

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

ENRIQUE DOMINGUEZ, *Applicant*

vs.

**VIA TRANSPORTATION, INC.; UNITED STATES FIRE INSURANCE COMPANY,
*Defendants***

**Adjudication Number: ADJ14138679
Los Angeles District Office**

**OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND
DECISION AFTER RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Award (F&A) issued on March 3, 2025, wherein the workers' compensation administrative law judge (WCJ) found that applicant was not employed by defendant as a driver during the period December 10, 2020 through December 24, 2020, but was an independent contractor.

Applicant contends that the WCJ failed to determine whether defendant met its burden to rebut the employment presumption.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will grant reconsideration, and, as our Decision After Reconsideration, we will rescind the F&A and return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On February 19, 2025, the matter proceeded to trial of the following issues:

1. Employment.
 2. Attorney's fees.
 3. Whether the Applicant was an independent contractor.
- (Minutes of Hearing and Summary of Evidence, February 19, 2025, p. 2:14-16.)

The parties stipulated that applicant claimed injury to his respiratory system and in the form of COVID-19 while employed during the period of December 10, 2020 through December 24,

2020, as a driver by Via Transportation, Inc. (*Id.* p. 2:6-8.) Notably, the only evidence produced by defendant was an Independent Contractor Agreement dated December 9, 2020 (Defendant's Exhibit A); the denial of applicant's claim (Defendant's Exhibit B); and the Application for Adjudication (Defendant's Exhibit C)¹. Defendant presented no witness testimony.

The Agreement provides:

NOMAD TRANSIT LLC

INDEPENDENT CONTRACTOR AGREEMENT

Los Angeles County Metropolitan Transportation Authority Mobility On-Demand Drivers

This Independent Contractor Agreement (the "**Agreement**") is entered into on 12/9/2020 (the "**Effective Date**") by and between **Nomad Transit LLC** (the "**Company**"), a Delaware limited liability company, and Enrique Dominguez Gonzalez, ("**Driver Partner**" or "**you**"), an individual whose principal place of business is located at [address omitted], and whose business email is [email address omitted] (the Company and Driver Partner are, together, the "**Parties**").

...

WHEREAS, you are a professional driver who wishes to provide transportation services to members of the public using the Los Angeles County Metropolitan Transportation Authority Mobility On-Demand service ("Mobility On-Demand Service");

WHEREAS, the Company has entered into a contract with the Los Angeles Metropolitan Transportation Authority ("LACMTA") to provide technology and to act as a broker coordinating the services of independent third-party service providers, including independent contractor driver partners, for the Mobility On-Demand Service;

WHEREAS, the Company desires to enter into a business relationship with you as an independent contractor driver partner ("**Driver Partner**") and the owner-operator, lessee, or renter of a passenger vehicle to be dispatched by the Company on its Transportation Network Company ("**TNC**") platform (the "**Via Platform**") using the Via Transportation, Inc. ("**Via**") mobile application ("**Via App**"), to provide passenger transportation and/or delivery services for the Mobility On-Demand Service (the "**Transportation Services**").

(Ex. A, Independent Contractor Agreement, December 9, 2020, p. 1.)

¹ The Application for Adjudication is a pleading that is part of the record of proceedings (Cal. Code Regs., tit. 8, § 10803) and is not properly designated as evidence. Hence, the WCJ should have made that correction at the time of the trial.

In the Report, the WCJ states:

The defendant, Via Transportation, had an existing contract with the Los Angeles Metropolitan Transportation Authority which provided technology and was a broker coordinating the services of independent third-party service providers, including independent contractor driver partners for the Mobility On-Demand Service. The applicant entered into an Independent Contractual Agreement (EAMS DOC ID.: 55195144) to provide transportation services to members of the public using the Los Angeles County Metropolitan Authority Mobility On-Demand service. Via Transportation provided the app.

...
With his testimony the applicant's first day of picking up passengers would be Tuesday 12/15/2020. On 12/16/2020, Proposition 22 became effective.

...
The *totality of the circumstances* is that Proposition 22 applies during the entire CT period and the applicant is an independent contractor.

...
The control of work details, nature of the work and overall arrangement between the parties was examined by the Court before rendering its decision.

...
The applicant has presented no evidence of Via Transportation's lack of adherence to the above.

...
[T]he applicant did not establish that Via Transportation had "the right to control the manner and means of accomplishing the result desired" . . .

...
No evidence was presented that Via Transportation app had professional drivers nor drivers that Via Transportation was forcing into independent contractor status.

Applicant did not provide evidence that the Independent Contractor Agreement violates the BPC sections 7448-7467.

(Report, pp. 2-10, emphasis added.)

DISCUSSION

I.

Former Labor Code section 5909² 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. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

- (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 Unless otherwise stated, all further statutory references are to the Labor Code.

(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 April 16, 2025 and 60 days from the date of transmission is June 15, 2025. The next business day that is 60 days from the date of transmission is Monday, June 16, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on June 16, 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 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 April 16, 2025, and the case was transmitted to the Appeals Board on April 16, 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 April 16, 2025.

³ 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.

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 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); *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].)

Hence 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." (§ 3351.) And any person rendering service for another, other than as an independent contractor or other excluded classification, is legally presumed to be an employee. (See § 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. (*Cristler v. Express Messenger Sys. Inc.* (2009) 171 Cal.App.4th 72, 84 [74 Cal.Comp.Cases 167]; *Narayan v. EGL, Inc.* (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724].) Consequently, all workers are presumed to be employees unless the hirer can demonstrate that the worker meets specific criteria to be considered an independent contractor.

In the case before us, applicant bears the burden of proving that he rendered service for defendant, whereupon the burden shifts to defendant to rebut the employment presumption with proof that the service was rendered in an excluded status such as that of an independent contractor. (*California Compensation Ins. Co. v. Workers' Comp. Appeals Bd. (Hernandez)* (1998) 63 Cal.Comp.Cases 844 (writ den.); *Lara v. Workers' Comp. Appeals Bd.* (2010) 182 Cal.4th 393, 402 [75 Cal.Comp.Cases 91].)

Applicant argues that, though he met his burden of showing that he rendered service for defendant, the WCJ failed to determine whether defendant met its burden to rebut the employment presumption under two applicable analytical frameworks: the section 2775 ABC test applicable for up to the entire period of alleged exposure; and the Business and Professions Code section 7451 test, which became effective as the result of Proposition 22 on December 16, 2020, for the alleged exposure period of December 16, 2020 through December 24, 2020. Further, the WCJ has

not discussed the potential impact of section 3351(i), effective as of July 1, 2020, which includes in the definition of employee, “any individual who is an employee pursuant to Section 2775.”

Before we evaluate the applicability of these defenses, we note that the WCJ concluded that applicant’s testimony showed that he began picking up passengers for defendant on Tuesday, December 15, 2020. (Report, p. 4.) Under the WCJ’s analysis of the record, then, applicant established that he rendered service to defendant, shifting the burden of proof to defendant to rebut the employment presumption.

As to whether defendant rebutted the employment presumption under the section 2775 ABC test, that section provides that defendant may prove that applicant was an independent contractor by demonstrating the following:

- (A) The [presumed employee] is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (B) The [presumed employee] performs work that is outside the usual course of the hiring entity’s business.
- (C) The [presumed employee] is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(See §§ 3351(i), 2775.)

Here, the record is unclear as to whether the WCJ evaluated the evidence with reference to the section 2775 ABC test because the Report states that “Proposition 22 applies during the entire CT period,” suggesting that she considered the evidence solely under the statutory provisions enacted by that proposition. (Report, p. 5.) But the Report also states that “applicant did not establish that [defendant] had “the right to control” suggesting that if the WCJ applied the ABC test she erroneously imposed the burden of proof on applicant. (Report, p. 10.) Yet, as explained above, ***the burden is defendant’s***, and here, defendant produced **no** witnesses and only submitted the Agreement.

Section 5313 requires the WCJ to produce “a summary of the evidence received and relied upon and the reasons or grounds upon which the [court’s] determination was made.” (See also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22.) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans*

v. Workmen's Comp. Appeals Bd. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (§§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

Because the record fails to show that the WCJ evaluated whether defendant rebutted the employment presumption under the section 2775 ABC test, we will rescind the F&A and return the matter to the trial level for further proceedings consistent with this decision.

We turn to applicant's argument that the WCJ failed to determine whether defendant rebutted the employment presumption under the Business and Professions Code section 7451 test applicable to the period of December 16, 2020 through December 24, 2020. We emphasize again that it is defendant's burden to demonstrate the application of Business and Professions Code section 7451.

In this regard, applicant argues that the Business and Professions Code section 7451 test may only be applied for the period of December 16, 2020 through December 24, 2020—and not the entire alleged period of December 10, 2020 through December 16, 2020—on the grounds that Proposition 22 did not take legal effect until December 16, 2020. Here, though the WCJ concluded that “Proposition 22 applies during the entire CT period” based upon the “totality of circumstances,” the effective date of Business and Professions Code section 7451 is set forth by that statute and may not be altered depending upon the circumstances.

Business and Professions Code section 7451 provides that defendant may prove that a network company defendant engaged in an app-based transportation and delivery business may establish that its presumed employee driver is an independent contractor by demonstrating the following:

- (a) The network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network company's online-enabled application or platform.

- (b) The network company does not require the app-based driver to accept any specific rideshare service or delivery service request as a condition of maintaining access to the network company's online-enabled application or platform.
- (c) The network company does not restrict the app-based driver from performing rideshare services or delivery services through other network companies except during engaged time.
- (d) The network company does not restrict the app-based driver from working in any other lawful occupation or business.

(Bus. & Prof. Code, § 7451; *Castellanos v. State of California*, (2024) 16 Cal.5th 588, 595 [89 Cal.Comp.Cases 744].)

In this regard, the record shows that the WCJ did not determine whether defendant met its burden of showing that it is a network company that satisfied the foregoing conditions. Rather, the WCJ determined that applicant "presented no evidence of [defendant's] lack of adherence" to those conditions and "did not provide evidence that the Independent Contractor Agreement violates the BPC sections 7448-7467." (Report, pp. 8, 10.) Because the WCJ did not evaluate the evidence under the appropriate burden of proof, we do not reach the issue of whether defendant met its burden of rebutting the employment presumption under the Business and Professions section 7451 test.

We note that the record lacks testimony from a representative of defendant and that the WCJ issued the F&A based upon the contents of the Independent Contractor Agreement. Yet defendant was not a party to the Independent Contractor Agreement; and, as such, it remains unclear as to why (1) defendant as opposed to the contracting party Nomad Transit LLC or another non-party such as the Los Angeles County Metropolitan Transportation Authority was named as the alleged employer; and (2) the Independent Contractor Agreement in which defendant made no contractual provision or representation was considered conclusive by the WCJ. (Ex. A, Independent Contractor Agreement, December 9, 2020, p. 1.; see also, e.g., *Robledo v. Pedroso*, 2018 Cal. Wrk. Comp. P.D. LEXIS 444 (stating that evidence of the contractual dispensation of control over an alleged employee's activities may not rebut ample evidence of the alleged employer's actual practice of control over work activities).) We note this without rendering any opinion but to underscore that *Hamilton* requires a complete and adequate record so that the issues decided at trial may be fully and meaningfully addressed if reconsideration is sought and to urge the WCJ and the parties to endeavor to make such a record following return of this matter to the trial level.

Accordingly, we will grant reconsideration, and, as our Decision After Reconsideration, we will rescind the F&A and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Award issued on March 3, 2025 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued on March 3, 2025 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 16, 2025

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

**ENRIQUE DOMINGUEZ
BLANCO & ARIAS, APC
ALBERT & MACKENZIE**

SRO/bp

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