BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: SABINE G. MIRANDA	**)**	**DOCKET NO. 23 18926**
	)	
CLAIM NO. SY-88010	**)**	**DECISION AND ORDER**

On November 9, 2022, Sabine Miranda injured her right knee while participating in a physical agility test required prior to obtaining employment with Shoreline School District #412 (Shoreline), a self-insured employer. Ms. Miranda sought treatment and filed a claim for an industrial injury. The Department of Labor and Industries allowed the claim. Shoreline appealed. After a hearing, our industrial appeals judge found that Ms. Miranda had established that she had an employment relationship with Shoreline prior to her injury but reversed allowance of the claim on the basis that Ms. Miranda was not in the course of employment during the physical agility test. Ms. Miranda filed a Petition for Review contending that she was a covered worker at the time of the injury because she was an employee of Shoreline and acting within the course of employment when taking the test. After careful consideration of the record, Ms. Miranda didn't show by a preponderance of the evidence that she and Shoreline had an employment relationship at the time of the injury. It is not necessary to reach the question of whether Ms. Miranda was in the course of employment, as we determine that this claim should be rejected due to the absence of the threshold requirement of an established employment relationship. We grant review to **REVERSE AND REMAND** the Department order dated June 29, 2023, with direction to reject the claim because Ms. Miranda was not Shoreline's employee when she injured her knee. We also clarify the legal basis and reasoning for claim rejection and amend the findings and conclusions consistent with this decision.

DISCUSSION

In 2022, Ms. Miranda applied for a job as a Food Services Assistant with Shoreline School District #412. For this job, Shoreline required applicants to successfully complete and pass a post-offer/pre-employment physical agility test (PAT) during the hiring process. Ms. Miranda's alleged industrial injury occurred during this test.

Shoreline interviewed Ms. Miranda for the position on October 28, 2022. On November 1, 2022, Shoreline's Benefit Specialist, Aileen Finnigan, called Ms. Miranda and offered her the job with additional information about the process. Ms. Miranda said she accepted and wished to continue moving forward. On November 2, 2022, Ms. Finnigan emailed Ms. Miranda with a list of requirements to complete in order to continue in the hiring process.

The PAT was one of these requirements. Ms. Finnigan attached forms for Ms. Miranda to arrange for the PAT with an independent company called People's Injury Network Northwest (PINN). The PAT tested candidates for the physical qualifications required in the lunch serving position that Ms. Miranda sought. The test administrator, PINN, was an independent, third-party business that administered employment-related testing. PINN administered these tests at their independently operated location and with its own employees. Shoreline contracted with PINN as a third-party company to provide the agility test required in the hiring process. Shoreline provided candidates the forms and contact information for PINN; the candidates independently scheduled and completed the test with PINN. Shoreline imposed no consequences (no disciplinary action, etc.) on any candidate who failed the test or decided not to proceed. Likewise, there was no adverse impact on Shoreline whether a candidate decided to take the PAT or not. Only candidates who passed the test may advance in the hiring process.

Ms. Miranda contacted PINN and arranged to take the PAT on November 9, 2022. Ms. Miranda attended her scheduled PAT at PINN's testing location. During the PAT, Ms. Miranda injured her right knee while performing the task of lifting a 50-pound bag of rice. She could not continue the test. Ms. Miranda sought treatment and filed this claim.

Ms. Miranda did not continue in the hiring process with Shoreline because she did not pass the PAT and was injured. Shoreline could not proceed with the hiring process or employment of a food services candidate unless they had passed the PAT. This provision was included in the Food Services employees' Collective Bargaining Agreement with Shoreline. Shoreline did not pay or compensate Ms. Miranda for her time spent completing the PAT. She had not advanced to the point in the process of completing employment paperwork, including wage forms required for Shoreline to pay employees. Ms. Miranda testified that she believed she would be paid, but she agreed that she was not. Ms. Finnigan denied telling Ms. Miranda she would be paid for the PAT, and she did not mention compensation in her email.

Ms. Miranda was provided a list of the physical requirements before agreeing to the PAT. If she did not complete the PAT, no further action would be taken by Shoreline. The test assessed Ms. Miranda's physical abilities and did not include any training or professional certification. In addition to the PAT, Ms. Miranda was required to complete other steps including providing or obtaining a food worker permit from the Health Department, either at a local office or online. Ms. Miranda would be completing these tasks independently.

Shoreline appealed the Department's decision to allow Ms. Miranda's claim. The parties disagree as to whether Ms. Miranda's injury occurred within the scope of coverage provided by the Industrial Insurance Act. They offered evidence and made arguments as to (1) whether an employment relationship existed between Ms. Miranda and Shoreline at the time of the injury, and (2) whether Ms. Miranda was in the course of employment at the time of the injury. Our industrial appeals judge held that an employment relationship existed between the parties at the time of the injury but that the claim should be rejected because Ms. Miranda was not injured in the course of employment. Ms. Miranda filed a Petition for Review requesting allowance of her claim. Shoreline filed a response, arguing that the claim should be rejected. We find that the claim must be rejected because Ms. Miranda failed to establish that she was a covered worker in an employment relationship with Shoreline.

As the appealing party, Ms. Miranda had the burden of proving, by a preponderance of the evidence, that she was entitled to benefits as a covered worker at the time of her injury.[1] In order to qualify as a covered worker under the Industrial Insurance Act, the claimant must be an employee in an employment relationship with the employer. For purposes of the Act, a two-prong factual test determines whether an employment relationship exists. This test requires: (1) employer has the right to control the employee's physical conduct in the performance of their duties, and (2) mutual consent to an employment relationship.[2]

Our industrial appeals judge concluded that Ms. Miranda and Shoreline had an employment relationship because (1) Ms. Miranda verbally accepted the position and would start working if she completed the additional steps and (2) the job offer was not conditional. We find that a preponderance of the evidence does not support the existence of an employment relationship because Shoreline did not have control over or the right to control Ms. Miranda when she underwent the application and hiring process in October and November 2022, and the parties did not demonstrate mutual consent to an employment relationship.

On November 9, 2022, when Ms. Miranda participated in the PAT and suffered the contended injury, she was taking steps in an effort to obtain employment with Shoreline, not acting as Shoreline's employee. Shoreline did not order or direct Ms. Miranda to take a physical test as they lacked

[1] RCW 51.08.180; RCW 51.32.010.
[2] *Novenson v. Spokane Culvert & Fabricating Co.*, 91 Wn.2d 550 (1979); *Robinson v. Dep't of Labor & Indus*., 181 Wn. App. 415 (2014).

authority to make her continue in the hiring process and had no ability to impose disciplinary consequences. If Ms. Miranda did not pursue the test, nothing further would happen to either party's benefit or detriment. If an employment relationship had been established, it would imply that the relationship would need to be terminated with some formality. That was not the case here, as Ms. Miranda was invited to proceed with establishing this relationship but was not yet employed. Ms. Miranda was not compensated and had no obligation to Shoreline to take any action.

Further, Shoreline was not involved in Ms. Miranda's actual test, which was administered by an independent authorized agency at its own location and with its own employees. Shoreline did not control Ms. Miranda's choices or conduct during the PAT process or the PAT itself.

As to the second requirement, the evidence does not show that Ms. Miranda and Shoreline had a mutual agreement to an employment relationship or that Ms. Miranda's belief she was employed by Shoreline at that time was reasonable. A worker's subjective belief regarding their employment relationship is relevant but does not, alone, establish the existence of such relationship.[3] The evidence must show that the subjective belief was reasonable.[4] Here, the PAT was a precursor to obtaining employment, and this was reiterated in the documents provided to Ms. Miranda. It was not training. Ms. Miranda received no benefit, training, certification, or compensation. There is no corroborating evidence to support her belief that she would be paid for the test if she was not actually hired. Shoreline's offer to Ms. Miranda was conditional and wasn't yet a mutually consensual employment relationship before the PAT. Ms. Miranda could not start working until she was hired, and in order to be hired, she needed to complete multiple steps, including the PAT, successfully. If she didn't, she would not be hired. These steps were contingencies to her employment. Also, we note that the test documents refer to and identify the PAT as a "*pre-employment*" assessment.[5]

The Board has looked at injuries occurring in other similar contexts, such as during a five-week employee training in *In re Kimberly Bemis,* BIIA Dec., 90 5522 (1992). In *Bemis*, the Board found that the claimant, a flight attendant, qualified as a covered worker after she suffered an injury during training. There are several distinguishing facts in that case, including that Kimberly Bemis was engaged in job-specific training, she received compensation from the employer, and the employer provided the training directly to Ms. Bemis using their own programming, staff, and facilities. Daily

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[3] *Robinson,* at 430 (citing *Rideau v. Cort Furniture Rental*, 110 Wn. App. 301, 307 (2002); *Jackson v. Harvey*, 72 Wn. App. 507, 519 (1994).
[4] *Jackson*, at 519.
[5] Ex. 2.

attendance was required. In *Bemis*, the Board concluded that these facts established an implied employment contract between the worker and employer. These facts are not present in this case.

Unlike *Bemis*, this is not a case about an injury during job training, and we do not find the PAT comparable to employer-provided job training or training provided by another entity that is required or covered by the employer. Ms. Miranda was not "receiving initial, primary, job training from [the self-insured employer] and its employees at [the self-insured employer's facility]."[6] We find Ms. Miranda's case closer to that of *Robinson v. Department of Labor & Indus*.[7] In that case, the court determined that the claimant failed to prove that he was an employee of a football team and, thus, a covered worker when he attended an off-season camp tryout. In *Robinson*, the claimant's participation in the pre-season camp could lead to employment pending their demonstrated success at camp. The claimant was compensated. The employer controlled the structure and ran the camp using their own staff and resources. However, the claimant was free to leave at any time. In comparison to the agility testing requirement for Ms. Miranda, the level of engagement between the *Robinson* claimant and their alleged employer during the tryout camp exceeded that of Ms. Miranda and Shoreline at the time Ms. Miranda attended the PAT. She was likewise, as the claimant in *Robinson* was, free to participate in the PAT or choose not to. Even so, the *Robinson* court determined that the claimant had not established an employment relationship by participating in the tryout camp, which involved more time, commitment, and direct engagement with the employer.

In sum, we conclude that the record lacks sufficient evidence to establish an employment relationship between the parties. Shoreline did not have the authority of an employer to control Ms. Miranda's actions and decisions, and it was not reasonable for Ms. Miranda to believe that she was acting as an employee of Shoreline when she submitted to the pre-employment test. For these reasons, Ms. Miranda was not a covered worker at the time of her injury on November 9, 2022, and the claim must be rejected.

It is not necessary to reach the question of whether Ms. Miranda was in the course of employment. To address the course of employment, the claimant must first establish the existence of an employment relationship. As we have determined that this claim should be rejected due to the absence of the threshold requirement of an established employment relationship, the record lacks support for establishing that Ms. Miranda's injury occurred in the course of employment.

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[6] *In re Kimberly Bemis,* BIIA Dec., 90 5522 (1992) at 5.
[7] 181 Wn. App. 415 (2014).

DECISION

In Docket No. 23 18926, the employer, Shoreline School District #412, filed an appeal with the Board of Industrial Insurance Appeals on August 22, 2023, from an order of the Department of Labor and Industries dated June 29, 2023. In this order, the Department allowed the claim for an industrial injury. This order is incorrect and is reversed. This matter is remanded to the Department with direction to reject the claim.

FINDINGS OF FACT

1. On April 8, 2024, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.
2. Sabine Miranda applied for a job as a Food Services Assistant with Shoreline School District #412 in October 2022.
3. To continue in the hiring process with Shoreline, Ms. Miranda scheduled a physical agility test with an independent testing facility, Peoples Injury Network Northwest. Shoreline did not compensate Ms. Miranda for participating in this test.
4. Ms. Miranda injured her right knee while completing the physical agility test at Peoples Injury Network Northwest on November 9, 2022.
5. Shoreline School District did not control or supervise the physical agility testing site, the employees of Peoples Injury Network Northwest, the applicants participating in the test, or the administration of the test with its applicants.
6. As of November 9, 2022, Ms. Miranda had not completed the hiring process with Shoreline.
7. Ms. Miranda was not an employee of Shoreline School District on November 9, 2022.

CONCLUSIONS OF LAW

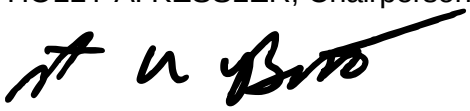
1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.
2. Sabine Miranda was not engaged in employment with Shoreline School District within the meaning of RCW 51.08.180 when she was injured while taking a physical pre-employment test on November 9, 2022.
3. Sabine Miranda did not sustain an industrial injury within the meaning of RCW 51.08.100 on November 9, 2022.

4. The Department order dated June 29, 2023, is incorrect and is reversed. The claim is remanded to the Department to issue an order rejecting the claim.

Dated: April 15, 2025.

BOARD OF INDUSTRIAL INSURANCE APPEALS

HOLLY A. KESSLER, Chairperson



ROBERT A. BATTLES, Member

Addendum to Decision and Order
In re Sabine G. Miranda
Docket No. 23 18926
Claim No. SY-88010

Appearances

Claimant, Sabine G. Miranda by Law Office of Sabiha Malikani Ahmad, per Sabiha Ahmad

Self-Insured Employer, Shoreline School District #412, by Holmes, Weddle & Barcott P.C. per Ann M. Silvernale and Jannine M. Myers

Employer's Lay Representative, Shoreline School District #412, by Puget Sound Workers' Comp Trust

Department of Labor and Industries, by Office of the Attorney General, per Diane H. Cornell

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and Order issued on December 6, 2024, in which the industrial appeals judge reversed and remanded the Department order dated June 29, 2023. The self-insured employer filed a response to the Petition for Review.

Evidentiary Rulings

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. The rulings are affirmed.