

1 STATE OF CALIFORNIA  
2 DIVISION OF WORKERS' COMPENSATION  
3 WORKERS' COMPENSATION APPEALS BOARD

4 CASE NO: (MF)

5 Applicant

POM District Office

6 vs.

7 MINUTES OF HEARING  
8 AND  
9 SUMMARY OF EVIDENCE

10 INC.;

11 Defendant(s)

12 LOCATION: Pomona, California

13 DATE AND TIME: September 12, 2019; 10:08 A.M. - 11:31 A.M.  
14 1:35 P.M. - 2:22 P.M.

15 JUDGE: THE HONORABLE

16 REPORTER: Hearing Reporter

17 APPEARANCES:

18 DIETZ, GILMOR & CHAZEN  
19 BY: CLARA FORMAN, ESQ.  
20 Attorneys for Defendant

21 Spanish Interpreter  
22 Spanish Interpreter

23 WITNESSES:  
24  
25

(52 pp.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

LET THE RECORD REFLECT this is a continuation in this matter.

EXHIBITS:

LET THE RECORD REFLECT that Applicant Exhibits 3 through 8 and Defense Exhibits A and C, which were previously admitted, were given to the Court today.

LET THE RECORD REFLECT that the following witness was taken out of order as applicant's witness was running late.

\* \* \*

SUMMARY OF EVIDENCE

a defense witness, was called, duly sworn and testified substantially as follows:

DIRECT EXAMINATION:

The witness is a investigator employed with as a licensed PI. He has been a private investigator for five years. Three of those years have been with

He used two cameras, both of which he has experience using -- one for one year and one for six years. He filmed applicant. After he filmed he then made a copy of that film and stored the original in a locked cabinet. He has a copy of the original film. It has not been out of his custody.

The Court was shown a video of applicant preparing a roof on a trailer which was shot from a public street while applicant was up on the roof and viewable by the public. Applicant was seen squatting and kneeling over time. It was indicated that there was an hour and 20 minutes of film with him performing the same or similar activities during that time.

\* \* \*

1 LET THE RECORD REFLECT that at this point the  
2 applicant's witness arrived.

3  
4 a witness on behalf of the applicant, was called, duly  
5 sworn and testified through the interpreter, who was also duly  
6 sworn, substantially as follows:

6 DIRECT EXAMINATION:

7 The witness is applicant's brother. The witness  
8 testified that he had come from Washington. When they started  
9 working on the job that his brother was on, his brother was a  
10 foreman. He observed his brother looking tired and walking  
11 badly. That day, although it's not indicated exactly what that  
12 day was, and told him to take the position that his  
13 brother was in and start working in that position. At that  
14 point he told his brother to stop and go see a doctor. He  
15 later spoke with with human resources and safety  
16 coordinator and told her what was happening. He sent his  
17 brother to the doctor. The witness remembers that he returned  
18 from Washington on October 5, 2018, so all of this happened  
19 sometime in October, but he could not remember exactly when.

14 EXAMINATION BY THE COURT:

15 He does not remember a time when the applicant fell on  
16 the stairs. He did not talk to his brother during the summer  
17 of 2018.

17 CROSS-EXAMINATION:

18 He testified that he lives with his brother and has  
19 lived with him for many years. They don't go out after work,  
20 but he associates with him at home because they are family. He  
21 testified that he is a foreman with and has  
22 been so for about four years and had previously worked as an  
23 installer.

24 He testified that if someone reports a work injury  
25 as a foreman he then calls a company his company uses called  
and fills out paperwork. He has to make sure  
26 the person is okay, and if it's a serious injury, he calls 911  
27 and does not leave them.

28 He testified that when he came back from Washington he  
29 saw his brother walking badly but did not ask him why because

1 he wasn't the foreman on that job, although he was a foreman.  
He testified he just couldn't step into somebody else's job.  
2 He was not the foreman on that specific job, so he felt that he  
could not intervene. He never asked his brother if he injured  
3 himself at work. His brother was the foreman at that job.  
When they switched him to be the supervisor over his brother,  
4 that's when he reported it to

5 He testified that when he arrived back from Washington  
he had not seen his brother at work until that specific day.  
6 He indicated that had never told him he was going to  
fire his brother, although he said that was going to  
7 fire his brother. He claimed that at that time he didn't know  
about his brother's injury and doesn't remember if he told  
8 before or after he spoke with about applicant's  
performance issues to tell her about the injury. He remembers  
9 that he just told He did not tell He reported  
to because she was in charge of safety. He does not know  
10 if still works there. This last week he reported an  
injury to because he does not know who the new safety  
11 coordinator is. That person came in just the past week. To  
his knowledge is not the current safety coordinator.

12 \* \* \*

13

14

15 a defense witness, was called, duly sworn and  
testified substantially as follows:

16

DIRECT EXAMINATION:

17

18 He testified he was employed by as  
a field operations manager for about six years. He knows the  
applicant.

19

20 The applicant was assigned to 1100 Hill Street in L.A.  
on April 9, 2018. The witness did not deliver any pipe to that  
area. On April 9, 2018 the witness testified that he was at  
21 several other locations downtown but not at that address. He  
stated that the applicant was not telling the truth about where  
22 he was working at that time. The witness stated that he has a  
GPS monitor on his truck. That it did not show him at that  
23 location on that day. The GPS monitors him at all times if the  
truck is running. If the truck is sitting still, it shows the  
24 truck idling at that location. If he is driving, it will show  
where he is, including what speed he was doing at that time.  
25 It is a 1500 Chevy truck which he still drives. He's had the

1 truck for over two years. He has not driven any other truck on  
any other day.

2

EXAMINATION BY THE COURT:

3

4 The Court asked the witness whether or not within  
5 two weeks around the time that the applicant alleges the  
April injury he delivered pipe to a location where the  
applicant was working. He indicated that he had not.

6 CROSS-EXAMINATION:

7

8 The applicant asked him if he had delivered pipe on  
Monday, April 9, and the witness answered no. The applicant  
asked him if he had asked the witness for help, and the answer  
was that it didn't happen.

9

REDIRECT EXAMINATION:

10

11 The witness testified that he didn't recall ever  
delivering pipe to applicant or Mr.

12

\* \* \*

13

14

15 a witness on behalf of the applicant, was re-called,  
previously sworn and further testified substantially as  
follows:

16

DIRECT EXAMINATION:

17

18 Mr. testified that there was an accident on  
April 9, 2018 and indicated that was there that day and  
came with the truck. He stated that had a different  
19 truck than what he has now and that there's an app called  
"busybusy" wherein you log in with cost codes for that day to  
20 show where they are working. That day they were lowering  
pressure in the fire system, and that's why came with  
21 the pipe.

22

23 In October of 2018 he indicated that applicant was  
telling him he was tired because of using the ladders and  
everybody was working. He indicated that he noticed that  
applicant was limping and would stop and lean against the wall  
24 and that everyone, electricians and plumbers, saw applicant  
walking like that.

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CROSS-EXAMINATION:

He indicated that he has no medical training and when he saw applicant walking funny he didn't know why and didn't bother to ask why.

\* \* \*

a defense witness, was called, duly sworn and testified substantially as follows:

DIRECT EXAMINATION:

The witness also works for He is a private investigator.

He interviewed applicant on January 9, 2019 and asked him about the April 9, 2018 injury. Applicant told him he was working for on job site on Hill Street at the time he was injured and was working with Mr. He indicated he did not tell anyone he was injured that day, although he eventually told Mr. he was injured.

Mr. then indicated he interviewed Mr. on December 19, 2018. Mr. told him at that time that applicant had injured himself on 4/9/18, although he stated that he found out a few days later. Mr. had told him that applicant indicated he reported the injury to the site foreman, on that date. He also indicated that at the Christmas party Mr. had told the investigator that applicant indicated he was still treating for the injury.

Mr. then testified that he also interviewed on 12/19/18. He was told by that she heard that applicant injured himself and that the applicant was directed to speak with her after a disciplinary meeting. She indicated he was going to be terminated at that time and that his brother, had been told that applicant was going to be fired and had pleaded with his bosses to have his brother stay on and he would take over as foreman. At the meeting for disciplinary action applicant indicated that he had been injured and then was referred to Prior to that meeting, had no knowledge of any work-related injury.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Mr.                    then interviewed                    on  
December 19, 2018.                    indicated that                    had contacted  
and noted that applicant would be terminated.  
indicated that his brother had been injured although he learned  
of the injury after the counseling session in October of 2018.  
He stated that he did not know prior to that date that his  
brother had been injured.                    did not tell the investigator  
that he had lived with applicant but indicated that he and  
applicant didn't talk to each other because of family reasons.

**CROSS-EXAMINATION:**

The applicant asked the witness whether he remembered  
him playing audio from the interview session that they had had.  
The investigator indicated that he remembered the audio from  
the phone and that it was transferred to the phone and up  
loaded to the system but since the other parties had not  
consented to the recording, he had done nothing with it.

\*           \*           \*

LET THE RECORD REFLECT that defense rested their case.  
The applicant had no further witnesses who were available,  
although it was indicated that applicant had attempted to have  
two witnesses -- one who showed up to Court and left and would  
not return his phone calls and the other one who never  
responded.

\*           \*           \*

**DISPOSITION:**

The matter stands submitted.

WORKERS' COMPENSATION ADMINISTRATIVE  
LAW JUDGE

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION

09-23-2019

PROOF OF SERVICE

Case Number:

DIETZ GILMOR  
ONTARIO

Law Firm, 3333 CONCOURS ST BLDG 7 FL 2 ONTARIO CA 91764

Injured Worker,

9/12/19 Minutes of Hearing (Reporter)  
served by US Mail on parties as indicated above.  
Date: 9/23/19  
By: