

<sup>10</sup> 1/4/24 SOE/MOH at 11:22-23.

<sup>11</sup> 1/4/24 SOE/MOH at 8:12-20

<sup>12</sup> 1/4/24 SOE/MOH at 9:14-17

December 31st were Miguel Ceja and Leticia Mata.”<sup>13</sup> This is not what the letter says. The letter states:

And have absolutely no employment records for this individual. Regarding the alleged employment period in question, the only people employed by Mata’s Tire Service are listed below and are currently still employed by our shop.

Miguel Ceja  
Leticia Mata

The Court interprets the letter to mean that per Ms. Mata, including herself, Mata’s Tire Service only had two employees at the time of alleged injury, and those employees are still so employed. Ms. Mata further testified that this is still the case; she testified that she has one employee, Miguel Ceja, they cannot afford another employee “right now”, and they maximally employed two employees over the last two years.<sup>14</sup> Ms. Mata offered this testimony immediately after explaining that she “basically does everything”.

One of the key inconsistencies in the defense witness testimony concerned the number of individuals employed by Mata’s Tires. Ms. Mata insisted that she had only one other employee, Mr. Ceja, and that she could not afford to hire anyone else. Mr. Ceja then immediately contradicted that testimony on his own direct examination when he informed the Court that there were two other employees working at Mata’s while he was testifying in Court.<sup>15</sup> This alone dramatically undercut the credibility of Ms. Mata’s testimony, and it lends support to applicant’s allegation that he was paid in cash under the table.

## **B.**

### **Defendant correctly but inappropriately notes that the Court did not consider testimony that was not elicited at trial**

The thrust of defendant’s first argument is that “the Judge ignored facts that show that the applicant could not have possibly worked at the store.”<sup>16</sup> Defendant then spends a significant portion<sup>17</sup> of this section listing alleged deposition testimony by applicant relating to the bathrooms

---

<sup>13</sup> Petition for Reconsideration at 2:19-20

<sup>14</sup> 1/4/24 SOE/MOH at 10:19-23

<sup>15</sup> 4/18/24 SOE/MOH at 2:12-17

<sup>16</sup> Petition for Reconsideration at 1:23-24

<sup>17</sup> Petition for Reconsideration at pgs 5-6.

on premises, the bays on property, whether or not Mata's shares its property with another business, and whether and for how long the applicant worked following the alleged injury.

Defendant correctly points out that the Court did not consider this deposition testimony. Unfortunately, this is because defendant did not elicit this testimony from applicant during the trial. Despite that defendant refers to the deposition transcript as its "Exhibit B", applicant's deposition transcript is not part of the evidentiary record, because defendant did not attempt to offer it into evidence. 8 C.C.R. §10670; 8 C.C.R. §10803(a)(2). In violation of 8 C.C.R. §10945(c)(2), defendant has simply attached the entire transcript to its Petition for Reconsideration and then refers to it as if it were part of the trial record. Defendant also violates 8 C.C.R. §10945(c)(1) by needlessly attaching the Reporters' Minutes of Hearing and Summary of Evidence.

The Court properly did not consider this evidence, cannot consider it in the first instance on Reconsideration, and will not respond to it here.

In many cases<sup>18</sup>, the WCAB has admonished and even imposed sanctions against parties for citing to documents that are not part of the evidentiary record. The undersigned makes no recommendation to the WCAB as to admonishing or sanctioning defendant for this conduct, but leaves the same to the WCAB's discretion.

### C.

#### **The Court stands by its determination of the credibility of the witnesses**

The Court acknowledges that applicant, Mr. Ramirez Gonzalez, presented as a poor historian, and that there were moments where he changed prior testimony and otherwise appeared to be confused. Nonetheless, the WCJ had the opportunity to observe the demeanor of the witness, and Mr. Ramirez Gonzalez presented earnestly. The applicant appeared to put forth his best effort to answer the questions he was asked, and none of the inconsistencies noted by the defendant affected the WCJ's determination that he testified honestly.<sup>19</sup> The Court was aided in this determination by the corroborating testimony<sup>20</sup> of Mr. Juan Cuenca Lopez, the consistency

---

<sup>18</sup> See e.g., *Hill v. County of San Bernardino*, 2012 Cal. Wrk. Comp. P.D. LEXIS 74; *Redden v. MJT Enterprise, Inc., dba Blue Ribbon Personnel*, 2015 Cal. Wrk. Comp. P.D. LEXIS 263; *Deza v. The Home Depot*, 2008 Cal. Wrk. Comp. P.D. LEXIS 22.

<sup>19</sup> The WCJ's credibility determination is entitled to great weight. *Garza v. Workmen's Comp. Appeals Bd.*, (1970) 3 Cal.3d 312, 318-319

<sup>20</sup> E.g. 1/4/24 SOE/MOH at 8:9-11, 8:12-23, 9:9-10, 9:14-17, 9:21-22, and 11:22-23



between applicant's account of injury at Trial and the mechanism he recounted<sup>21</sup> to Dr. Haronian, and testimony<sup>22</sup> from defense witness Mr. Alfredo Mata confirming that tire-changing work at Mata's is performed outside in the parking lot. With this additional corroborating evidence, the Court was confident in its determination that applicant's testimony regarding his employment with Mata's and the circumstances of his injury was credible. Defendant offers no explanation or argument as to why Mr. Cuenca Lopez's testimony should not be found to be credible.

In stark contrast, multiple defense witnesses provided testimony that was both not credible and incredible. As stated *supra*, Ms. Leticia Mata testified that as of the time of Trial, she has one employee, Miguel Ceja, and Mata's cannot afford to hire another employee "right now".<sup>23</sup> This is the same message provided in her letter denying employment, which was introduced as Defense "Exhibit A". Mr. Ceja himself demonstrated<sup>24</sup> that this testimony was false when he identified his two co-workers who were manning the shop in his absence.

Ms. Mata also testified<sup>25</sup> that the reason she would not pay employees under the table was so that in the event of a workplace injury, there would be a record of the person's employment. She also testified<sup>26</sup> that she is not aware of any injury having ever occurred at Mata's Tires. The Court did not and does not find it credible that in response to a question of why she would not pay someone under the table, someone who claims to have a historically injury-free workplace would immediately volunteer that this would ensure that in the event of workplace injury, there would be a record of employment that would then allow that injured person to make a claim for workers' compensation benefits. Furthermore, Mr. Mata offered similarly unusual testimony<sup>27</sup> that suggested that his worker's compensation policy was directing his hiring decisions, and that aside from the employees allowed by his policy, he could have "other employees".

The Court could have given the Matas the benefit of the doubt that these unusual answers were the product of a truly conscientious employer who made substantial business hiring and payroll decisions based upon a paramount desire to avoid workplace injuries. However, in light of the glaring inconsistency between Ms. Leticia Mata's insistence that she had only two employees

---

<sup>21</sup> Exhibit "1" at pg 2

<sup>22</sup> 4/18/24 SOE/MOH at 5:17-18

<sup>23</sup> 1/4/24 SOE/MOH at 10:19-23

<sup>24</sup> 4/18/24 SOE/MOH at 2:12-17

<sup>25</sup> 1/4/24 SOE/MOH at 13:1-4

<sup>26</sup> 3/14/24 SOE/MOH at 4:15-16

<sup>27</sup> 4/18/24 SOE/MOH at 7:5-11

(herself included) and the contrary testimony of both Mr. Ceja and Mr. Alfredo Mata, the Court finds that this is unlikely.

Finally, defendant took pains to argue that applicant's alleged 2:00 p.m. injury could not have occurred, at Mata's as the store closed early on that day. Ms. Mata so testified<sup>28</sup>. Unfortunately for defendant, Mr. Mario Ramirez<sup>29</sup> and Mr. Alfredo Mata<sup>30</sup> both testified that the store closed well after 2:00 p.m., which is typical for holidays<sup>31</sup>. As defendant's own witness testimony suggested that the store could have been open at the time of applicant's alleged injury, the Court did not credit this argument.

Given the totality of the evidence presented, the Court found applicant's testimony to be credible, and that defense witnesses did not offer credible testimony in rebuttal.

#### IV

#### **RECOMMENDATION**

For the reasons stated above, it is respectfully recommended that defendant's Petition for Reconsideration be DENIED.

DATE: 8/14/2024

**Adam D. Graff**

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

---

<sup>28</sup> 1/4/24 SOE/MOH at 12:13-16

<sup>29</sup> 4/18/24 SOE/MOH at 5:1-4

<sup>30</sup> 4/18/24 SOE/MOH at 6:14-16

<sup>31</sup> 4/18/24 SOE/MOH at 5:1-4