

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

**KENNETH HARLAN, *Applicant***

**vs.**

**RENE M. CASAREZ aka RENE CASAREZ aka RENE BASAREZ aka RENE  
CAESAREZ dba AFFORDABLE PLUMBING AND ROOTER; HIROSHI CHARLES  
TANGE; FARMERS INSURANCE, *Defendants***

**Adjudication Number: ADJ7507358  
Long Beach District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration (Petition) and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

We have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination(s). (*Id.*) We find no merit in petitioner's argument that the WCJ was precluded from considering homeowner Tange's credibility now because it was not raised previously. (Petition, p. 5.) The WCJ is empowered, and required, to weigh witness credibility. (See *Rodriguez v. Aladdin Custom Pools* (Nov. 9, 2018, ADJ7870189 [2018 Cal.Wrk.Comp. P.D.LEXIS 537, \*13]; *Doty v. Stoke* (Sept. 6, 2013, ADJ8149660) [2013 Cal.Wrk.Comp. P.D.LEXIS 419, \*22] ["The WCJ is empowered to resolve conflicts in the evidence and to make credibility determinations."].)

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**April 3, 2023**

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

**KENNETH HARLAN  
LAW OFFICES OF DENNIS R. FUSI  
LEWIS, BRISBOIS, BISGAARD & SMITH  
LAW OFFICES OF MICHAEL BRAUN  
OFFICE OF THE DIRECTOR LEGAL**

**JMR/pc**

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

**STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board**

**CASE NUMBER: ADJ7507358**

**KENNETH HARLAN**

vs.

**RENE M. CASAREZ aka RENE CASAREZ aka RENE BASAREZ aka  
RENE CAESAREZ dba [AFFORDABLE] PLUMBING AND ROOTER;  
HIROSHI CHARLES TANGE; FARMERS OKLAHOMA CITY;**

**WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE:  
DANIEL NACHISON**

**DATE OF INJURY: AUGUST 3, 2010**

**REPORT AND RECOMMENDATION OF WORKERS'  
COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION**

**I  
INTRODUCTION**

Farmers Insurance and Hiroshi Tange (hereafter homeowner, Tange or Petitioners) have jointly filed a timely, verified, Petition for Reconsideration of the Findings of Fact dated January 18, 2023, determining that Affordable Plumbing and Rooter, a dba for Rene M. Casarez aka Rene Casarez aka Rene Basarez aka Rene Caesarez (hereafter Rene Casarez, Rene, or Affordable) was not a licensed contractor on August 3, 2010. It was also found that Tange was an employer of Kenneth Harlan (hereafter Applicant) who was performing plumbing work at a new construction project, at 22303 Avis Court, Torrance, California, on the date injury is claimed. It is from these findings that petitioners seek redress.

Petitioners assert that the Court erred in its Findings of Fact as follows:

1. That by the Findings of Fact and Opinion on Decision made and filed by the WCJ, the Appeals Board acted without or in excess of its powers;
2. That the evidence fails to justify the Findings of Fact;
3. That the Findings of Fact do not support the order, decision, or award.

Petitioners assert that reconsideration of the Finding of Fact should be granted because:

- a. It is irrelevant that Affordable was not a licensed contractor because there was no contract between Affordable and Tange;
- b. Hiroshi Tange did not employ applicant;
- c. The Court exceeded its authority by raising the issue of Tange being the employer at the “second trial”.

## **II. FACTS**

The sole issue before the Court is employment. Kenneth Harlan claims to have sustained injury while working for Affordable at the site of Tange’s home which was under construction. By Findings and Order dated March 23, 2022, Affordable was found to be applicant’s employer on the date of injury and the record was ordered to be developed with respect to whether Affordable was a licensed contractor. Defendant JMA Contractors and its substantial shareholders were dismissed.

The record was developed with the addition of the Contractor’s License report for Affordable Plumbing and Rooter (Exhibit XX) and the WCIRB report dated March 24, 2022 (Exhibit YY). Affordable was shown to have a Contractor’s License but was uninsured for workers’ compensation. With this additional information the case was set for second day of Trial on the issue of employment. No further testimony was offered, additional Exhibits XX and YY were admitted without objection, and the matter was submitted based on the testimony previously given.

Kenneth Harlan testified that he was employed by Affordable for six or seven months until he was injured on August 3, 2010 (SOE Page 3, Lines 14-15). His duties were primarily those of a plumber’s assistant or helper on new construction, service calls, old construction and different plumbing jobs (SOE Page 3, Lines 15-16.5). He was supervised by Rene Casarez (Page 3, Line 16.5). The address where he was injured was 22303 Avis Court, Torrance, California (SOE Page 3, Lines 19=22). He was paid in cash, depending on the type of job, by Casarez (SOE Page 4, Lines 5-6). He was injured while capping a sewage pipe that was placed in a three foot trench (SOE Page 5, Lines 10-11).

Applicant does not know whether there was a contract between Affordable and the homeowner (SOE Page 4, Lines 5-5.5) (Page 4, Lines 20.5-21). Harlan does recall seeing job orders between Tange and Casarez (SOE Page 8, Lines 5-8). He also recalled overhearing a conversation between Tange and Casarez regarding the installation of a heater and a gas pipe (SOE Page 9, Lines 10-12). He worked at the Avis Court location at least 60 hours during the period between May and August 3, 2010 (SOE Page 3, Lines 23-23.5).

Tange testified that he obtained an estimate from Affordable but never signed a contract. Affordable never did any work for him (SOE PAGE 6, Lines

6-8.5). Rene kept coming back for a month or two and the homeowner spoke to him many times because he was hanging around to do work of some kind (SOE Page 6, Lines 12-14). Tange has not recollection of seeing applicant work at the property at any time (SOE Page 6, Lines 17-17.5). He did not hire a plumbing contractor. The plumbing work was done by his brother-in-law, a handyman, who was not a licensed contractor, and a tile setter (SOE Page 7, Lines 19.5-20). The handyman did most of the plumbing under the house (SOE Page 7, Lines 19.5-20). The homeowner could not recall who dug the trench and laid the pipe to the sewer which was being capped by applicant (SOE Page 7, Lines 9-9.5).

### **III.**

#### **AFFORDABLE IS AN EMPLOYER BUT NOT AN INDEPENDENT CONTRACTOR**

Casarez was a licensed contractor (Exhibit XX). However, the record shows that he was uninsured for workers' compensation (Exhibit YY). The type of work being performed (Plumbing) requires a license in good standing in California (Business and Professions Code Section 7000 et. seq.). A contractor's license is suspended, as a matter of law, at the time of hire of an employee in the absence of compensation insurance (Labor Code Section 3700; Business and Professions Code Section 7125.2).

The burden of proof on an issue lies with the party having the affirmative of the issue (Labor Code Sec. 5705). The applicant has the affirmative on the issue of employment and must prove the elements by a preponderance of the evidence (Labor Code Sec. 3202.5). Preponderance of the evidence means that when compared to the evidence opposed has a greater likelihood of truth. Applicant has the burden of proof to establish employment while the defendant has the burden of proof to establish independent contractor (Blew v. Horner (1986) 51 CCC 615).

An "employer" is any person who has a natural person in service (Labor Code Section 3300). "Employee" means 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 (Labor Code Section 3351). Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee (Labor Code Section 3357).

Labor Code Section 2750.5 provides in pertinent part as follows:

There is a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required pursuant to Chapter 9 (commencing Section 7000) of Division 3 of the Business and Professions Code, or who is performing such

services for a person who is required is an employee rather than an independent contractor...

Affordable was doing work which required an active license. The license was suspended due to the lack of workers' compensation insurance. As an employee of the unlicensed contractor Harlan is presumed to be the employee of the person or persons who benefitted by his labor and has control over the project (Laeng v. WCAB (1972) 37 CCC 185).

#### **IV. THE HOMEOWNER EMPLOYED APPLICANT**

It is well established that liberal construction allows the definition of "service of an employer" and a general presumption of employment to be construed by the courts with the purpose of extending benefits for the protection of persons injured in the course of employment (Labor Code Section 3202). Common law and contractual elements of the employment relationship are replaced in determining employment by right to control and benefit to the employer (Laeng, supra. at 193).

Applicant's testimony is more plausible than that of the homeowner on several points. It is undisputed that Casarez was present at the job site for a period one to two months which coincides with the period that applicant testified he worked on the job. Applicant's testimony that he saw work orders and overheard conversations regarding work at the site makes sense in light of Casarez being present at the site for an extended period. It is acknowledged by Tange that he had numerous conversations with Casarez. None of the work being done on the construction site was performed by contractors who were insured for workers' compensation. The homeowner could not recall who dug the trench and laid the pipe that applicant was capping when he claimed he was injured. Review of this record shows that the testimony of the applicant has a greater likelihood of truth than that of the homeowner. Petitioners note that there was a written contract between JMA Contractors and the homeowner in support of their claim that there was no agreement between Tange and Affordable. JMA who was dismissed on other grounds, was also uninsured.

The Court may draw inferences from the evidence (Coborn v. IAC (1948) 13 CCC 89; Phoenix Indemnity v. IAC (Hamilton) (1948) 13 CCC 118). In order for an inference to be substantial evidence it must be fairly drawn from the evidence and cannot be based on evidence lacking probative force or based on purely fanciful conclusion (Ybarra v. WCAB (2002) 67 CCC 1283; Bracken v. WCAB (1989) 54 CCC 349). We find that applicant was working on the new construction project at the direction Casarez who employed him for the benefit of the homeowner. Affordable, an unlicensed contractor, was performing work requiring a license at 22303 Avis Court, Torrance, California at the instance of the homeowner who was in charge of the project on the date of the alleged injury.

The rationale for the presumption of employee status for persons who were unlicensed contractors or working for unlicensed contractors is set forth in State Compensation Insurance Fund v. WCAB (1985) (Meier) 50 CCC 562, 568, as follows:

The fundamental policy underlying the workers' compensation laws is that those hiring others to perform services should bear the risk of injuries incurred in the undertakings. When the person seeks to hire the services through a licensed independent contractor, it is reasonable to anticipate that the independent contract will insure against the risk and that the cost of the insurance will be added on as part of the price of the contract. Thus it is reasonable to exonerate the hirer of the independent contractor. However, when the person performing the services for which a license is required is unlicensed, the likelihood that he will insure against the risk of injury, and has included the insurance cost in the price of the contract is greatly reduced.

There is no credible evidence rebutting the presumption of employment by the person benefitting from the services of the unlicensed contractor, and who was entitled to exercise control over the project.

Applicant was an employee of Affordable, a plumbing contractor, which was unlicensed by virtue of being uninsured for workers' compensation and cannot be an independent contractor. It is undisputed that the homeowner was on the job site, interacted with the contractors and appears to be acting as his own general contractor. He testified that he hired the contractors which shows sufficient control over the project. Applicant worked on the project performing plumbing services for the benefit of the employer. These facts are sufficient to meet the definition of employment as stated in Laeng.

Therefore, this renders the homeowner to be the ultimate hirer of the employee of the unlicensed contractor (Meier, supra; 567; Rinaldi v. WCAB (1988) 53 CCC 107).

## V.

### **THERE WAS ONE TRIAL ON THE ISSUE OF EMPLOYMENT**

There was one trial on the issue of employment. The matter was initially submitted on the issue and a Findings and Order, dated March 23, 2022, issued with Affordable determined to be an employer and ordering development of the record on whether or not Affordable was a licensed contractor. Once additional evidence was offered on the issue of the licensure and insurance, the parties proceeded to a second day of trial October 19, 2022, without objection, and the case was submitted after the admission of additional exhibits. The minutes of the hearing at the second day of trial list the issues as:

1. Whether or not Mr. Casarez is a licensed contractor;
2. Based on the outcome of the above-listed issue:  
Whether there are additional employers other than Mr. Casarez.

The parties declined to provide any additional testimony.

**VI.  
RECOMMENDATION**

The Petition for Reconsideration should be denied.

DATE: February 22, 2023

Daniel Nachison

WORKERS' COMPENSATION JUDGE