

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

PLS

YOUSIF YOUNAN,

*Applicant,*

Case Nos. VNO 388130

FINDINGS OF FACT

vs.

JACQUELINE RODAS;  
INTERINSURANCE EXCHANGE,

*Defendants.*

Law Offices of Scott Solis  
By: Scott Solis  
Attorneys for Applicant

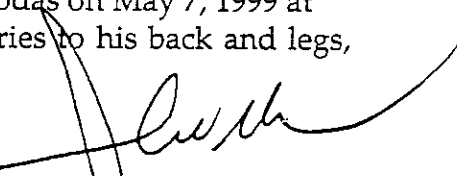
Law Offices of Kegel, Tobin & Truce  
✓ By: Preeti Shah  
Attorneys for Defendant

Application having been filed herein, all parties having appeared, and the matter having been regularly submitted, the Honorable JOHN K.C. MAH, Workers' Compensation Administrative Law Judge, now makes his decision as follows:

FINDINGS OF FACT

1. Applicant was not employed by Jacqueline Rodas as a laborer
2. Applicant, while allegedly employed by Jacqueline Rodas on May 7, 1999 at Los Angeles, California, did not sustain industrial injuries to his back and legs, with resulting incontinence.

Dated: 7-2-02  
Served on all parties as shown on  
the Official Address Record.  
By: Margie Lujano

  
\_\_\_\_\_  
JOHN K. C. MAH  
Workers' Compensation  
Administrative Law Judge

"A Petition for Reconsideration from this decision shall be filed only at Van Nuys District Office of the Workers' Compensation Appeals Board."

✓  
PLS

STATE OF CALIFORNIA  
Workers' Compensation Appeals Board  
WCAB CASE NO.: VNO 388130

YOUSIF YOUAN

v.

JACQUELINE RODAS;  
INTERINSURANCE EXCHANGE

JUDGE: JOHN K.C. MAH

OPINION ON DECISION

It is found that on May 7, 1999, applicant Yousif Younan was not employed by Jacqueline Rodas, a homeowner, and if he had been employed, did not sustain an industrial injury to his back and legs with resulting incontinence.

It is my determination that on May 7, 1999 applicant was not an employee of Ms. Rodas but an independent contractor building a room addition to her home in his capacity as a *licensed* contractor. Applicant testified at trial that he has been a licensed general contractor since 1995 or 1996. I did not believe the testimony of applicant, who has purportedly not been employed since the date of the alleged injury, that he has never worked under his contractor's license nor ever "pulled a permit" as a general contractor. I found even more difficult to believe, applicant's trial testimony that he has never worked as a contractor, but only as a "laborer."

In *S.G. Borello & Sons v. Dept. of Industrial Relations* (1989) 43 Cal. 3d 341, 54 Cal. Comp. Cases 80, the Supreme Court cited the following "additional factors . . . derived principally from the Restatement Second of Agency" to consider in determining whether there is an employment relationship:

- a) Whether the person performing services is engaged in a distinct occupation or business.
- b) The kind of occupation and whether the work is usually done under the principal's direction or by a specialist without supervision.
- c) What skill is required.
- d) Whether the principal or the worker supplies the tools and place of work.
- e) The length of time the services are to be performed.
- f) Whether the worker is paid by the time or by the job.
- g) Whether the work is part of the principal's regular business, and
- h) Whether the parties believe they are creating an employer-employee relationship.

At the time of his alleged injury, applicant was engaged in a **distinct occupation**. Applicant was not a laborer as he claims, but a construction tradesman hired by Ms. Rodas to "add a room" to her home. Applicant testified at trial that he told Ms. Rodas he was a civil engineer in Kuwait. Applicant also testified that he previously performed "small jobs" such as installing drywall and building ceilings on garages.

The type of work applicant was hired to perform was that of a **specialist** without supervision. Applicant admitted at trial that he was hired by Ms. Rodas to "add a new room" to her home. I do not believe that Ms. Rodas, a homeowner, could have supervised applicant's work as a construction tradesman. At trial, applicant testified that Ms. Rodas told him "how to do" his job. Applicant cited as an example that she told him *where to place* windows and a canopy. In my opinion, such directions did not constitute supervision of the applicant. Even though applicant testified that he could "not recall" if Ms. Rodas told him how to frame the walls of the room addition or how to lay the foundation, I seriously doubt she did.

The work of a tradesman who builds a room addition to a house requires **skill**, and is far different from that required of an unskilled laborer. To construct a room addition, requires a tradesman to be familiar with construction principles and techniques. The level of applicant's skill and knowledge of the building trades is evidenced by Defendant's B, an itemized estimate of the charges *prepared and signed by him* for his labor. The itemization calls for applicant to perform electrical work, carpentry work, finish carpentry work, and plumbing work, and to install windows and a roof for the sum of \$6,560.00.

While the site of the work was Ms. Rodas' home, applicant testified at trial that he used his own **tools** for her job.

With respect to the **length of time** applicant's services were to be performed, Ms. Rodas testified that applicant told her he would complete her project, an enclosure of her patio, in 3 months. However, according to Ms. Rodas the project took longer because applicant's wife was ill and he work working on a bathroom project for another person.

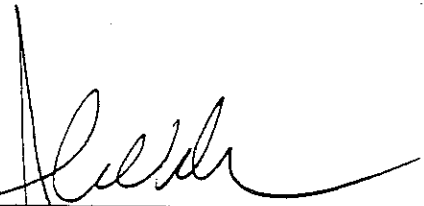
Based on the estimate (Defendant's B) prepared by applicant, it is evident that he was **paid by the job** and not the hour.

Ms. Rodas is a homeowner who hired applicant to perform construction work for her. There is no evidence that her **regular business** was.

There is a dispute between applicant and Ms. Rodas regarding whether they believed an **employer-employee relationship** was created. While applicant claims he was hired as Ms. Rodas' employee to work as a "laborer" for her, I believe she hired him in his capacity as a licensed contractor to build a room addition.

The court in *Borello* also referred to a 6 prong test from other jurisdictions that includes "the right to control the work," the alleged employee's opportunity for profit or loss, the alleged employee's investment in equipment or materials required for the task or employment of helpers, whether the service rendered requires a special skill, the degree of permanence of the working relationship, and whether the service rendered is an integral part of the alleged employer's business. These factors are quite similar to the elements from the Restatement of Agency.

It is my determination that even if applicant had been employed by Ms. Rodas, the alleged injury of May 7, 1999 never occurred. I do not believe that applicant slipped on dog feces on that date while carrying a bag of cement. Based on the emergency room note from the records of L.A. County/USC (Defendant's D), it appears that he *fell in a bathroom* on **May 9, 1999** and developed "severe low back pain" and had a *second fall* on **May 12, 1999** which resulted in "numbness/weakness" in his lower extremities. At trial, applicant's recollection was refreshed that he fell in a bathroom one or two days after allegedly slipping in Ms. Rodas' house, and that he collapsed at home.



---

JOHN K.C. MAH  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Date Served: 7-2-02  
Served on parties as shown on  
Official Address Record  
By: Margie Lujano