WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DERRYL THOMPSON, *Applicant*

vs.

VICTORY OUTREACH CHINO, CHURCH MUTUAL INSURANCE CO.; MISSION ACTS MINISTRIES, UNINSURED; MECUM ACUTIONS, INC., ZURICH AMERICAN INS. CO., *Defendants*

Adjudication Number: ADJ10983565
Los Angeles District Office

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

Defendant Zurich American Insurance Company (Zurich) insurance carrier for Mecum Auctions (Mecum) and defendant Church Mutual Insurance Company (Church) carrier for Victory Outreach Chino (Victory) each seek reconsideration of the April 29, 2025 Findings and Order (F&O) wherein the workers' compensation administrative law judge (WCJ) found that on the date of injury Victory was the general employer, Mission Acts Ministries (Mission) was the employer and personnel staffing agency, and Mecum was the special employer of applicant.

Zurich contends that the WCJ misinterpreted the law regarding volunteers for the purposes of interpreting Labor Code 3352 (a)(2) and 3352 (a)(9).[1] Zurich further contends that the evidence does not support a finding that Victory was a general employer, that Mission was not an employer or staffing agency, and that Mecum was not a special employer.

Church also contends that applicant is excluded from the definition of employee pursuant to the aforementioned sections and that the WCJ misapplied the "reality of the situation" standard in finding that applicant was not a volunteer. They contend that Victory was not a general employer. Last, they confusingly contend that Mission's role as a staffing agency does not result

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

in imputed employment to Victory and that there is no joint and several liability because Victory did not arrange or control the activities with Mecum.

Applicant filed a "Response to Both Defendant's Petitions for Reconsideration" (Response) arguing that both petitions should be denied on their face because both parties make misleading references to fact and reference facts without citation to the record.[2]

Defendant Mission did not seek reconsideration and did not file a response.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending denial of both Petitions. In addition to supporting her findings, she, too, notes that neither defendant made the proper references to the record to support their factual allegations, that some of the facts were not in the record, and that the Petition of Victory cited a case that does not exist.

At the outset, we admonish both defendant's attorneys Scott Shields and Mavredakis Phillips and defendant's attorneys Rommel C. Embisan and Hefley Law, APC, for filing petitions for reconsideration that violate WCAB Rule 10945 (Cal. Code Regs., tit. 8, § 10945). Subdivision (b) states, "every petition and answer shall support its evidentiary statements by specific references to the record." "A petition for reconsideration, removal or disqualification may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved." (Cal. Code Regs., tit. 8, § 10972.) In short, failure to cite the record and failure to fully and accurately set forth the facts and evidence is grounds to deny a petition for reconsideration. (§ 5902; Cal. Code. Regs., tit. 8, § 10972.) Counsel Shields' Petition included a statement of facts that was more than five pages, without a single reference to the record. Counsel Embisan's Petition included a short background without reference to the record and included additional facts in the argument section, again without reference to the record. We agree with the WCJ that this failure makes it exceedingly difficult to decipher the actual facts that are supported by evidence and raises a concern regarding the veracity of the facts outlined in each petition. Such conduct can also subject the filing party to sanctions. (Lab. Code, § 5813.)[3]

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[2] Applicant argues that Church's petition should be dismissed because it was not served properly on applicant as it was served by email pursuant to Administrative Director (AD) Rule 10205.6 (b) (Cal. Code Regs., tit. 8, § 10205.6). However, litigation at the Workers' Compensation Appeals Board is governed by the Workers' Compensation Appeals Board Rules, found at WCAB Rules 10300 through 10995 (Cal. Code of Regs., tit. 8, §§ 10300 through 10995) (See Lab. Code, § 5500.3.) Thus, the applicable rule here is WCAB Rule 10625(b)(2) (Cal. Code Regs., tit. 8, § 10625(b)(2)), which allows electronic service as an acceptable form of service.

[3] Counsel Embisan also cited to *Hartford Accident & Indemnity v. WCAB* (1971) 38 Cal. Comp. Case 322. There is no case with this cite and therefore it cannot stand for the proposition defendant suggests.

We have considered the allegations of the Petitions for Reconsideration and the Answer and the contents of the Report. Based on our review of the record, and for the reasons stated in the WCJ's Report, and for the reasons discussed below, we will deny both Petitions for Reconsideration.

FACTS

Applicant claims injury while working at the Pomona Fairgrounds on February 17, 2017 for alleged employers Victory, Mission, and Mecum. (MOH/SOE, 06/05/2024, 2:10-13.) The only issue set for trial was whether applicant was an employee or volunteer of one or more of the named defendants. (MOH/SOE, 06/05/2024, 2:16-17.)

Applicant testified on February 25, 2025, the second day of trial, that he was a resident of Victory for approximately 22 months beginning in 2016. (MOH/SOE, 02/25/2025, 2:13-15.) As a resident of Victory, he had to comply with a schedule, do chores, apply for a welfare card, and also accept jobs outside of the residence (MOH/SOE, 02/25/2025, 2:16-18.) Applicant testified that he was at Victory for treatment related to addiction. (MOH/SOE, 02/25/2025, 4:5.) There was no cost out of pocket for Victory, but testified that they would require the residents to apply for food stamps and give the food stamps to Victory to feed the residents. (MOH/SOE, 02/25/2025, 4:6-8.)

The residents would also go outside of the residence to do jobs, and the money went to Victory house. (MOH/SOE, 02/25/2025, 04:8-10.) He did not recall any fundraisers. (MOH/SOE, 02/25/2025, 4:8.) Applicant indicated that the requests for residents for potential jobs would come to Victory. Residents would be selected and if selected, the resident was required to go. (MOH/SOE, 02/25/2025, 2:19-23.) If a person did not work, the staff at Victory would require additional jobs around the home or the resident would be sent to another home that may not accept the resident. (MOH/SOE, 02/25/2025, 3:20-4:2.)

Applicant first worked for Mecum in Santa Ana as a staff member to oversee a group of men and participate. (MOH/SOE, 02/25/2025, 4:12-13.) Applicant testified that he was supervised by Michael Waldrup and Lewis Gainer, whom he had met for the first time at the Santa Ana location. (MOH/SOE, 02/25/2025, 4:12-14.) On the date of injury, he was assigned to a second auction at Pomona Fairplex and was in charge of 10 men, also from Victory, as an overseer. (MOH/SOE, 02/25/2025, 4:16-17.) Mr. Waldrup and Mr. Gainer conducted an orientation and gave assignments to guide and clean cars. (MOH/SOE, 02/25/2025, 4:22-25.) He kept a timesheet

that he gave to Mr. Waldrup or Mr. Gainer which was then given to Victory. (MOH/SOE, 02/25/2025, 3:8-9.) They were given hats and shirts brandishing the Mecum logo. (MOH/SOE, 02/25/2025, 3:3-5, 5:12.) As with all job placements, someone from Victory drove him and the other men to the site. (MOH/SOE, 02/25/2025, 4:17-18, 5:4.) Applicant understood that he was exchanging work for financial aid to be in the home. (MOH/SOE, 02/25/2025, 5:14.)

Mr. Waldrup was also called as a witness. Mr. Waldrup founded Mission Acts Ministry in 1990 as a nonprofit 501(c)(3). Mission is a relief agency which works with churches to provide humanitarian aid to other countries (MOH/SOE, 02/25/2025, 6:8-9.) Mr. Waldrup described Mecum as a donor to Mission. (MOH/SOE, 02/25/2025, 6:12.)

The testimony regarding the relationship between Mr. Waldrup, Mecum, and Victory is confusing at best. Mr. Waldrup testified that Victory went directly to Mecum to do a fund raiser. (MOH/SOE, 02/25/2025, 6:12-13.) Mission and Victory agreed to give Mecum manpower and Mecum agreed to a donation of an unknown amount. (MOH/SOE, 02/25/2025, 6:13-14.) However, Mr. Waldrup testified that since 2010 or 2011 at the request of Mecum, he goes to churches and finds volunteers for auctions all around the country, they reimburse Mission for his travel. (MOH/SOE, 02/25/2025, 6:15-16, 6:20-21, 7:15-16.) According to Mr. Waldrup, his only connection to Victory was serving with the pastor and being on the board of the men's homes in 2010. (MOH/SOE, 02/25/2025, 8:1-3.) When Mecum asked for help, he told Victory about the need for help. (MOH/SOE, 8:2-4.) He also helped to coordinate on site and ended the weekend by giving Mecum a list of names, tasks in return for a check that was given to Victory. (MOH/SOE, 02/25/2025, 7:4-5.) He believes he was given $1000-$1200 for two days in Santa Ana. (MOH/SOE, 7:23-24.)[4]

Lewis Gainer was called as a witness as a representative for Victory. He was the home director for 15 years at Victory in Riverside ending in roughly 2019 or 2020. (MOH/SOE, 02/25/2025, 8:11-13.) Victory is a Christian international ministry with subsidiary ministries of recovery homes for drug addicts, alcoholics, and gang members. (MOH/SOE, 02/25/2025, 8:14-16.) They provide a place to live, do bible study, share in the work, have group meetings, and help the residents to work again. (MOH/SOE, 02/25/2025, 8:14-15.) He testified that Victory is a non-profit. (MOH/SOE, 02/25/2025, 8:17.) Defendants offered a printout from an unidentified website

[4] Applicant exhibit 10 shows that two checks were made to Mission Acts Ministry on 2/18/2017 for a total amount of $3827.00. The column titled 'memo' notes LABOR LA17.

showing that Victory is on the Publication 78 Data List with a deductibility code PC. (Defendants' Joint Exhibit D.) No testimony was taken in regard to this document.

At the February, 17 auction, four Victory homes sent men to the Mecum auction. (MOH/SOE, 02/25/2025, 9:1-2.) He was an overseer for the Victory homes, and each home appointed another supervisor to ensure that everything was done the way Mecum instructed. (MOH/SOE, 02/25/2025, 9:3-6.) The men worked 8-10 hours per day, some worked 7 days, others worked only 3. (MOH/SOE, 02/25/2025, 9:11-13.) After the event, he received a check from Mecum to Victory, and no men were paid individually as they understood that they were volunteers. (MOH/SOE, 02/25/2025, 9:11-13.) The payment was a donation based on the work done and the number of men who worked with the funds being divided among the home based on the pro rata share of men working. (MOH/SOE, 02/25/2025, 9:16-22.)

John Smith, human resource manager for Mecum, was also called as a witness. Mecum auctions classic cars at 14 events in the U.S. each year. (MOH/SOE, 02/25/2025, 10:14-15.) The headquarters in Wisconsin employs 25-30 people as well as a core group of part-time employees who work the auction, supplemented by local people. (MOH/SOE, 02/25/2025, 10:18-19.) When Mecum hires the locals, they do get referrals from local people and organizations, and he meets with the candidates who also complete I-9s. (MOH/SOE, 02/25/2025, 10:19-21.) They would also use local volunteer groups either from classic car groups or churches. (MOH/SOE, 10:22-23.) The vice president of operations would advise Mr. Waldrup how many people were needed, and he would coordinate the church groups to give Mecum local labor. (MOH/SOE, 02/25/2025, 10:22-24.) He testified that prior to using Mr. Waldrup, they had difficulty finding reliable labor. (MOH/SOE, 02/25/2025, 11:5-7.) Mecum donates to Mission for Mr. Waldrup's work after each auction; the amount is based upon a spreadsheet of the number of people and hours as well as a price negotiated. (MOH/SOE, 02/25/2025, 11:6-7.) He stated that no funds go to Victory. (MOH/SOE, 02/25/2025, 10:7-8.)[5] He also testified that using Victory was more efficient because they needed 40 to 100 laborers at each location, so they refer to Mr. Waldrup to coordinate because it is easier and likely cheaper than hiring 100 individuals separately. (MOH/SOE, 02/25/2025, 11:19-23.)

[5] Applicant exhibit 10 shows three entries for payment by check from Mecum to Victory Outreach for a total of $14,152.00 with the memo stating LABOR. There were also multiple other payments to Victory on separate dates.

DISCUSSION

I

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on June 17, 2025 and 60 days from the date of transmission is Saturday, August 15, 2025. The next business day that is 60 days from the date of transmission is August 18, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[6] This decision is issued by or on August 18, 2025 so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to

[6] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on June 17, 2025, and the case was transmitted to the Appeals Board on June 17, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 17, 2025.

II

California has a no-fault workers' compensation system. With few exceptions, all California employers are liable for the compensation provided by the system to employees injured 4 or disabled in the course of and arising out of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no-fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms of 'service to an employer' and by including a general presumption that any person 'in service to another' is a covered 'employee.'" (Lab. Code, §§ 3351, 5705(a)1; *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].)

An "employee" is defined as "every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed." (Lab. Code, § 3351.) Further, any person rendering service for another, other than as an independent contractor or other excluded classification, is presumed to be an employee. (Lab. Code, § 3357.) Once the person rendering service establishes a prima facie case of "employee" status, the burden shifts to the hirer to affirmatively prove that the worker is an independent contractor or other excluded classification. (*Cristler v. Express Messenger Sys., Inc.* (*Cristler*) (2009) 171 Cal.App.4th 72, 84 [74 Cal.Comp.Cases 167]; *Narayan v. EGL, Inc*. (*Narayan*) (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724].)

An employer is defined, in relevant part, as "every person including any public service corporation, which has any natural person in service." (Lab. Code., § 3300(c).). In the seminal case of *Kowalski v. Shell Oil Company* (1979) 23 Cal.3d 168 [44 Cal.Comp.Cases 134], the California Supreme Court explained the concept of "general" and "special" employment as follows:

> The possibility of dual employment is well recognized in the case law. "Where an employer sends an employee to do work for another person, and both have the right to exercise certain powers of control over the employee, that employee may be held to have two employers -- his original or 'general' employer and a second, the 'special' employer." [Citation.] In Industrial Ind. Exch. v. Ind. Acc. Com. (1945) 26 Cal.2d 130, 134-135 [156 P.2d 926], this court stated that "an employee may at the same time be under a general and a special employer, and where, either by the terms of a contract or during the course of its performance, the employee of an independent contractor comes under the control and direction of the other party to the contract, a dual employment relation is held to exist. [Citations.]" If general and special employment exist, "the injured workman can look to both employers for [workers'] compensation benefits. [Citations.]"

(*Id.* at pp. 174-175.)

The paramount consideration in determining whether a special employment relationship exists "is whether the special employer has 'the right to control and direct the activities of the alleged employee or the manner and method in which the work is performed, whether exercised or not. [Citation.]" (*Kowalski,* 23 Cal.3d at p. 175.) Although the *Kowalski* case and a number of cases following it reiterate that the issue of control is the primary criterion in the determination of the existence of a special employment relationship, the following other relevant factors have also been enumerated:

> (1) whether the borrowing employer's control over the employee and the work he is performing extends beyond mere suggestion of details or cooperation; (2) whether the employee is performing the special employer's work; (3) whether there was an agreement, understanding, or meeting of the minds between the original and special employer; (4) whether the employee acquiesced in the new work situation; (5) whether the original employer terminated his relationship with the employee; (6) whether the special employer furnished the tools and place for performance; (7) whether the new employment was over a considerable length of time; (8) whether the borrowing employer had the right to fire the employee and (9) whether the borrowing employer had the obligation to pay the employee.

(*Riley v. Southwest Marine, Inc.* (1988) 203 Cal.App.3d 1242, 1250.)

Here, applicant was clearly in service of Victory and Mecum. For Victory, he was placed at job sites and tasked with performing various jobs in exchange for payment to Victory. Victory was conferred the benefit of his services through monetary reimbursement from the job placements. The representative from Victory even noted that without these "fundraisers" the Victory program would not be able to survive. Victory assigned the residents to job sites, including Mecum. Victory drove the residents to the Mecum location. Victory sent a staff member to be an "overseer" to assist with assigning jobs and remind the Victory men of how to behave and "why

they are there." (MOH/SOE, 02/25/2025, 9:2-5.) They even appointed residents as team leaders for groups at the location. Likewise, not only did Mecum pay Victory for the labor of applicant, just as any other employer, calculation of payment was based on the number of people Victory sent and the work being done. Victory/Church confusingly contends in its petition that "Victory did not characterize the funds it may have received indirectly from Mecum as being related to the labor provided by members of the home." (Church Petition, 6:11-13.). While Victory may not have characterized the funds as labor, the evidence shows that Mecum paid $13,000.00 to Victory directly and that Mecum did characterize it as "LABOR". (Applicant exhibit 10, p. 2 and Applicant exhibit 3.)[7] According to applicant, he understood that his work was being exchanged for a place in the Victory home and program, which was corroborated by Victory's representative Mr. Gainer. (MOH/SOE, 02/25/2025, 9:20-22.) As such, we agree that Victory was a general employer.

Using the test outlined in *Riley*, *supra*, Mecum was appropriately determined to be the special employer. Mecum provided uniforms that applicant was required to wear. Upon arrival, Mr. Gainer or Mr. Waldrup were given assignments and instructions which were then conveyed to the Victory participants. Applicant understood that he was working for Mecum to acquire money for Victory, which is indicative of his understanding that he was performing services for two entities. It is irrelevant whether he understood the complexity of a general / special relationship as Mecum contends. The tools and location were under Mecum's control. There was no testimony about Mecum's ability to fire applicant, but Mecum did pay for his services to Victory.

Zurich contends that there must be evidence of mutual consent to create an employment contract. Common law rules for creation of employment contracts have been rejected in favor of liberal interpretation to extend the benefits of California's workers compensation laws. (*Laeng v WCAB* (*Laeng)* (1972) 6 Cal.3d 771 [37 Cal.Comp.Cases 185].) A contract for hire is not required for a finding of employment as section 3351 defines employment as, "every person in the service of an employer under *any* appointment *or* contract for hire. (*County of Los Angeles v. WCAB* (*Conroy*) (1981) 30 Cal.3d 391, 398 [46 Cal. Comp. Cases 1322].) Here, the facts clearly support a finding that Mecum was a special employer because it had control over applicant in terms of the work being performed, and applicant was performing a service for Mecum.

[7] Victory did not provide evidence to support the manner in which it received the donations and whether it was characterized as labor or not.

Mission's role in this scheme is much more complicated. Church contends that the Victory residents were sent to perform volunteer work via Mission. This is not borne out in the testimony. Mr. Waldrup testified that Victory went to Mecum to a do a fundraiser and that both Mission and Victory agreed to provide manpower in exchange for a donation to each. (MOH/SOE, 02/25/2025, 6:13-15.) However, Mr. Waldrup also testified that Mecum contacts him for labor and he provides and coordinates recruiting people. (MOH/SOE, 02/25/2025, 7:11-12.) On the auction days, Mr. Waldrup also volunteers his time and assists with coordination of the event. Mission is paid a donation in exchange for all of Mr. Waldrup's services. Mecum argues that Mr. Waldrup's testimony as to Mission's tax status is evidence enough that it was not a staffing agency. However, it is clear that Mr. Waldrup was acting either as a recruiter or employee of Mecum. Mission did not file a petition for reconsideration, objecting to its characterization as a staffing agency or joint employer and as such, we will not disturb that finding as it does not affect the analysis for either Victory or Mecum's status as general and special employers.

III

Thus, the burden shifts to defendants to prove that applicant was excluded from the definition of employee or was an independent contractor. (*Johnson v. WCAB* (1974) 41 Cal.App.3d 318, 321 [39 Cal.Comp.Cases 565].) In this case, defendants Mecum and Victory argue that applicant's services fit the exclusions under section 3352(a)(2) and (a)(9). Zurich additionally argues that any exception Victory is successful in proving, is likewise applicable to them as a donor and recipient of Victory's services. We disagree, and we will address each separately.

At the outset, we reject Mecum's argument that either of these sections apply to them by virtue of some kind of transferal of non-profit status by allowing Victory's "volunteers" to provide labor. Victory is a private non-profit organization. Mecum is a for-profit corporation. We agree that Victory may rightfully assert the exceptions under section 3352 (a)(2) and (a)(9). Mecum may not. The fundamental purpose of statutory interpretation is to ascertain the Legislature's intent in order to effectuate the law's purpose. (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) Interpretation begins "with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent." (*People v. Watson* (2007) 42 Cal.4th 822, 828.) The plain meaning controls if there is no ambiguity in the statutory language. (*People v. King* (2006) 38 Cal.4th 617, 642.) If, however, the language is susceptible to

more than one interpretation, consideration must be given to other factors, such as the purpose of the statute, the legislative history, and public policy. (*Ibid.*) If a statute is amenable to more than one interpretation, the interpretation that leads to a more reasonable result should be followed. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

Had the Legislature intended for the non-profit status to transfer to a for-profit company, it would have done so. This notion is borne out in *Arriaga v. County of Alameda* (1995) 9 Cal.4th 1055 [60 Cal.Comp.Cases 316] and reiterated in *Velasquez v. WCAB* (2023) 97 Cal.App.5th 844 [88 Cal.Comp.Cases 1137] wherein the courts analyzed the role of government entities separate from the private nonprofit organizations that would have been exempt from the definition of employers under section 3301(b). In *Velasquez,* the court noted that if the injured worker had been assigned to a public entity by the government agency both would be liable for workers' compensation as general and special employers. Likewise, had the county assigned the injured worker to a private, non-profit only the county would be liable because the private nonprofit is statutorily excluded. (*Id.* at p. 853) Here there is no support for the contention that the for-profit special employer should be excluded on the basis that the general employer is a religious, charitable, or relief organization, or a private nonprofit entity.

We begin first with section 3352(a)(2), which states that the definition of an "employee" excludes, "a person performing services in return for aid or sustenance only, received from any religious, charitable, or relief organization." (Lab. Code, § 3352(a)(2).) Victory did provide evidence of its status as a non-profit organization, and it appears that this is not in dispute. The applicability will hinge on whether applicant was performing services in return for aid and sustenance *only.*

Hoppmann v. Workers' Comp. Appeals Bd. (1991) 226 Cal.App.3d 1119, 1125 [56 Cal. Comp.Cases 27] (*Hoppmann*) is instructive here. The court in *Hoppman* noted, "the question is whether services are provided at a minimal level to obtain necessaries of life, or instead are part of a normal employment relationship." (*Id.* at p. 1123.) In that case, the court considered whether the worker was performing the same work as other employees and ran the same risks, earned the same wages as other employees or was working for necessities alone, and whether the wages were measured by his strict needs. (*Id.*) Ultimately, they concluded that the overall purpose of the statutory scheme was not to exempt religious, charitable, or relief organizations, but rather the purpose:

> appears to be an exemption of services which are outside normal employment relationships either because they are not compensated at the prevailing rate or because the motive in providing these services is primarily donative rather than mercenary. The critical test in all cases is whether services are rendered for (1) charitable reasons, (2) for aid or sustenance, or (3) for wages.

(*Id.* at p. 1125.)

The case here is analogous to the facts in *Barragan v. WCAB* (1987) 195 Cal.App.3d 637 [52 Cal.Comp.Cases 467], wherein the court found that a nursing student who was exchanging services for instruction was an employee and not a volunteer. In that case, the court's analysis hinged on the fact that in return for her services she was also receiving a benefit. As a result, it could not be deemed to have been charitable. The same is true here; applicant understood that he had to perform services in return for residence and participation in the rehabilitation program. Though participation in the program, much like a nursing internship, was voluntary, the services rendered were in return for a benefit. Generally, a person must be providing purely gratuitous voluntary service from "the goodness of their heart" without any expectation of something in return. (*Edwards v. Hollywood Canteen* (1946) 27 Cal.2d 802.) There was no testimony provided that he would have performed any service for either Mecum or Victory if he were not in the program, therefore it could not have been voluntary.

Further, as outlined in *Hoppman*, applicant was working side by side with actual Mecum employees, wearing the same uniform, and exposed to the same risks. Mr. Smith testified that but for the assistance of Victory and Mr. Waldrup, they would not have had a stable workforce. Defendants' witnesses imply that offering the position to the Victory residents was charitable because he was given the perk of "getting their life on track," "rehabilitation," and "pushing million-dollar cars." (MOH/SOE, 02/25/2025, 10:25, 11:15-16.) *Hoppman* notes, citing to *Barragan*, *supra*, and *County of Los Angeles v. WCAB* (*Conroy*) (1981) 30 Cal.3d 391 [46 Cal.Comp.Cases 1322], "services are not voluntary because the worker is poor and must work, or receives less than others may be able to obtain." (*Id.* at p. 120.) Thus, the services rendered here were not voluntary simply because the employers felt charitable when, in fact, the Victory residents were no different from the covered Mecum workforce.

Given the scheme in this case, the discussion of aid and sustenance is nuanced, and the method of compensation must be discussed. As noted in *Barragan*, "there is a long line of case law establishing the rule that one need not receive actual payment of money or wages in order to be an

employee for purposes of the Workers Compensation Act." (*Id.* at p. 649; *Laeng*, *supra*, 6 Cal.3d at p. 777, fn. 5; *Parsons v. Workers' Comp. Appeals Bd*. (1981) 126 Cal.App.3d 629 at p. 635 [46 Cal.Comp.Cases 1304]; *Anaheim General Hospital v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.App.3d 468, 473 [35 Cal.Comp.Cases 2]; *Van Horn v. Industrial Acc. Com*. (1963) 219 Cal.App.2d 457, 464; *Union Lumber Co. v. Indus. Acc. Com.* (*Thornquist*) (1936) 12 Cal.App.2d 588, 596; *Gabel v. Industrial Acc. Com.* (1927) 83 Cal.App. 122, 125.) Further, it is not necessary that compensation be paid directly to the employee in order to constitute an employment relationship. (*Thornquist*, *supra*, at p. 596 [sum of $25 per semester was paid to the vocational program fund for the services of a student apprentice].)

In this case, applicant was receiving two levels of compensation. First, from Victory he was receiving food, board, and a rehabilitation program and from Mecum he was receiving monetary compensation siphoned by Victory. There was no evidence provided from Victory as to the cost for housing each resident; likewise, there was no evidence offered by Victory that the service applicant was performing was equal in cost to his "strict need." In terms of sustenance and aid, it is also troubling that Victory was requiring residents to apply for food stamps which were then paid to Victory. Arguably, applicant was already paying for his own sustenance with the provision of food stamps to Victory. As such, Victory would have to show that the services rendered by applicant and paid for by Mecum were equal only to the cost only of boarding and rehabilitation services. There is no such showing here.

Mecum was paying Victory an amount commensurate with the wages they were paying admitted employees. Applicant Exhibit 3, is a spreadsheet of the hours worked which appear to be paid based on whether one was a "pusher" or "labor." For "labor" the hours were paid at $15 per hour, pushers appear to be a flat rate of $6,000 for approximately 22 hours. The testimony reflects that applicant was working in both positions over the weekend. Mr. Smith testified that Mecum writes a check based on the number of people and hours worked. (MOH/SOE, 02/25/2025, 11:6-8.) Mr. Gainer testified that the money he received from Mecum on behalf of Victory was divided pro rata based on the number of men each house sent to the event. (MOH/SOE, 02/25/2025, 9:16-22.) Even though the compensation is referred to as donations, the sum paid was not based on the strict need of applicant, but was more closely commensurate with payment of non-nominal wages for the services rendered by applicant. The facts here are consistent with the holding in *Hoppman*, *supra*, at p. 121, that applicant was doing work normally done by paid workers, for wages not merely nominal, making him a member of the work force.

Mecum cites *Posadas v. Workers' Comp. Appeals Bd*. (2001) 66 Cal.Comp.Cases 651 (writ denied), wherein a resident of a sober living facility who was painting the facility when he was injured was found to be excluded because there was no mutual assent to the employment contract and because the $12.00 he received for 25-35 hours per week seemed to have been calibrated to his need for aid and sustenance. We disagree that this case is persuasive as the panel appears to have concluded that the compensation was nominal and calibrated to the injured worker's need. Here, we do not find that the compensation was nominal nor that it was calibrated to the need of applicant.

Next, section 3352(a)(9) states that the definition of employee excludes, "a person performing voluntary service for a public agency or a private, nonprofit organization who does not receive remuneration for the services, other than meals, transportation, lodging, reimbursement for incidental expenses." The analysis here is similar to section 3352(a)(2).

As outlined above, applicant was not rendering services at the auction without expectation of a benefit from Victory, and therefore was not performing voluntary services. It is worth noting that the analysis for determining whether one is a volunteer does not only hinge on whether there was a requirement to work or be expelled. Rather, the analysis turns on whether the applicant was performing the services out of the goodness of his heart without the expectation of anything in return. (*Edwards, supra,* 27 Cal.2d 802.) When it is to their benefit, Victory argues that the services were rendered in exchange for aid and sustenance, but when it is not, it argues that the services were rendered without expectation of anything in return. By the definition provided in *Edwards* and *Barragan*, applicant rendered services in exchange for the benefit of all the perks of the rehabilitation program and not from any purely charitable motive.

Turning to remuneration, we again refer to *Barragan, supra*, wherein the court found that a nursing student providing unpaid services to a hospital as part of a college externship received sufficient remuneration in the form of training and instruction, and that, as a result, she was not excluded under section 3352(a)(9). (*Id.* at p. 650.) The court explained that, had the Legislature intended to add training and instruction to the list of excluded remuneration, it knew how to do so. (*Id.* at p. 650.) The court thus declined to add training and instruction to section 3352(a)(9)'s exclusionary list, given the Legislature's decision not to do so. (*Id.* at pp. 649-650.)

In *Arriaga, supra*, the California Supreme Court also addressed the definition of remuneration under section 3352(a)(9). In that case, the Court held that a person injured while performing community service in lieu of paying a court-imposed fine was not excluded under section 3352(a)(9). (*Id*. at p.

1059.) The Court stated that, for the purposes of section 3352(a)(9), remuneration "need not be in monetary form." (*Id.* at pp. 1064-1065.) The Court explained that, "[i]f in exchange for her work, Arriaga had received money with which to pay her fine, she unquestionably would have received sufficient remuneration. The same result must be obtained in this case, where Arriaga simply received credit against the fine instead." (*Id.* at pp. 1064-1065, fn. 7.) The Court concluded that its interpretation of section 3352(a)(9) also complied with the Legislature's command that the Act be liberally construed in favor of awarding workers' compensation. (*Id.* at pp. 1064-1065, citing Lab. Code, § 3202.)

Barragan, Arriaga, and its progeny clearly establish that remuneration may take many forms, including, but not limited to, money. Here, applicant received, in addition to meals, transportation, lodging, and other incidental expenses, the benefit of a substance abuse rehabilitation program. In general rehabilitation programs entail some cost, and therefore it is clearly consistent as an example of non-monetary remuneration.

Further, as outlined above, we disagree that applicant was not also receiving monetary remuneration from Mecum even though it was not being paid directly to him. The money given to Victory was directly tied and calculated to the work performed by applicant at Mecum. In any other general/special employment relationship, the special employer will often pay the general employer for the services rendered. This cannot be discounted simply because Victory converted the monetary remuneration into funds for the operation of the home.

Accordingly, we deny both Petitions for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration by defendant Zurich American Insurance Company and Mecum Auctions of the April 29, 2025 Findings and Order is **DENIED**.

IT FURTHER ORDERED that the Petition for Reconsideration by defendant Church Mutual Insurance Company and Victory Outreach Chino of the April 29, 2025 Findings and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 18, 2025

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

DERRYL THOMPSON
KHAKSHOUR FREEMAN
HEFLEY LAW
MAVREDAKI PAIK

TF/md

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