

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

JOHNNY HAMLETT, *Applicant*

vs.

**DAVID WALDSCHMIDT dba WOLF PERFORMANCE GOLF CARTS,
illegally uninsured; UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ7721850
San Bernardino District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.¹

Defendant David Waldschmidt dba Wolf Performance Gold Carts seeks reconsideration of the Opinion and Decision After Reconsideration issued on August 15, 2022, wherein we rescinded our March 21, 2022 finding that the record was insufficient to establish that Waldschmidt's prior attorney, Brian Collins, consented to his dismissal and affirmed the WCJ's February 12, 2021 findings as relevant that (1) on October 21, 2010, applicant sustained injury to his left arm, left hand, left wrist, left elbow, left shoulder, right hand, face, head and skin while employed by Waldschmidt, who had willfully failed to secure the payment of compensation; (2) applicant's injury caused temporary total disability beginning on October 21, 2010 through October 20, 2012, at the rate of \$400.00 per week, plus a 10% penalty increase pursuant to Labor Code section 4554, payable by the employer, less attorney's fees of 15%; (3) applicant's injury caused permanent disability of 76%, entitling applicant to indemnity payable at \$270.00 per week for 529.25 weeks and a life pension thereafter at \$123.69 per week, plus a 10% penalty increase on each species of benefit per Labor Code section 4554, payable

¹ Commissioner Sweeney, who previously served as a panelist in this matter, no longer serves on the Appeals Board. Another panel member has been assigned in her place.

by the employer, less attorney's fees of 15%; and (4) applicant will require further medical treatment to cure or relieve from the effects of this injury.

Waldschmidt contends that the court clerk erroneously failed to amend his official address of record, resulting in a failure of service and violation of the right to due process.

We received an Answer from applicant.

We have considered the allegations of the Petition and the Answer. Based on our review of the record, and for the reasons stated below, we will affirm our Opinion and Decision After Reconsideration.

FACTUAL BACKGROUND

On July 17, 2013, the matter proceeded to trial of the issue of whether applicant was an employee of Waldschmidt. (Minutes of Hearing and Summary of Evidence and Disposition, July 17, 2013, pp. 1-2.) Brian Collins of the Law Office of Brian Collins appeared on behalf of Waldschmidt. (*Id.*, p. 1.)

On May 30, 2014, the WCJ found that applicant was “an employee of and not an independent contractor of [Waldschmidt], illegally uninsured, as a golf cart mechanic, on October 21, 2010, when he sustained injury.” (Findings of Fact, May 30, 2014.)

On June 2, 2014, the WCJ served notice of the finding on all parties shown as follows:

OFFICIAL ADDRESS RECORD

...

DAVID WALDSCHMIDT	Uninsured Employer, 74874 JONI DRIVE
DBA WOLF PERFORMANCE	PALM DESERT CA 92260

...

(POS - Finding of Fact - Opin on Dec from Tr 030514.pdf, June 2, 2014.)

On September 2, 2014, Waldschmidt filed a dismissal of attorney, asserting that “I have dismissed said attorney and have no attorney whatsoever at the present time and wish to have future documents served upon me and not on my former attorney.” The dismissal is signed by Waldschmidt and, beneath his name, the following address appears: “74874 Joni Dr. #B5, Palm Desert, CA 92260.” (Dismissal of Attorney, September 2, 2014, p. 1.)

On October 21, 2020, the matter proceeded to trial, and the WCJ stated that Waldschmidt did not appear “even though he was served notice by” UEBTF. (Minutes of Hearing and Summary of Evidence and Disposition, October 21, 2020, p. 2:2-3.) The WCJ

ordered that trial would be continued to December 2, 2020 and that UEBTF would serve notice thereof on Waldschmidt. (*Id.* p. 1:21-22.)

Also on October 21, 2020, the WCJ entered into the minutes the order that trial be continued until December 2, 2020 and that UEBTF serve applicant's employer with notice of the continued trial. (Minutes of Hearing, October 21, 2020.) The WCJ designated UEBTF to serve a copy of the October 21, 2020 upon the parties of record. (*Id.*)

On October 22, 2020, UEBTF sent notice of the December 2, 2020 trial by mail to Waldschmidt at the address of "74874 Joni Drive Palm Desert CA 92260." (Proof of Service-Notice of Trial, October 27, 2020, pp. 1-4.)

On October 27, 2020, the court served a copy of the October 21, 2020 Minutes of Hearing and Summary of Evidence and Disposition on all parties of record. (Minutes of Hearing and Summary of Evidence and Disposition, October 21, 2020, p. 25.)

On February 12, 2021, the WCJ issued the Findings, Award and Orders which was affirmed by our August 15, 2022 Opinion and Decision After Reconsideration. In it, the WCJ found as outlined above and ordered the parties to negotiate all liens, costs, self-procured medical treatment and medical mileage, and ordered UEBTF to notify applicant and applicant's counsel of any action brought against Waldschmidt. (Findings, Award, and Orders, February 12, 2021, pp. 1-2.)

On September 28, 2021, Waldschmidt sought reconsideration of the Findings, Award and Orders, contending that Mr. Collins failed to enter his (Waldschmidt's) complete address into the official address of record (OAR). (Petition for Reconsideration, September 28, 2021.) Specifically, Waldschmidt alleged:

Petitioner was initially represented by Brian Collins, who withdrew via a dismissal filed September 24, 2021. EAMS 12936522. When he withdrew, he did not . . . update nor confirm the correctness of the official address record. Petitioner's address was never 74874 Joni Drive, Palm Desert, California 92260. That address is a multi-unit industrial complex. Without adding "Unit 5" to the address mail is not reliable.

(*Id.*, pp. 2:1-5.)

The WCJ issued a report and recommendation on Waldschmidt's petition, stating:

The threshold issue of employment versus independent contractor was hotly contested in a three-day trial on 7/17/13, 10/16/13 and 3/5/14, at which trial petitioner herein, David Waldschmidt, appeared and testified. At no point during

this trial proceeding was there any objection as to WCAB jurisdiction over the dispute. A Findings, Award and Order issued on 5/30/2014. There was no appeal of the determination that Johnny Hamlett was an employee of David Waldschmidt dba Wolf Performance. Mr. Waldschmidt submitted to and acquiesced in the jurisdiction of the WCAB by attending, participating in and testifying at the trial, by failing to object to jurisdiction in the first place, and by failing to appeal the initial judgment of an employer-employee relationship between himself and Mr. Hamlett.

Following the initial adjudication of WCAB jurisdiction and the finding of employment, Mr. Waldschmidt ceased to participate in the workers' compensation case and provided no benefits, and so the further adjudication of issues was handled by the Uninsured Employers Benefits Trust Fund, which had been previously joined to the action by Judge Pusey on 4/13/2011. With no active participation in the matter by Mr. Waldschmidt, the UEBTF saw to the ongoing treatment and evaluation of Mr. Hamlett's serious injuries, culminating in final reports from the Panel QME, David Wood, M.D. Following several settings and two days of trial (10/21/2020 and 12/2/2020), the issues were submitted and a Findings, Award and Orders issued on 2/12/2021.

A Petition for Reconsideration was filed on 9/28/2021. To have been a timely Petition for Reconsideration, it would have needed to have been filed by March 9, 2021 (20 + 5 days after the issuance of the final decision).

...

It is each person's or party's responsibility to ensure that the WCAB has the correct mailing address for each participant, and the Official Address Record is available online to each party to ensure that the WCAB has the correct address in their system for that person or party. If incomplete information or an incomplete address was given to the WCAB for the Official Address Record, then that is the information in our system until a person or party advises the WCAB of the correct information. EAMS is not intuitive and requires persons and parties to make a specific request to make a change in the Official Address Record.

Insofar as Mr. Waldschmidt participated in and testified at the initial trial in this matter to determine if applicant was an independent contractor or an employee, he certainly had access to the Official Address Record. He was represented by counsel, who also had access to the Official Address Record. If the address for Mr. Waldschmidt was never checked or corrected on the Official Address Record, that responsibility ultimately falls on Mr. Waldschmidt, who, once he dismissed his prior counsel (Dismissal of Attorney was filed 9/2/2014 – EAMS Doc. ID 12936522) became responsible for representing himself and making sure the WCAB had his correct address. Further, parties to a case have access to an online site to obtain Official Address Information and status of case, and, as a party to the case, Mr. Waldschmidt, as an unrepresented employer, could also have availed himself of information through the Call Center or Information and Assistance Office.

Changes to the Official Address Record do not magically occur, but require a request for some action to be taken. . . . No petition to change or correct Mr. Waldschmidt's address was made prior to the instant filing of the Petition for Reconsideration, which was accompanied by a separate Notice of Change of Address, and Notice of Representation filed by current counsel, English Lloyd & Armenta. Asserting an incorrect address nearly 11 years after the Application for Adjudication of Claim was filed and 7 years after dismissal of his prior attorney after 3 days of trial and a final determination as to an employee/employer relationship certainly does not show adherence to the Rules or due diligence. There was no denial of due process.

. . .

Further, there is no information in the file that Mr. Brian Collins, Mr. Waldschmidt's prior counsel, withdrew from the case, as is asserted in the instant petition. There is no Petition for Leave to Withdraw as counsel, there is a Dismissal of Attorney, which infers that the attorney was dismissed or "fired" by the client and did not seek leave from the court to be allowed to withdraw. Any argument Mr. Waldschmidt has regarding the effectiveness of his prior representation and what the attorney did or did not do when the representation ceased is best addressed in another venue, as the WCAB does not have jurisdiction to address complaints against a member of the State Bar.

Once the threshold issue of employment was determined (and not appealed), Mr. Waldschmidt could have stepped up and taken over the provision of benefits and adjudication of further issues without the involvement of the UEBTF, but he did not. He very conspicuously disappeared and ceased participation in a case wherein an employee sustained a very severe injury resulting in a high degree of disability with a life pension and award for lifetime future medical care.

Mr. Waldschmidt . . . should not be afforded relief in equity for actions he did not take to ensure that his address was correct in the WCAB Official Address Record.

(Report and Recommendation on Waldschmidt's September 28, 2021 Petition for Reconsideration, pp. 1- 5.)

On March 21, 2022, we "agree[d] with the WCJ that the mere allegation that Waldschmidt did not receive [the February 12, 2021 Findings, Award and Orders] because his address in the OAR was incomplete may not serve as grounds for the Petition to be deemed timely." (Opinion and Decision After Reconsideration, March 21, 2022, p. 7.) However, we determined that because "the record . . . suggests that the court improperly removed Mr. Collins's name [as Waldschmidt's attorney] from the OAR and . . . did not serve him as a consequence of its own error," we would treat the petition as timely and "develop the record as to the issue of

whether Waldschmidt was represented by Brian Collins” when the Findings, Award and Orders was served. (*Id.*, p. 11.)

On August 15, 2022, we rescinded our finding that the record as to whether Waldschmidt was represented by Mr. Collins required development and affirmed the Findings, Award and Orders on the grounds that “the pleadings record is sufficient to establish Mr. Collins’s consent to dismissal and, therefore, that he was not Waldschmidt’s attorney of record at the time of trial herein,” rendering the issue of whether the court was required to serve Mr. Collins moot. (Opinion and Decision After Reconsideration, August 15, 2022, p. 9.)

DISCUSSION

Waldschmidt contends that the dismissal of his prior attorney, Mr. Collins, contained his complete address, that the court clerk erroneously failed to amend his official address of record based upon the address in the dismissal, and that the failure to amend his address of record violated the right to due process.

The record reveals that Waldschmidt sought reconsideration of the Findings, Award and Orders on the grounds that Mr. Collins failed to enter his complete address into the OAR, resulting in a failure of notice and opportunity to be heard. (Petition for Reconsideration, September 28, 2021.) Specifically, Waldschmidt alleged that Mr. Collins omitted “Unit 5” from what was otherwise a complete and correct address in the OAR, leaving him vulnerable to a failure of notice.

We determined that the mere allegation that Waldschmidt did not receive notice of proceedings because his address of record was incomplete did not establish grounds for reconsideration and found reconsideration warranted only because the record was unclear as to whether Mr. Collins was still his attorney—and entitled to notice—when the court gave notice of trial. (Opinion and Decision After Reconsideration, March 21, 2022, p. 7.) Upon determining that that Mr. Collins was not Waldschmidt’s attorney and not entitled to notice, we rescinded our decision and affirmed the Findings, Award and Orders.

Now Waldschmidt argues that the court clerk should have amended his official address of record on the grounds that the dismissal of Mr. Collins included unit number 5. This argument is procedurally and substantively defective.

An issue that is not raised at the first opportunity at which it may properly be raised is waived. (Lab. Code, § 5502(e)(3), see also *Gould v. Workers' Comp. Appeals Bd.* (1992) 4

Cal.App.4th 1059 [6 Cal. Rptr. 2d 228, 57 Cal.Comp.Cases 157], *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260 [257 Cal. Rptr. 813, 54 Cal.Comp.Cases 145].) For example, in *Mercier v. Workers Compensation Appeals Bd.* (1996) 61 Cal.Comp.Cases 90, the Court of Appeals held that a defendant may waive objection to defective service by failing to raise the objection at trial or its first petition for reconsideration, stating:

[Defendant] failed to raise the issue of defective service in its initial petition for reconsideration and could not do so in its subsequent petition. "Thus a petitioner is not entitled to raise new contentions in a second petition for reconsideration with respect to an order, decision, or award that was the subject of a prior petition for reconsideration filed by the petitioner." (2 Hanna, Cal. Law of Employee Injuries and Workers' Comp. (rev. 2d ed. 1995) § 28.06, p. 28–25.15.) (*Mercier, supra*, at p. 94.)

Because Waldschmidt previously argued that his prior attorney, Mr. Collins, failed to amend his address in the OAR resulting in a failure of notice, and because he did not then allege that the court clerk also failed to amend the address with the same result, the issue is waived. (Petition for Reconsideration, September 28, 2021.)

In *City of Los Angeles v. Workers Compensation Appeals Bd.*, (1997) 62 Cal.Comp.Cases 339 (writ den.), the Court of Appeals found no violation of the right to due process where a trial was conducted in the defendant's absence after the defendant failed to appear after it allegedly did not receive notice of trial at its new address following mailing of notice to its address of record after it had failed to notify the court of its address change. The the Court reasoned that “[p]arties have a duty to notify the Board *of any change of address* and cannot complain of lack of notice if it was mailed to the address on the official address of record.” (*Id.*, at p. 340 [Emphasis added].)

WCAB Rule 10205.5(c) provides in relevant part:

[E]very party and every lien claimant having an interest in an active case pending before the district office or appeals board *shall advise* the district office and all parties of *any change of mailing address* and telephone numbers by furnishing the current information within five business days of any change (8 CCR 10205.5 (c) [Emphasis added].)

That Waldschmidt’s address in the dismissal of Mr. Collins included a unit number does not suggest that the dismissal advised the court of a change to Waldschmidt’s address of record. Because the dismissal does not advise of a change of address, the court clerk would have had no reason to deem it substantially different from that already in the OAR—and no reason to inquire whether a change of address had been requested.

Because Waldschmidt did not advise the court of any change to his address of record, his argument that the clerk erroneously failed to amend his official address of record is without merit.

Accordingly, we will affirm our August 15, 2022 Opinion and Decision After Reconsideration.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that our Opinion and Decision After Reconsideration issued on August 15, 2022 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 30, 2024

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

**JOHNNY HAMLETT
LERNER, MOORE, SILVA, CUNNINGHAM & RUBEL
ENGLISH LLOYD & ARMENTA
OFFICE OF THE DIRECTOR – LEGAL UNIT
THE LAW OFFICE OF BRIAN COLLINS
DAVID WALDSCHMIDT DBA WOLF PERFORMANCE GOLF CARTS**

SRO/cs

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