

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

GERALD TORRES, *Applicant*

vs.

**PRO DEO FOUNDATION;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ19479057
Santa Barbara District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Orders (F&O) issued on June 4, 2025 by the workers' compensation administrative law judge (WCJ) which found in pertinent part that applicant is an employee of defendant employer, Pro Deo Foundation.

Defendant contends applicant is not an employee, but a volunteer and/or independent contractor. Defendant further contends applicant should be judicially estopped from asserting a workers' compensation claim because applicant received a \$50,000.00 settlement as an injured volunteer for Pro Deo Foundation. If applicant is not judicially estopped from asserting his workers' compensation claim, defendant requests a refund of the \$50,000.00 volunteer settlement or a credit for it. Lastly, defendant contends applicant was either an employee or independent contractor with Santa Barbara Unified School District and/or Santa Barbara Education Foundation.

We have received an Answer from applicant. The WCJ filed an Amended Report and Recommendation (Report) on the Petition for Reconsideration recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the WCJ with respect thereto. Based on our review of the record, the Answer and for the reasons stated in the WCJ's Report, which we adopt and incorporate only to the extent set forth in this opinion, we will affirm the WCJ's finding that applicant is an employee of Pro Deo Foundation and deny reconsideration.

Further, in affirming the WCJ's finding of employment herein, we have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Additionally, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

I.

Preliminarily, we note that former Labor Code¹ 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 27, 2025 and 60 days from the date of transmission is August 26, 2025. This decision was issued by or on August 26, 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

¹ All further references are to the Labor Code unless otherwise noted.

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 WCJ, the Report was served on June 27, 2025, and the case was transmitted to the Appeals Board on June 27, 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 27, 2025.

II.

In her Report, the WCJ supported her finding of employment, in relevant part,² as follows:

[WCJ's FACTUAL BACKGROUND]

The case proceeded to trial on April 14, 2025, and May 12, 2025, on the issue of employment. Applicant alleged he was an employee of Pro Deo Foundation insured by State Compensation Insurance Fund.

Defendant claimed applicant was not an employee and was instead an independent contractor, or volunteer (LC § 3352(a)(9) or an employee of his own foundation Restoring Us although not an employee of Pro Deo Foundation.

Joint Exhibit Y is a check ledger for Pro Deo Foundation (EAMS ID 56313139). The check ledger documents that payments were made to the applicant/Restoring Us beginning April 24, 2019. Applicant and Pro Deo Foundation entered into an "Independent Contractor Agreement" dated January 5, 2023 (Joint Exhibit X EAMS ID #56313138). The Client is identified as "Pro Deo Foundation" and the Contractor as "Restoring Us-Gerald Torres."

The applicant agreed to provide services as a "1. Life Coach and Mentor as well as "2. The Services will also include any other tasks which the Parties may agree on. The Contractor hereby agrees to provide such Services to the Client." (Joint Exhibit X page 1 EAMS ID #56313138) Compensation was set at \$500 per

² We omit those parts of the WCJ's Report which are irrelevant and/or unhelpful to determining the issue of employment in this 2023 injury case. As of July 1, 2020, *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903 [83 Cal.Comp.Cases 817], (See Lab. Code, § 3351(i): "ABC" test of *Dynamex* is used to determine employee status, pursuant to Lab. Code § 2775.) Furthermore, primary legal sources which can be binding on or persuasive to the WCAB should be cited.

month. (Joint X page 2). The check ledger for Pro Deo Foundation (Joint Exhibit Y EAMS ID #56313139) shows the amounts paid varied.

There was no testimony nor evidence that anything changed about the work that was being done once the agreement was signed.

(Report, at p. 2.)

In her Report, the WCJ provided the pertinent analysis as follows:

[WCJ's DISCUSSION]

Based on the credible testimony of the applicant together with the documentary evidence on the issue of employment it was determined that the applicant was an employee of Pro Deo Foundation.

Defendant seeks reconsideration from that determination. Defendant argues 1. applicant and the defendant signed an agreement that the applicant was an Independent Contractor, 2. The defendant lacked control and 3. That the applicant received a \$50,000 check from the defendant's liability carrier for the injury, so the applicant is estopped from claiming he is an employee of Pro Deo Foundation (Petition for Reconsideration hereinafter referred to as PFR at page 3)

Applicant began working with Pro Deo Foundation according to the check ledger in 2019. Labor Code § 3357 states:

Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.

[...]

One of the Defendants arguments against employment was that they contend the applicant was a volunteer. A volunteer is one who performs services not called for by a contract of hire and that do not contemplate remuneration or consideration. A person who is paid generally is not considered a volunteer. Here applicant was paid monthly. The evidence does not support that the applicant was a volunteer.

Defendant also contended the applicant was an independent contractor as evidenced by the "Independent Contractor Agreement". That agreement wasn't signed until nearly 4 years after the applicant started working with Pro Deo Foundation. Checks from Pro Deo Foundation to Restoring Us/Applicant started in 2019. The agreement wasn't signed until January 5, 2023.

[...]

Defendant also argues they lacked control.

Three primary factors differentiate independent contractors from employees, which is known as the "ABC" test:

The ABC test as set out in *Dynamex Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903, presumptively considers all workers to be employees and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies each of three conditions. It was found that this defendant did not satisfy the three conditions.

The first factor is autonomy from control. An individual is an independent contractor if they operate free from the direct control and direction of the hiring entity in connection with the performance of the work. The work at Pro Deo Foundation was done at their direction. It was not the applicant that controlled the hours of work, the amount of work, where the work was performed nor how the product was sold. This case proceeded to trial over two days April 14, 2025, and May 12, 2025.

The Employer witness Jesse Lund testified on April 14, 2025, that he is the board chairman of Pro Deo Foundation (page 4 line 10). On May 12, 2025, he testified that Dave Roberts was the executive officer and superior to the applicant (page 7 lines 22-23). He testified that he did not know if the applicant was an employee of Pro Deo (lines 23-24).

The applicant testified that the saw he was using was owned by Pro Deo Foundation (MOH/SOE 5-12-2025 at p.3 lines 4-5). Applicant did locate the table saw for Pro Deo Foundation, paid for the saw and was reimbursed by Pro Deo Foundation (MOH/SOE 5-12-2025 page 4 lines 15-16). The applicant and Dave discussed needing the saw (lines 12-13). He would not have purchased it without Dave giving him the okay to purchase for Pro Deo Foundation (lines 15-16).

Applicant credibly testified that Dave ran the shop and gave instructions (MOH/SOE 5-12-2025 at page 3 lines 7-8). Dave would advise if the store was low on product and how much was needed to be made (page 3 lines 10-12). The applicant took orders from Dave (page 5 at lines 3-4). Hours were dictated by Dave as the kids got out at a certain time and was also dictated by the store and how that functioned (page 5 lines 17-18). Supplies were provided by Pro Deo Foundation (page 5 lines 22-23).

The second factor is business operation. The person performs work that is outside the usual course of the hiring entity's business.

In this case the applicant does perform work outside of Pro Deo Foundation. The applicant describes Restoring Us as operating as a church (MOH/SOE 5-12-2025 page 4 lines 17). Both Restoring Us and Pro Deo Foundation are motivated by Christian faith to help kids (page 5 lines 2-3). Woodworking is not a part of

Restoring Us as it is with Pro Deo Foundation (page 9 line 10). Restoring Us is described as a mobile church that prays with people, does weddings, funerals, marriage counseling, life coaching and life development in addition to working with girls that are saved from human trafficking by bible studies and coaching through difficulty (page 9 lines 11-15).

The last factor is customarily engaged. The person regularly operates within an independently established trade, occupation, or business closely related to their tasks. This applicant has an independent established non-profit business named Restoring Us as described above. Some of the work through Restoring Us mirrors the work he does with Pro Deo Foundation and other work does not. Providing life coaching and mentoring intersects with what he does as a pastor with Restoring [U]s, however Restoring [U]s does not make items, nor use a table saw. It does not then sell the items made (MOH/SOE 5-12-2025 page 9 lines 5-6).

The Defense witness describes the program at Pro Deo Foundation as making goods, operating a retail storefront adjacent to the facility where items could be displayed and sold (MOH/SOE 4-14-2025 page 6 at lines 19-21). Part of the program were teaching kids about the business and how to market them to the public (page 6 lines 21). That testimony showed how unrelated Restoring Us and Pro Deo Foundation were. Applicant was injured when using the table saw at Pro Deo Foundation which he did not use at Restoring Us.

Defendant would further argue that the applicant received a check for \$50,000. from Pro Deo Foundations liability carrier. Therefore, they argue he is estopped from claiming he is an employee of Pro Deo Foundation. Applicant testified that he received a letter from the liability carrier that he had a right to file a claim which he did (page 5 lines 13-15). No evidence was presented indicating he waived any claim of employment against Pro Deo Foundation. Applicant is free to pursue claims in workers compensation and civilly. Defendant discusses the issue of a refund or credit however that issue is not before the Court.

This applicant worked for Pro Deo Foundation for 5 years (MOH/SOE 5-12-2025 p.3 lines 9-10). The Independent Contractor Agreement was created January 5, 2023. There was no testimony nor evidence that anything changed about the applicants work in 2023. Some employers may misclassify employees to sidestep the financial and administrative responsibilities associated with workers' compensation, although there is no direct evidence in this case that this employer did so for that purpose.

Applicant did testify that in the first year, checks were originally written by Pro Deo Foundation to the applicant and after a discussion with Dave Roberts the checks were made out to Restoring Us (MOH/SOE 5-12-2025 page 4 lines 4-5). The check ledger only reflects the payee as Restoring Us.

Based on the above, it was determined that the defendant did not satisfy the three conditions and applicant was determined to be an employee of Pro Deo Foundation.

(Report, at pp. 2-5.)

In addition to the analysis set forth in the WCJ's Report, we observe the following. 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.) Any person rendering service for another, other than as an independent contractor or other excluded classification, is 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] (*Cristler*); *Narayan v. EGL, Inc.* (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724] (*Narayan*). 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 *Barragan v. Workers' Comp. Appeals Bd. (Barragan)* (1987) 195 Cal.App.3d 637 [52 Cal.Comp.Cases 467], the Court of Appeal explicitly held that "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.)³ In that case, 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, citing Lab. Code, § 3352(i), now Lab. Code, § 3352(a)(9), Stats. 2017, ch. 770, § 4, hereinafter "section 3352(a)(9)".) 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. (*Id.* at pp. 649-650.)

³ Cf. *Pruitt v. Workmen's Comp. Appeals Bd.* (1968) 261 Cal.App.2d 546 [33 Cal.Comp.Cases 225] ("payment of monetary wages is not a *sine qua non* of employment under workmen's compensation law."); *Chavez v. Sprague* (1962) 209 Cal.App.2d 101, 111 ("The fact that a person is not paid monetary compensation for his services does not prevent him from occupying the status of an employee.")

Here, the record demonstrates that applicant proved that he sustained injury to his left index finger, middle finger and thumb while performing for defendant employer as a Life Coach, Mentor and other tasks the parties agreed upon in their after-school program and thereby established his prima facie case that he is entitled to employment status. (05/12/2025 MOH/SOE, at p. 2:21-25.) Consequently, defendant holds the burden of proving that applicant was a volunteer and/or an independent contractor at the time of injury. As observed by the WCJ, applicant was paid monthly, he was not a volunteer. Furthermore, as established by case precedent, even if an applicant works as a “volunteer,” there are other types of remuneration that can establish an employment relationship. Lastly, defendant failed to satisfy all three prongs of the ABC test and did not rebut the presumption of employment.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 26, 2025

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

**GERALD TORRES
WOLFF-WALKER LAW FIRM
STATE COMPENSATION INSURANCE FUND**

SL/abs

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