

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

JOSE VELASQUEZ, *Applicant*

vs.

**THE SALVATION ARMY; COUNTY OF SANTA BARBARA, administered by
INTERCARE HOLDINGS, LLC, *Defendants***

**Adjudication Number: ADJ11436476
Santa Barbara District Office**

**OPINION AND DECISION
AFTER REMAND**

The following Decision after Remand is issued pursuant to the December 5, 2023 published Opinion by the Second Appellate District Court of Appeals (Court), in which the Court granted the relief requested by the Workers' Compensation Appeals Board (Appeals Board) to remand the matter to the Appeals Board. (Opinion, p. 15.) The Court affirmed the Appeals Board's May 31, 2022 Opinion and Decision after Reconsideration (Decision),¹ to the extent that the Appeals Board concluded that The Salvation Army was not applicant Jose Velasquez's employer, but annulled the Appeals Board's decision as to Santa Barbara County (County) and remanded the matter to the Appeals Board on the issue of whether the County was applicant's employer. (*Ibid.*) The Court also awarded costs to applicant.

Because the Court remanded the matter to the Appeals Board on the issue of whether the County was applicant's employer and on the issue of costs under Labor Code section 5801, the Appeals Board was required to issue a decision after remand. Only the Appeals Board can decide the issue of the amount of costs. While it is likely that the Appeals Board would have returned the matter to the workers' compensation administrative law judge (WCJ) to consider the issue of applicant's employment with the County in the first instance, jurisdiction was conferred to the Appeals Board, and a WCJ's authority is by way of designation from the Appeals Board. (See

¹ Commissioner Lowe, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

Lab. Code, § 5309.) Moreover, in order to avoid the risk of inconsistent rulings, until a decision by the Appeals Board issues, the WCJ should not act on a case while it is still pending at the Appeals Board. (See Cal. Code Regs., tit 8, § 10961.)

Having been made aware, while this matter has been pending in the Appeals Board on the Court's remand, that a settlement has been reached between applicant and the County, and that the WCJ issued an Order Approving Compromise and Release, the Appeals Board now issues its decision after remand.

It is our decision after remand to amend the July 1, 2019 Findings of Fact and Order to defer the issue of whether the County is applicant's employer and return this matter to the trial level to effectuate the Order Approving Compromise and Release. This is not a final decision on the merits of any of the issues pending on reconsideration.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that applicant Jose Velasquez's Petition for Reconsideration of the July 1, 2019 Findings of Fact and Order is **AFFIRMED EXCEPT** that it is **AMENDED** as follows and the matter is returned to the trial level for further proceedings consistent with this Opinion.

FINDINGS OF FACT

...

2. The issue of whether the County of Santa Barbara is applicant's employer is deferred.

ORDER

There are no orders at this time.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH Y. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 29, 2024

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

**JOSE VELASQUEZ
LAW OFFICES OF DANIEL K. SIMON
PEATMAN LAW GROUP
BRADFORD & BARTHEL, LLP**

LSM/oo

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