

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

**JAMES GODFREY, *Applicant***

**vs.**

**REALTY WORLD/SELZER REALTY;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ12487271  
Santa Rosa District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order, issued by the workers' compensation administrative law judge (WCJ) on August 5, 2024, wherein the WCJ found in pertinent part that Applicant's employment was terminated for reasons unrelated to his industrial accident and ordered that applicant take nothing in connection with his application for benefits under Labor Code section<sup>1</sup> 132a.

We have not received an Answer from defendant.

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

We have considered the allegations in the Petition and the contents of the Report with respect thereto. Based on our review of the record, for the reasons stated in the WCJ's Report, which is adopted and incorporated herein, and for the reasons discussed below, we will deny reconsideration.

**I.**

As a preliminary matter, 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:

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<sup>1</sup> All statutory references are to the Labor Code unless otherwise stated.

(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 September 11, 2024, and 60 days from the date of transmission is Sunday, November 10, 2024. The next business day that is 60 days from the date of transmission, is Tuesday, November 12, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Tuesday, November 12, 2024, 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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on September 11, 2024, and the case was transmitted to the Appeals Board on September 11, 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

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

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.

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 September 11, 2024.

## II.

Under section 132a, “It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.” Section 132a protects an employee from retaliation or discrimination by an employer because of an exercise of workers' compensation rights. (*Department of Rehabilitation v. Workers' Comp. Appeals Bd. (Lauher)* (2003) 30 Cal. 4th 1281, 1298-1299 [68 Cal.Comp.Cases 831]; *Franco v. MV Transportation, Inc.* (2019) 84 Cal.Comp.Cases 666, 678.) Section 132a has been “interpreted liberally to achieve the goal of preventing discrimination against workers injured on the job,” while not compelling an employer to “ignore the realities of doing business by ‘reemploying’ unqualified employees or employees for whom positions are no longer available.” (*Lauher, supra*, at 1298-1299 [citations omitted].)

Pursuant to section 132a, “[a]ny employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim ... or an application for adjudication, or because the employee has received a rating, award, or settlement, ... testified or made known his or her intention to testify in another employee’s case ...” may be guilty of a misdemeanor and responsible for the payment of increased compensation, costs, lost wages, and work benefits to the injured employee. (Lab. Code, § 132a; *Franco, supra*, at 678.) However, an employer “does not necessarily engage in ‘discrimination’ prohibited by section 132a merely because it requires an employee to shoulder some of the disadvantages of his industrial injury.” (*Lauher, supra*, at 1300; *Franco, supra*, at 679.)

Thus, “[t]o meet the burden of presenting a prima facie claim of unlawful discrimination in violation of section 132a, it is insufficient that the industrially injured worker show only that . . . he or she suffered some adverse result as a consequence of some action or inaction by the employer that was triggered by the industrial injury. The claimant must also show that he or she had a legal right to receive or retain the deprived benefit or status, and the employer had a corresponding legal duty to provide or refrain from taking away that benefit or status.” (*Lauher, supra*, at 1300; *Franco, supra*, at 679.) Stated another way, an injured worker must show they were subject to “disadvantages not visited on other employees because they were injured... .” (*Id.*)

Applicant and defense witness Richard Selzer both testified at trial, offering contradictory versions of events. Mr. Selzer testified that applicant did not inquire about his eligibility for workers' compensation benefits, that applicant did not ask him about filing a claim for benefits, and finally, that the subject did not come up. (Minutes of Hearing and Summary of Evidence (MOH/SOE), May 13, 2024 trial, p. 3.) The WCJ weighed the testimony, finding Mr. Selzer's testimony more credible. Credibility determinations of the 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 their 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].) Further, a WCJ's credibility determination may be disturbed only where there is contrary evidence of considerable substantiality. (*Id.*) There is no such evidence here. As such, there is no reason to disturb the credibility findings of the WCJ.

Applicant also urges us to find that he sustained his burden based on an absence of evidence, rather than on an affirmative showing of proof. Applicant alleges that defendant terminated applicant after applicant's injury on March 8, 2019, and contends that defendant offered no evidence of other employees facing termination, and thus applicant was clearly singled out for disadvantageous treatment. (Petition, p. 7; Summary of Evidence, p. 4, l . 29-31, 11/27/2023) However, by his own arguments, i.e., the absence of evidence, applicant has not sustained his burden of presenting a prima facie claim of unlawful discrimination in violation of section 132a.

Accordingly, we deny applicant's Petition for reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



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

**November 12, 2024**

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

**JAMES GODFREY  
SHATFORD LAW  
MARTENSON, HASBROUCK & SIMS  
STATE COMPENSATION INSURANCE FUND**

***JB/pm***

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

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

## **I INTRODUCTION**

1. Applicant's occupation: Real Estate Broker/Sales Manager
2. Applicant's age at time of injury: 62
3. Date of injury: March 8, 2019
4. Body Parts injured: Multiple including jaw, wrist, hips, thigh and psyche
5. Manner of injury: Single car motor vehicle accident
6. Identity of petitioner: Applicant. The Petition was timely and properly verified.

Case was submitted for decision on the sole issue of whether or not the employer violated Labor Code § 132a when it terminated applicant's employment following his motor vehicle accident. Applicant seeks reconsideration of the court's decision (1) that he failed to meet his burden that he intended to file a workers' compensation claim at the time his employment was terminated and (2) that the employer established a non-discriminatory business necessity for the termination.

## **II FACTS**

Applicant James Godfrey was hired by Selzer Realty in late 2018 to act as a Broker/Sales Manager. (Minutes of Hearing and Summary of Evidence ("MOH"), dated 11/27/2023 at pg. 2:15). This position required the supervision of approximately 50 real estate agents. (Id. at pg. 7:16) He was required to be available to the agents for advice and feedback (Id. at Pg. 4:6-11), as well as perform document review of real estate transactions. (Id. at pg. 7:10-14). Although it appears that the parties were in the process of negotiating a contract of employment, that document was never finalized (See Applicant's Exhibit 1, employment agreement), and applicant was an at-will employee until his termination in June of 2019.

On March 8, 2019, applicant attended a work sponsored event at Ukiah Brewing Company. The primary purpose of the gathering was to allow the applicant to meet with agents and develop some rapport. (MOH 11/27/2023 at pg. 3:19-20) At this point the applicant had only been employed for a few months. Applicant, perhaps as a result of his accident later that evening, does

not remember anything that happened that day. (MOH 11/27/2023 at pg. 3:16-17).<sup>3</sup> It appears that Richard Selzer, applicant's sole supervisor and principal for the employer, spoke to applicant at the event, noticed that he was intoxicated and advised him to make sure his wife drove him home. (MOH 5/13/2024 pg. 3:1-4).

It appears that applicant did not heed this advice and shortly thereafter, at approximately 8:35 p.m., he was involved in a motor vehicle accident. (See generally, Defense Exhibit I, traffic collision report). Following the accident he was transported to Santa Rosa Memorial Hospital; he remained hospitalized for several months.

During his hospitalization, applicant spoke to Mr. Selzer, who visited him in the hospital. There is disagreement regarding whether during these visits applicant inquired about whether or not he could file a claim for workers' compensation benefits. Applicant testified that he did ask (MOH 11/27/20203 at pg. 4:10-13), and Mr. Selzer testified that the topic never came up. (MOH 5/13/2024 at pg. 3:10-15). Even assuming that the applicant made inquiry, he admitted that he did not know whether or not he was entitled to file a claim for benefits at the time of his termination. (MOH 11/27/20203 at pg. 6:30-32). He also testified that he never told anyone at Selzer Realty that it was his intention to file a claim. (Id. at pg. 5:37-38).

Numerous employer witnesses testified that applicant's job performance was subpar. The office manager testified that applicant had inconsistent attendance, would not show up to the office until 10:00 a.m., and would sometimes take lunch and not return to the office. (MOH 4/8/2024 at pg. 2:38-40). His use of the SkySlope software to review contracts was inconsistent and unreliable. (Id. at pg. 3:3). She received feedback from agents that there was a lack of support and inconsistent feedback. (Id. at pg. 3:8-9). His unavailability was a "very large problem." (Id. at pg. 3:8).

The office manager's administrative assistant testified that applicant was not in the office very often and never for 8 hours. He would occasionally take three-hour lunches. Agents would come looking for applicant and no one knew where he was or how to get ahold of him. She received multiple complaints about his responsiveness and timeliness of document review. (Id. at pg. 5:35-40). She received complaints from 10 or 15 people about his responsiveness and late document

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<sup>3</sup> Despite the fact that applicant testified that he could not recall the day of the accident at all, it appears that immediately following the accident he was able to communicate with the CHP officer that responded to the scene of the accident and admitted to consuming 2-3 drinks at "his office party." (Defense Exhibit I, traffic collision report at pg. 16:2-4).

review. (Id. at pg. 6:12 -14). A broker working as a salesperson found applicant to be arrogant and self-centered. (Id. at pg. 8:26-27).

All of this testimony was consistent with the testimony of the principal, Richard Selzer's testimony, that applicant was arrogant, untimely and unavailable. (See generally MOH 5/13/2024 at pg. 2:36-46).

### III DISCUSSION

Per Labor Code § 132a:

Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because **he or she has filed or made known his or her intention to file a claim** for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor . . .

Labor Code § 132a(1) (emphasis added)

The court found that applicant had not filed a claim at the time of his termination, and had failed to present evidence that he had “made known his . . . intention to file a claim.” Therefore, as a matter of law, he did not meet his burden to establish a violation of Labor Code § 132a.

In addition, the court found Richard Selzer's testimony that applicant never brought up the subject of workers' compensation to be more credible than applicant's testimony that he did make such inquiry. Accordingly, even if inquiries into whether he was covered rose to the level of making known his intention to file, the court found it more likely that he did not make such inquiry than that he did. The court found Selzer's testimony more credible than applicant's on this issue. Applicant failed to meet his burden of proof that he was fired as a result of any inquiry as to whether he was entitled to file a claim and receive benefits.

Finally, the court found the employer's justification for the termination, to wit, that applicant was not conscientious in the execution of his duties, to be plausible and supported by numerous witnesses. The court found, based on testimony from multiple witnesses as detailed above, that the employer had established a valid business reason for the termination of applicant's employment.



**IV**  
**RECOMMENDATION**

The court recommends that the applicant's Petition for Reconsideration be denied.

Date: September 11, 2024

**JASON E. SCHAUMBERG**  
Workers' Compensation Judge