STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

MICHAEL WOXLAND, *Applicant* vs. CARMELO, RAMONA AND LILLIAN GARCIA as individual homeowners/BANKERS & SHIPPERS INSURANCE COMPANY, *Defendants.*	Case No. NOR 191017 **FINDINGS AND ORDER**

Honorable JULES L. GREENBERG. Workers' Compensation Judge, Finds and Orders as follows:

FINDINGS OF FACT

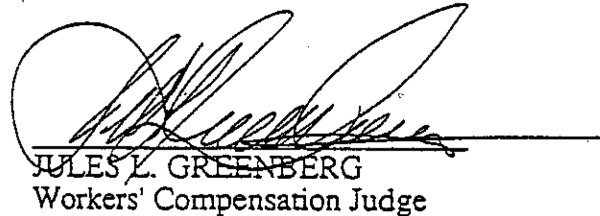
1. The injured applicant was not within a covered employment relationship pursuant to Labor Code Section 3352(h).

2. The Bunkhouse Rule would not apply as applicant was not in the course of employment.

3. The services performed by applicant were not directly related to an employment relationship.

ORDER

Based on the Findings of Fact and Opinion herein, IT IS HEREBY ORDERED that applicant take nothing. All liens based on the Findings herein are disallowed and the matter is hereby taken off calendar.



JULES L. GREENBERG
Workers' Compensation Judge

Service by mail on parties listed
on the Official Address Record
Date 08-31-94
By: [illegible]

FORM 111.1

NOR 191017

MICHAEL WOXLAND VS CARMELO, RAMONA & LILLIAN GARCIA as individual homeowners/BANKERS & SHIPPERS INSURANCE CO.,

WORKERS' COMPENSATION JUDGE; JULES L. GREENBERG

OPINION ON DECISION

FACTUAL BACKGROUND

The defendant issued to Carmelo and Ramona Garcia, parents of witness Lillian L. Garcia a homeowner's liability policy covering the residence located at 14035 Trumble St. in Whittier, California. Included in this policy was an additional coverage for workers' compensation for residence employees. The policy covered the period 9/11/92 to 9/11/93. The policy went on to describe in detail the definition of Residence Employee which means: ". . .any person employed by the owner or occupant of

> a residential dwelling whose duties are incidental to the ownership, maintenance or use of the dwelling, including the performance of household domestic services, or who performs elsewhere duties of a similar nature, or whose duties are personal and not in the course of the trade, profession or business, or occupation of the owner occupant, as defined."

The person so employed as a residential employee is covered provided that during the 90 calendar days immediately preceding the date of injury, the employee has:

> "(a) actually been engaged in such employment for no less than 52 hours, and
> (b) earned from the insured no less than $100 in wages.

The language of the insurance contract is an expression of the statutorily required definition of employee under Labor code Section 3351(d) and who may be an "excluded employee" under 3352(h).

Sometime in the second week of July 1992, the applicant Michael Woxland, moved into the residence on Trumble St. to live with Garcia. It was in July of 1992 that Woxland, a carpenter, began drawing unemployment benefits.

Prior to moving in with Garcia, Woxland was living in a 30 ft. trailer in Pomona.

He and Garcia entered into an agreement or "arrangement." In return for his help around the house, (fixing up the yard, the doors, concrete work and fixing locks) he was to be entitled to room and board.

Sometime, approximately September 1992, their relationship changed and they became intimately involved. This however according to Garcia did not alter the agreement between them, for him to provide fix it services in return for room and board.

One of the things Garcia asked Woxland to fix was the roof that leaked.

She was unaware if he was working other places and was also unaware if he was obtaining E.D.D. benefits. She never paid him any money.

On October 23, 1992, Woxland was on the roof trying to cover a hole with plastic sheeting and it was raining. He slipped and fell, injuring his ribs, head and left wrist. Friends took him to Whittier Hospital for treatment.

Through a private investigator, the defendant was able to get statements from Garcia's parents. The deed of trust lists all three Garcias

as owners of the Trumble St. property. Lillian under an agreement with her parents made all the house mortgage payments. It was Carmelo Garcia who told Lillian the roof needed fixing and she should get it fixed. He had no idea however, that she hired Woxland to do the job.

Garcia's mother, Ramona's statement is that she was aware of Woxland/and i.e. she had heard of him, but never met him and neither she nor her husband had authorized him to make repairs to the house.

Defendant has stated that the only named insureds on the policy were Carmelo and Ramona Garcia, not Lillian. It is however undisputed that Lillian Garcia along with her parents were the owners of the Trumble St. home and that Lillian occupied the residence.

DISCUSSION

The relevant portions of the policy which correspond to portions of 3351 and 3352 of the Labor code have previously been described. The facts show that the applicant and the homeowner entered into an agreement whereby the applicant was to provide home maintenance tasks and receive in kind payment of wages in the form of room and board.

> Labor Code 3357 states ". . .any person rendering service for another, other than an independent contractor, or unless expressly excluded herein, is presumed to be an employee."

The burden of proof then is on the defendant, to demonstrate applicant was either excluded under 3351(d) or by 3352(h) or was an independent contractor.

(5705 and 3202.5)

It is true that the homeowner, Garcia did not derive any income directly from the applicant, nor did she pay him an actual wage. the payments bilaterally were "in kind." That the concurrent consideration was in kind and not tangible does not make it any less valuable or meritorious. Garcia was the beneficiary of valuable repair and fix-it services from Woxland and he in turn was afforded the equivalent of monetary payment for the value of a room and meals.*

The term as used in 3351 "course of trade, business, profession, or occupation includes all services tending towards the preservation, maintenance or operation of the business, business premises or business property of the employer." (3355 L.C.)

This means or included, "any undertaking actually engaged in by the employer with some degree of regularity, irrespective of the trade names, articles of incorporation, or principal business of the employment." (3356 L.C.)

Was Mrs. Garcia engaged in a "business," within the meaning of the law?

There is a case on point, namely Stewart v. W.C.A.B. (1985) 50 C.C.C. 524. In Stewart, the court raised the same issue, since Mr. Potter the

*Workers' compensation law does not require that an applicant receive monetary compensation for his services in order to be an "employee." (Parsons v. W.C.A.B. (1981) 46 C.C.C. 1304)

applicant, a carpenter and handyman, fell from Mrs. Stewart's roof. As it turned out, Potter was also a tenant in Mrs. Stewart's house. He did odd jobs around the residence and Mrs. Stewart paid him $7.00 an hour, while he paid her $150 in rent.

The court held that if Potter's work was actually performed in the course of Mrs. Stewart's business, liability for compensation would attach, "under the general provision of the . . . law." (See Stewart Supra p. 526).

The court however found a whole line of cases that carved out an exception to the broad principle that compensation might attach.

These were the cases that held, that the ownership and rental for a profit and the irregular demands for labor to be performed by the lessee, of repairs of the property is not the engagement of a trade or business within the meaning of the act. Therefore when the employee casually engages in such repair, no liability will attach to the homeowner, for any injury sustained. (For a complete listing of these cases refer to Stewart, Supra p. 526).

The facts here show Garcia was not in the habit or custom of renting a room or a portion of the premises to others in exchange for repair services. If anything, the circumstances shown here are of a special landlord/tenant arrangement based on mutual need. Woxland was wary of the truck thieves in Pomona and wanted to move in for safety. Garcia, needed repair and yard work services which he could provide.

There was no covered employment relationship based on Garcia being engaged in a business. The defendant did not specifically attempt to show

that Woxland was excluded by virtue of 3352(h). It is quite possible that while he may have earned in excess of the pecuniary limit by statute ($100), he may have worked less than 52 hours in the 90 day period immediately preceding the injury.

There is yet another problem with seeing this as a compensable injury and that is whether the injury arose out of employment and occurred during the course of that employment. This is applicant's burden. There is at best, contradictory evidence to show whether applicant was actually performing job duties at the time of injury. The applicant's testimony was that he was not in the course of employment when injured. The leak was a personal inconvenience to him and he was not repairing the roof, merely covering the leak with a plastic sheet when he slipped and fell.

This type of situation would also take the injury out of the bunkhouse rule as the applicant was acting within the tenant-landlord relationship at the time of injury and not the employer-employee one. This split of relationships has been validated by case law, and the landlord tenant one found to be entirely subsidiary and collateral to the employment one.

The facts here show the applicant to be a skilled journey craftsman carpenter. He was collecting unemployment benefits, meaning he was holding himself ready and available to accept work. As further evidence of this, he was actively seeking employment out of the union hall and left the Garcia residence regularly to look for work. He stored his electric tools including a skill saw, drill motors, drill presses, etc. in the garage.

A type of employment not present in the instant case would have to exist before the bunkhouse rule could be applied. (See Rosen v. I.A.C. 31 C.C.C. 28). In Rosen, the line of cases cited held that the applicant's full time occupancy of or presence upon the employers premises was a substantial portion of the full time employment relationship that existed.

It does not make good common sense yet alone good public policy, to have as either an express or implicit intent of our workers' compensation law, that landlords be required to compensate their tenants for injuries under the circumstances of this case.

It makes no sense to require application of the law in a situation where the injured person/tenant, sustained injury while engaged in an activity only indirectly linked to an employment relationship, but directly connected to his activity and rights as a tenant.

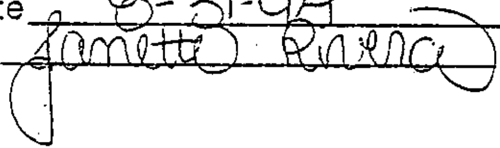
Motions:-Applicant objected to the declaration by the absent parents of Garcia as "hearsay.". The WCJ is convinced that these statements of unavailable witnesses (because of illness) are trustworthy enough to warrant admission in this forum. The investigator who took these statements was an available witness and was subject to cross-examination by applicant. The statements at best were only a collateral source of proof that Woxland was not primarily hired by any of the Garcia's to do roof repair. Motion therefore is denied and the statements admitted on behalf of defendant.

The Liens-This being an employment issue, the liens are not reimbursable to applicant per 4903 L.C., therefore lien claimants can take nothing.

JULES L. GREENBERG
Workers' Compensation Judge

JLG:bgd

Service by mail on parties listed
on the Official Address Record
Date 8-31-94
By:



FORM 111.9