WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JORGE MACIEL IBARRA, ***Applicant***

vs.

TIM CAGLE, individually, dba TIM CAGLE DRYWALL; UEBTF, ***Defendants***

Adjudication Number: ADJ10531850
Pomona District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted defendant's Petition for Reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.[1]

Defendant Uninsured Employers Benefits Trust Fund (UEBTF) seeks reconsideration of the Findings of Fact issued on April 12, 2022, wherein the workers' compensation administrative law judge (WCJ) found that (1) while allegedly employed on July 19, 2016, by Tim Cagle, individually, dba Tim Cagle Drywall (Cagle), and Greg and Brooke Baird (the Bairds), homeowners, applicant claims to have sustained injury to the neck, arm, hand, knee and "multiple"; (2) at the time of alleged injury, Cagle was uninsured; (3) Cagle failed to appear at his deposition scheduled for June 16, 2018, to comply with discovery, and to appear for trial, and, therefore, exhibit "G" (letter from Tim Cagle dated June 6, 2016), is not relied upon and not considered evidence herein; (4) applicant testified at trial that on July 19, 2016, he was employed by Cagle, and that testimony is unrebutted; (5) on February 9, 2021, the court ordered this case resubmitted for decision on the issues set forth in the Minutes of Hearing dated September 15, 2020, and the only resulting change to the record was UEBTF's submission of a post-trial brief; (6) applicant does not meet the criteria to be considered a "residence employee" of the homeowner pursuant to exhibit "A"; (7) applicant does not meet the criteria to be considered an employee of the homeowners pursuant to Labor Code Section 3352(h); (8) the record is insufficient to establish that the homeowners were the ultimate hirer of applicant; (9) applicant was employed by Cagle on

[1] Commissioner Lowe and Commissioner Sweeney no longer serve on the Workers' Compensation Appeals Board. Commissioner Capurro and Deputy Commissioner Schmitz have been substituted in their place.

the date of alleged injury, and the unrebutted evidence is that Cagle was uninsured at the time of alleged injury; and (10) applicant is entitled to seek benefits from UEBTF.

UEBTF contends that the WCJ erroneously (1) failed to find that applicant was employed by the homeowners pursuant to Labor Code section 2750.5; (2) found that applicant does not meet the criteria to be considered an employee of the homeowners pursuant to Labor Code section 3352(h);[2] and (3) found that applicant is entitled to seek UEBTF benefits.

We received an Answer from the Bairds.

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, as our Decision After Reconsideration, we will rescind the Findings of Fact and substitute findings that (1) the homeowners, the Bairds, are applicant's ultimate hirer for purposes of imposing workers' compensation liability; and (2) the issue of whether applicant is an employee of the homeowners pursuant to Labor Code Section 3352(h) is deferred; and we will return the matter to the trial level further proceedings consistent with this decision**.**

FACTUAL BACKGROUND

On March 27, 2018, the matter proceeded to trial on the issue of whether applicant was a household employee within the meaning of Labor Code section 3352(h). (Minutes of Hearing and Summary of Evidence, March 27, 2018, p. 3:2.)

At trial, applicant testified that his injury occurred on July 19, 2016, when he was working on a remodeling project involving drywall at the Bairds' home. He started the job on the Monday of the week before his injury. He worked a total of seven days: five days over the first workweek of the job, and two days of the second workweek. He did not work after his injury and did not finish the job. (*Id.*, p. 3:9-18.) He worked 10 hours a day, except on the day of injury, when he worked three hours. Cagle paid him by the job, did not pay him for his work at the Bairds because the job was not completed, and stopped communicating with him after the injury. (*Id.*, p. 5:6-14.)

[2] UEBTF also argues that Labor Code sections 3351(d) and 3352(h) may not be applied to exclude applicant from being deemed an employee of the Bairds on the grounds that their dwelling was uninhabitable. However, UEBTF did not raise the applicability of Labor Code sections 3351(d) and 3352(h) as an issue for trial; and, as such, the WCJ issued no findings thereon. Therefore, we will not address the issue. (Report, p. 2; F&O; Lab. Code §§ 5900(a), 5902, 5903.)

He worked for Cagle for seven months before the injury and was always paid $20.00 per hour. (*Id*., p. 4:4-7.)

Gregory Baird testified that he would check on the progress of the remodeling project "pretty much every day, sometimes in the morning, sometimes in the afternoon." (*Id.*, p. 5:23-24.) Over a seven-day period, he saw applicant at the home on three or four days, but was not keeping track. (*Id*., p. 6:12-14.) He did not know what hours applicant worked or at what rate he was paid. According to what Cagle told him, applicant was paid $20.00 per hour and may have worked on the project for three days. (*Id*., p 6:7-14.)

On September 15, 2020, the matter proceeded to continued trial, and the parties stipulated that Cagle did not hold a workers' compensation insurance policy on the date of alleged injury. (Minutes of Hearing, September 15, 2020, p. 2:18-19.)

The WCJ admitted an exhibit entitled Contractors Safety License Board Contractor's License Detail #657656 dated 6-1-18 into evidence. (*Id*., p. 2:7-8.)

It states:

> Contractors State License Board
> Contractor's License Detail for License # 657656
> . . .
> Business Information
> TIM CAGLE DRYWALL
> 19942 RANGER LANE
> HUNTINGTON BEACH, CA 92646
> . . .
> Entity Sole Ownership
> Issue Date 10 /2 9/1992
> Expire Date 10/31/2018
> . . .
>
> **Classifications**
> C-9 -DRYWALL
> (Ex. 1, Contractors Safety License Board Contractor's License Detail #657656, June 1, 2018, pp. 1-2.)

In the Report, the WCJ states:

> At the time of the alleged injury on July 19, 2016, Tim Cagle aka Timothy Howard Cagle, individually, dba Tim Cagle Drywall was uninsured for workers' compensation. The homeowners were insured by Allied Insurance, adjusted by AMCO Insurance Company. UEBTF has been joined as a party defendant.
> . . .
> The matter was resubmitted for decision on the limited issue of employment:

1. On the date of claimed injury was applicant employed by Tim Cagle;

2. Was the homeowner the ultimate hirer of applicant under Labor Code Section 2750.5;

3. If the homeowner was the ultimate hirer, is the applicant excluded from the definition of an employee for workers' compensation purposes because he failed to meet the wage and hour thresholds found in Labor Code Section 3352(h) in effect on the date of the claimed injury.

The Findings of Fact and Opinion on Decision dated April 12, 2021, found the exhibit "G" letter from Tim Cagle dated June 6, 2016, although entered into evidence as part of the trial record is not considered credible evidence of the statements set forth in that document and therefore unreliable, in part due to the fact Tim Cagle failed to appear at his noticed deposition and failed to comply with requested discovery thereby denying defendant UEBTF and defendant homeowner their due process to litigate this claim. That unverified document exhibit "G" was deemed to have no evidentiary value and no evidence in support of any of the contentions set forth therein.

. . .

Applicant did testify he was employed by Tim Cagle on the alleged date of injury (Minutes of Hearing and Summary of Evidence March 27, 2018 page 3 lines 7 to 8). Applicant testified the homeowner was doing remodeling and the witness was working with drywall (page 3 lines 10 to 11). Under direct examination there was no further testimony as to the specific work applicant claimed to have done at that location. Under cross examination applicant testified he worked alone at the residence. Applicant testified he put tape between sheets of drywall that had already been installed. He put the masking to make the area smooth between the drywall sheets. He worked alone. (Minutes of Hearing and Summary of Evidence March 27, 2018, page 5 lines 4 to 5).

. . .

The contention that applicant met the burden of proof under Labor Code Section 3352(h) to qualify as an "employee" of the homeowner is not supported by substantial evidence.

Defendant UEBTF in its Petition for Reconsideration contends the exceptions in section 3352 do not apply. That is based solely on the trial testimony of the applicant.

None of the exhibits entered into evidence were records of the applicant's work on the premises. There were no time cards submitted. There were no check stubs or payroll records submitted. The applicant did not submit any tax records or documents to substantiate any claimed earnings from Tim Cagle in any capacity. Applicant did not submit any records of the number of hours he claims to have worked at the property. Applicant did not testify as to any records he kept on the

> number of hours he worked. Applicant did not testify as to how he documented his time and how he presented to Tim Cagle the number of hours worked. In fact, applicant testified that he did not have a written record of the number of hours he worked and that he never told Tim Cagle how many hours he worked on the job. (Minutes of Hearing and Summary of Evidence March 27, 2018 page 4 lines 24 to 25). Applicant further testified he was never paid for the work he did on this job (page 4 line 9).
>
> None of the applicant's trial testimony as to the number of days and hours he worked on the homeowner's residence is supported by any documentary evidence.
> . . .
> The record does not support finding the applicant to be an "employee" of the homeowner pursuant to either the residential employee exception found in the homeowner's policy (exhibit "A") pursuant to Labor Code Section 3351 or 3352. The record established at trial did not provide sufficient evidence upon which to make a finding on the number of hours and days worked by the applicant. As noted above the applicant testified he did not have a written record of the number of hours worked.

(Report, pp. 1-5.)

DISCUSSION

Business and Professions Code section 7125.2(a)(2) provides, in relevant part, as follows:

> The failure of a licensee to obtain or maintain workers' compensation insurance coverage . . . shall result in the automatic suspension of the license by operation of law in accordance with the provisions of this section, but this suspension shall not affect, alter, or limit the status of the licensee as an employer for purposes of Section 3716 of the Labor Code.

(Bus. & Prof. Code, § 7125.2(a)(2).)

Labor Code section 2750.5 provides, in relevant part, as follows:

> There is a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of Business and Professions Code, or who is performing such services for a person who is required to obtain such a license is an employee rather than an independent contractor.

(Lab. Code, § 2750.5.)

Labor Code section 3351, as operative on July 19, 2016, provides in relevant part, as follows:

> 'Employee' means 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, and includes:
> . . .
> (d) Except as provided in subdivision (h) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(Lab. Code, § 3351.)

In turn, Labor Code section 3352(h), as operative on July 19, 2016, excludes from the definition of "employee" the following:

> (h) Any person defined in subdivision (d) of Section 3351 who was employed by the employer to be held liable for less than 52 hours during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury or injuries, as defined in Section 5412, or who earned less than one hundred dollars ($100) in wages from the employer during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury for injuries, as defined in Section 5412.

(Lab. Code, § 3352.)

In interpreting the interaction of Labor Code sections 2750.5 and 3352(h), the court in *Cedillo v. Workers' Comp. Appeals Bd.* (2003) 106 Cal.App.4th 227 [68 Cal.Comp.Cases 140] found that a homeowner who hires an unlicensed contractor to perform work for which a license is required becomes the employer of the unlicensed contractor's employees under the workers' compensation scheme unless the injured employee worked for the homeowner less than 52 hours during the 90 days preceding the date of injury or did not earn more than $100 in wages from that person during the 90 days immediately preceding the date of injury. (*Cedillo*, *supra*, at pp. 236-237.)

The court reasoned:

> Section 2750.5 unequivocally provides that a person lacking the requisite license may not claim to be an independent contractor. (Citations omitted.) Accordingly, the presumption that the person who employs the unlicensed contractor is the employer is conclusive. (Citations omitted.)
> . . .

> When the person seeks to hire the services through a licensed independent contractor, it is reasonable to anticipate that the independent contractor will insure against the risk and that the cost of the insurance will be passed on as part of the price of the contract. Thus it is reasonable to exonerate the hirer of the independent contractor. However, when the person performing services for which a license is required is unlicensed, the likelihood that he will insure against the risk of injury and has included the insurance cost in the price of his contract is greatly reduced. It is not unreasonable for the Legislature to conclude that effective implementation of a system of providing for workers' injuries requires liability on the part of the ultimate hirer and that he should not be able to avoid liability on the ground that he dealt with a contractor when the contractor lacked a required license. Whether or not the hirer of the unlicensed contractor must be viewed as negligent in engaging in the hiring, it is apparent that the hirer has little expectation that the contractor will have compensation and liability insurance. While it may seem anomalous to hold that the hirer is liable for compensation only if the contractor lacks the required license, and that he would not be liable if the contractor were licensed, the justification is apparent in that the Legislature has sought to assure that both licensed and unlicensed contractors and their employees will have compensation should they be injured on the job.' (Citation omitted.)

(*Cedillo*, *supra*, 68 Cal.Comp.Cases at pp. 144–145.)

However, the *Cedillo* court also found that where the employee performed less than 52 hours of work before sustaining injury, Labor Code section 3352(h) applied to exclude the homeowner from being deemed the worker's "employer" for purposes of imposing worker's compensation liability. (*Id*., pp. 146-148.)

UEBTF contends that the WCJ erroneously (1) failed to find that applicant was employed by the homeowners, the Bairds, pursuant to Labor Code section 2750.5; and (2) found that applicant does not meet the criteria to be considered an employee of the homeowners pursuant to Labor Code section 3352(h).

The record shows that (1) Cagle held a C-9 license from the Contractor's State License Board authorizing him to perform drywall installation work for hire; (2) the Bairds hired Cagle to install drywall in their home; (3) Cagle employed applicant to assist the drywall installation at the Bairds' home; (4) applicant sustained alleged injury while assisting in the drywall installation; and (5) Cagle was uninsured for workers' compensation on the date of alleged injury. (Report, pp. 1-5; Ex. 1, Contractors Safety License Board Contractor's License Detail #657656, June 1, 2018, pp. 1-2; Minutes of Hearing and Summary of Evidence, March 27, 2018, pp. 3:9-6:14; Findings of Fact.)

It follows that Cagle is deemed unlicensed by operation of law; and, in consequence, the homeowners, the Bairds, are applicant's ultimate hirer. (Lab. Code, § 2750.5; Bus. & Prof. Code, § 7125.2(a)(2)).) Accordingly, we will substitute a finding that the Bairds are applicant's ultimate hirer for purposes of imposing workers' compensation liability.

Since we have concluded that the Bairds are applicant's ultimate hirer, the issue becomes whether the Bairds met their burden of proving that they are not applicant's employer by establishing that applicant performed less than 52 hours of work on their behalf or did not earn more than $100 in wages by working at their dwelling during the 90 days immediately preceding the date of injury. (Lab. Code, § 3352(h); *Cedillo*, *supra*, at pp. 236-237.)

However, the WCJ did not determine whether the Bairds met their burden, but rather that applicant failed to meet the "the burden of proof under Labor Code Section 3352(h) to qualify as an 'employee' of the homeowner." (Report, p. 4.)

Having misassigned the burden of proof, the WCJ also failed to make a record regarding how, if at all, she weighed the parties' trial testimony on the issue of whether applicant's hours worked and wages earned met the thresholds of Labor Code section 3352(h).

Notably, applicant testified that he worked six 10-hour days, plus one 3-hour day before sustaining injury, at a rate of $20.00 per hour, evidencing that he surpassed the requisite thresholds. (Minutes of Hearing and Summary of Evidence, March 27, 2018, p. 5:6-14.)

On the other hand, though Mr. Baird testified that he lacked direct knowledge of applicant's hours worked or wages earned, he also testified that Cagle informed him that he was paying applicant $20.00 per hour, and he observed applicant at the home on three or four occasions. (*Id*., p. 6:7-14.)

Notwithstanding this witness testimony, the WCJ concluded that applicant's work did not meet the Labor Code section 3352(h) threshold for hours and wages because the record lacked documentary evidence on the issue. (Report, p. 5.) But since the gist of applicant's testimony was that Cagle paid him by job, that he did not complete the job because of injury, and that Cagle did not pay him because the job was not completed, we are unpersuaded that documentary evidence relating to applicant's actual hours worked and wages earned ever existed. (Minutes of Hearing and Summary of Evidence, March 27, 2018, pp. 3:9-5:24.) We observe however, even if no documentary evidence is available, the WCJ may determine the issue based on applicant's credible testimony.

Thus, we conclude that the finding that applicant does not meet the criteria to be considered an employee pursuant to Labor Code Section 3352(h) is without support.

The WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award, there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; see also *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) 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*, *supra*, at p. 476, (citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351]).)

Based upon the absence of a record regarding whether the Bairds' met their burden of proving that applicant is excluded from the definition of an employee for workers' compensation purposes under Labor Code section 3352(h), including a record as to the probative value of the parties' testimony on that issue, we conclude that the record requires further development.

Accordingly, we will substitute a finding that defers the issue of whether applicant is an employee of the homeowners pursuant to Labor Code Section 3352(h); and we will return the matter to the trial level for development of the record thereon. (See *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261] (finding that the Appeals Board has the discretionary authority to develop the record when appropriate to fully adjudicate the issues); see also Lab. Code, § 5313.)

We turn next to UEBTF's contention that the WCJ erroneously found that applicant is entitled to seek UEBTF benefits.

Labor Code section 3716 provides, as relevant:

> (a) If the employer fails to pay the compensation required by Section 3715 to the person entitled thereto, or fails to furnish the bond required by Section 3715 within a period of 10 days after notification of the award, the award, upon application by the person entitled thereto, shall be paid by the director from the Uninsured Employers Benefits Trust Fund. The expenses of the director in administering these provisions, directly or by contract pursuant to Section 3716.1, shall be paid from the Workers' Compensation Administration Revolving Fund. Refunds may be paid

from the Uninsured Employers Benefits Trust Fund for amounts remitted erroneously to the fund, or the director may authorize offsetting subsequent remittances to the fund.

(b) It is the intent of the Legislature that the Uninsured Employers Benefits Trust Fund is created to ensure that workers who happen to be employed by illegally uninsured employers are not deprived of workers' compensation benefits, and is not created as a source of contribution to insurance carriers, or self-insured, or legally insured employers. The Uninsured Employers Benefits Trust Fund has no liability for claims of occupational disease or cumulative injury unless no employer during the period of the occupational disease or cumulative injury during which liability is imposed under Section 5500.5 was insured for workers' compensation, was permissibly self-insured, or was legally uninsured. No employer has a right of contribution against the Uninsured Employers Benefits Trust Fund for the liability of an illegally uninsured employer under an award of benefits for occupational disease or cumulative injury, nor may an employee in a claim of occupational disease or cumulative injury elect to proceed against an illegally uninsured employer.

(Lab. Code, § 3716(a)-(b).)

In *Jenkins v. Workmen's Comp. Appeals Bd*. (1973) 31 Cal. App. 3d 259 [38 Cal.Comp.Cases 201], the court stated:

[S]ection 3716 of the Labor Code established the Uninsured Employers Fund. The purpose of this fund is to provide an injured employee with immediate benefits if an employer fails to pay an award of compensation for such injury within 10 days after notification thereof. These provisions were obviously enacted to fulfill the public policy declared in article XX, section 21 of the California Constitution that mandates the creation of a system of workmen's compensation that, in the words of the Constitution, will be so administered to "accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character; . . ." The provisions of said section 3716 appear to be founded on the maxim that "justice delayed is justice denied" -- a maxim peculiarly applicable in workmen's compensation law.

When an employee or his dependent has obtained an award from the appeals board against an uninsured employer pursuant to section 3715, the employer is required to pay the award or furnish the board with a sufficient bond for its payment. If the employer fails to pay the award or furnish the required bond within 10 days after notification thereof, the award, upon application of the employee or dependent, shall be paid by the Director of Industrial Relations from the Uninsured Employers Fund. This is the essence of section 3716. There is thus created an immediately available fund from which an injured employee's award shall be paid if an employer does not pay it within said 10-day period.

> The provision does not create a new right having its origin in the initial injury. Rather, the right created is based upon the fact of nonpayment of an obligation already in existence, i.e., the award of compensation. It is this time (nonpayment within 10 days after entry of award), and not the time of injury, that effectuates section 3716.

(*Jenkins*, *supra*, at pp. 263-264.)

The Legislature intended that the employer be primarily responsible for the payment of the award even in a case in which the UEBTF has participated and ultimately may be required to pay the award, and nothing in the statutory scheme suggests the Legislature intended the UEBTF to pay any amount in excess of, or different from, the amount awarded against the uninsured employer. (*Dubois v. Workers Comp. Appeals Bd*. (1993) 5 Cal.4th 382 [58 Cal.Comp.Cases 286, 291].)

Pursuant to these authorities, applicant may apply for payment from UEBTF of an award issued against an uninsured employer in the event that the award is not paid within 10 days of service on the uninsured employer. (Lab. Code, § 3716(a)-(b).) However, there is no authority for the proposition that applicant may pursue a claim for workers' compensation benefits directly against UEBTF because UEBTF is not an employer or an insurance carrier standing in the shoes of an employer. (See *DuBois*, *supra*; *Symmar v. Workers' Comp. Appeals Bd*. (1982) 135 Cal.App.3d 65, 70 [47 Cal.Comp.Cases 847, 850–851] (stating that a workers' compensation award can only be against the employer).) Thus, the WCJ's finding that applicant is entitled to seek recovery of workers' compensation benefits directly from UEBTF is incorrect.

Accordingly, as our Decision After Reconsideration, we will rescind the Findings of Fact and substitute findings that (1) the homeowners, the Bairds, are applicant's ultimate hirer for purposes of imposing workers' compensation liability; and (2) the issue of whether applicant is an employee of the homeowners pursuant to Labor Code section 3352(h) is deferred; and we will return the matter to the trial level further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact issued on April 12, 2022 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. JORGE MACIEL IBARRA born on _____, while allegedly employed on July 19, 2016 as a drywall installer, occupational group number 380, at 25771 Serenate Drive, Mission Viejo, California, by TIM CAGLE aka TIMOTHY HOWARD CAGLE, individually dba TIM CAGLE DRYWALL, and GREG AND BROOKE BAIRD, homeowners, claims to have sustained injury arising out of and occurring in the course of employment to the neck, arm, hand, knee and various body parts.

2. Applicant was employed by TIM CAGLE, individually dba TIM CAGLE DRYWALL, on the claimed date of injury. It is concluded the unrebutted evidence is that at the time of the claimed injury TIM CAGLE, individually dba TIM CAGLE DRYWALL, was uninsured.

3. The parties were denied an opportunity to cross-examine TIM CAGLE, and Exhibit "G" (letter from Tim Cagle dated June 6, 2016) is struck from evidence.

4. The homeowners, GREGORY and BROOKE BAIRD, are applicant's ultimate hirer for purposes of imposing workers' compensation liability.

5. The issue of whether applicant is excluded from being deemed an employee of the homeowners GREGORY and BROOKE BAIRD pursuant to Labor Code Section 3352(h) is deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 17, 2025

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

JORGE MACIEL IBARRA
PEREZ LAW
STOCKWELL, HARRIS, WOOLVERTON & FOX
OFFICE OF THE DIRECTOR – LEGAL UNIT

SRO/*cs*

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