

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

LUIS ARNULFO BERMEO CUEVA (Deceased.), *Applicant*

vs.

**EMIL BENJAMIN ARAUJO GALVEZ, an individual dba KING AUTO SALES;
JOSE CARPIO, an individual dba REX AUTO SALES;
UNINSURED EMPLOYERS BENEFITS TRUST FUND (UEBTF), *Defendants***

**Adjudication Number: ADJ13444464
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the presiding workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the Opinion and Decision and PWCJ's Report, both of which we adopt and incorporate, we will deny reconsideration.

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, Labor Code 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 Labor Code 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 May 6, 2025, and 60 days from the date of transmission is Friday, July 4, 2025, which is a State holiday. The next business day that is 60 days from the date of transmission is Monday, July 7, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, July 7, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 presiding workers’ compensation administrative law judge, the Report was served on May 6, 2025, and the case was transmitted to the Appeals Board on May 6, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on May 6, 2025.

¹ 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.

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/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 3, 2025

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

**MARIA BERMEO on behalf of LUIS ARNULFO BERMEO CUEVA, DECEASED
HINDEN & BRESLAVSKY
EMIL BENJAMIN ARAUJO GALVEZ AN INDIVIDUAL DBA KING AUTO
OFFICE OF THE DIRECTOR, LEGAL UNIT, (LOS ANGELES)**

AS/mc

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Applicants attorney of record has filed a timely and verified Petition for Reconsideration challenging the Findings and Order dated 2/24/2015 and served on **2/25/2025**.

The petition contends that the By the Findings and Order the WCJ acted in excess of his power; and that the evidence presented does not justify the Findings of Fact.

Because the trial judge is no longer available, this report is submitted on his behalf by the presiding judge pursuant to California Code of Regulations, title 8, section 10962(c).

II

FACTS

Luis Arnulfo Bermeo Cuevas, care of Maria Bermeo, born on February 15, 1957, while allegedly employed on May 13, 2020, at Long Beach California by Emil Benjamin Araujo Galvez, an individual doing business as King Auto Sales, and Jose Carpio, doing business as Rex Auto Sales, claims to have sustained injury arising out of and in the course of employment in the form of Covid-19, which caused death.

This matter proceeded to trial on 12/24/2024 on the sole issue of employment. At trial the decedents wife testified to the location where here husband worked but provided no details regarding the work arrangements or any specifics regarding how he was paid other than she "thinks her husband was paid for his work in cash on Saturday afternoons." The applicant also called Mr. Nunez who testified that Mr. Bermeo did rent space from King Auto Sales to store tools that were owned by Mr. Bermeo (SOE page 6 lines 12-13).

Mr. Galvez testified that he did not employ Mr. Bermeo and that he had closed his business on June 30, 2019, due to bankruptcy (SOE page 7 lines 5-8). Bankruptcy records were admitted as Exhibit A by the WCJ in his Opinion on Decision (page 5). Mr. Carpio testified that he did not know the people involved in this case and that he did not create the receipts that were offered into evidence. In addition, he testified that his business is located at an address different from the location where the decedent was working (SOE page 7 lines 22-25).

Based on the evidence presented, the WCJ found no employment. It is from this decision that the applicant filed their Petition for Reconsideration.

III

DISCUSSION

In the Petition for Reconsideration applicant asserts numerous allegations that the defendant asserted control over the applicant. These allegations are not supported by the record. The applicant asserts that the defendants controlled the schedule of work including the time to start and end, controlled the cars to be repaired, the method and tools to be used and the specific process, and exerted supervision over the quality of work. The petition goes on to state other controls by the defendants (page 5 lines 10 -21). In violation of California Code of Regulations Section 10945, the applicant fails to state all of the material evidence relative to the point or points at issue. In addition, the petition does not support the evidentiary statements with specific references to the record. In fact, the applicant fails to state anywhere in the record where the information regarding control can be found. The testimony presented by the witnesses does not support any of the allegations of control raised by the applicant in their Petition for Reconsideration (Minutes of Hearing and Summary of Evidence 12/24/2024).

The facts and discussion supporting the decision are set forth in the trial judge's Opinion on Decision, which is attached hereto, incorporated herein by reference, and transmitted herewith.

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

This matter was transmitted to the Recon Unit on 5/6/2025.

Respectfully submitted,

SHARON L. VELZY
Presiding Workers' Compensation Judge

OPINION ON DECISION

At trial on December 24, 2024, the parties submitted for decision the sole issue of employment, i.e., whether applicant Luis Arnulfo Bermeo Cueva, who is now deceased, was or was not as of May 13, 2020 an employee of Emil Benjamin Araujo, an individual doing business as King Auto Sales, or an employee of Jose Carpio, an individual doing business as Rex Auto Sales (*See Minutes of Hearing and Summary of Evidence of 12/24/2024, page 2, lines 19-20*).

At trial, the parties stipulated that Luis Arnulfo Bermeo Cuevas, born XX-XX-XXXX, while allegedly employed on May 13, 2020, at Long Beach, California by Emil Benjamin Araujo Galvez, an individual doing business as King Auto Sales, and Jose Carpio, doing business as Rex Auto Sales, claims to have sustained injury arising out of and in the course of employment in the form of Covid- 19, which caused death. The parties further stipulated that both alleged employers were uninsured for workers' compensation, and furnished no medical treatment to applicant (*Id.*, at page 2, lines 11-18).

Applicant's attorney provided written evidence on the issue of applicant's alleged employment that was admitted over all of the defendants' objections based on relevance, authentication, and lack of foundation. Admitted as Applicant's 1 were subpoenaed records of Clinica Monsenor Oscar A. Romem, with a cover page dated February 22, 2022, a page with four receipts: one for \$500 received on April 25, 2020 by "REX AUTO SALES!", (stamped) from an unspecified person for "pago de Renta del 1405" (payment of Rent for 1405) for "4-1-20 to 5-1- 20" minus \$425 credit for what looks like "Chevy Repair"; a second receipt for \$500 received from Luis Bermeo on December 14, 2019 for "pago de Renta del to Rex Auto Sales; a third receipt for \$500 received on January 20, 2020 from Luis for "Renta" to Rex Auto Sales; and a fourth receipt for \$400 received on May 15, 2019 from "Don Luis" for "Renta" by "KING AUTO SALES" (stamped). The first receipts appears to have the initials "AR" and the other three have initials that appear to be "CR," but this is not entirely clear, and the initials on the third and fourth receipts look distinctly different than the initials on the second receipt. Page three of Applicant's 1 is a copy of a positive Covid-19 test result for "Bermeo, Luis" from a sample taken May 5, 2020 at 10:33 a.m. Admitted as Applicant's 2 was a photograph of a man standing next to a car, which is purported to be applicant Luis Arnulfo Bermeo Cuevas. These two exhibits marked as Applicant's

1 and 2 were admitted into evidence over objection with the provision that although workers' compensation judges are not constrained by the Evidence Code as to admissibility of exhibits on the grounds that they lack authentication, a witness should explain to the Court what these exhibits are, and why they are relevant.

Defendant Uninsured Employers Benefit Trust Fund (UEBTF) provided written evidence that was marked for identification as Defendant UEBTF's A, which appears to be a docket for a Chapter 7 bankruptcy case, number 2: I 9-BK-18700, for debtor Mr. Emil Benjamin Araujo Galvez, formerly doing business as King Auto Sales. Page 2 of the docket includes an entry for an order of discharge on November 5, 2019, which is before applicant's claimed injury date of May 13, 2020. Marked for identification as Defendant UEBTF's B was an e-mail message in Spanish from defendant Mr. Araujo Galvez to applicant's attorney, which the Court understands to read approximately as follows:

Good morning, my name is Emil Araujo Galvez, I had a car sales business called Kings Auto Sales but I closed it in 2019. Since that time I left the place where I operated my business at 1405 N Long Beach Blvd Compton, CA 90221 and recently, after so much time, I passed by there and what was my surprise when I found some documents with the Workers Comp lawsuit that the people who work there had in store for me. This is the case number ADJ13444464. I want to inform you that in 2019 I went bankrupt and decided to close the business on June 23, 2019 and I have tests from the State Board of Equalization and also from the DMV. I also want to state that Mr. Luis Arnulfo Bermeo Cueva was not my employee nor did he have an employment contract with me or my company. Please review my case and if there is a need for any proof, let me know so I can send you the documents. I thank you in advance for your help and wish you a happy day.

Sincerely:
Emil Araujo Galvez

The exhibits marked as Defendant UEBTF's A and B were not admitted into evidence at the time of trial, because defendant Jose Luis Carpio indicated that he had not seen them before. Since there has been no objection from Mr. Carpio after a reasonable opportunity for him to inspect copies of these exhibits (approximately 60 days), it seems reasonable at this time to admit these two exhibits into evidence as well, and so at this time they are admitted into evidence.

Four witnesses testified at trial. First, Maria Bermeo, widow of applicant Luis Arnulfo Bermeo Cuevas, and Hector Alfonso Nunez Salazar, who worked with applicant before he died,

testified on behalf of applicant. Then, both individual defendants testified on their own behalf. Their testimony was summarized in the December 24, 2024 Minutes of hearing and Summary of Evidence as follows.

Ms. Mario Bermeo testified that her husband, applicant Luis Bermeo, passed away on May 13, 2020. Her husband worked for Rex Auto Sales and King Auto Sales. Ms. Bermeo thinks that her late husband worked at 1405 N Long Beach Blvd., Compton, CA 90220. Mr. Bermeo was about six feet tall, Hispanic, with dark hair. He was a little dark skinned. The photograph in Applicant's 2 is a photograph of her husband. Ms. Bermeo took this photograph of her husband when she went to his workplace to drop off food for him.

Ms. Benner's husband worked as a mechanic for King Auto Sales, then he worked for Rex Auto Sales. These were both used car dealers. Mr. Bermeo did mechanical work, exchanging parts, but he didn't do body work, Ms. Bermeo thinks. Ms. Bermeo thinks her husband was paid for his work in cash on Saturday afternoons,

On cross-examination, Ms. Bermeo admitted that she doesn't know exactly when her late husband last worked for King Auto Sales. She thinks it might have been in 2018 or something like that. She is also not sure why he stopped working there, but thinks that maybe the owner was going back to Guatemala,

Next, Hector Alfonso Nunez Salazar (referred to here as Mr. Nunez) testified that he knew Luis Bermeo. They started working together at King Auto Sales in 2017. Mr. Nunez started working there first, then Mr. Bermeo came to work there too after a few months. Both Mr. Nunez and Mr. Bermeo worked as mechanics. They both worked for Rex Auto Sales later, after working for King Auto Sales. When Mr. Nunez stopped working for Rex Auto Sales, Mr. Bermeo was still working there. Mr. Nunez was always paid for his work there in cash, and he thinks that Mr. Bermeo was paid in cash, too.

On cross-examination, Mr. Nunez admitted that he doesn't remember exactly when he started working for Rex Auto Sales. He thinks that maybe it was in 2018 or 2019. Suddenly the owners "changed names," There were actually several owners, Mr. Nunez thinks. He doesn't recall their names, but he thinks that perhaps Mr. Carpio owned both King Auto Sales and Rex Auto Sales. Mr. Nunez does not think he had a lease agreement with King Auto Sales. He does not think that Mr. Bermeo rented anything from them, either. King Auto Sales just provided Mr. Nunez and Mr. Bermeo with a space to work and paid them cash for doing jobs. Mr. Nunez admits that Mr.

Bermeo did rent space from King Auto Sales to store tools while working for the dealership. Mr. Bermeo did not have his own customers. Mr. Nunez did not} either. Neither Mr. Bermeo nor Mr. Nunez worked on cars on their own at King Auto Sales.

Mr. Bermeo did not have a rental agreement with Rex Auto Sales either, Mr. Nunez thinks. The tools that were used by Mr. Bermeo at Rex Auto Sales were tools for mechanics, such as jacks to lift engines, and wrenches. Mr. Bermeo owned these tools. Mr. Bermeo paid rent to Rex Auto Sales to store his tools. Mr. Nunez does not recall the last day that Mr. Bermeo worked at Rex Auto Sales, but believes it might have been the day that Mr. Bermeo passed away.

Mr. Nunez also admitted that he never got a Form W-2 for taxes from King Auto Sales or Rex Auto Sales. He was paid in cash. He doesn't remember exactly where Rex Auto Sales is located, but thinks it *is* on Long Beach Boulevard in Compton.

Defendant Emil Benjamin Araujo Galvez (Mr. Araujo) testified that he doesn't agree with the receipts that were put into evidence as Applicant's Exhibit 1. He doesn't agree with the numbers on them, and the signatures are not his. The signature on the third receipt in this exhibit is fake, Mr. Araujo thinks.

Mr. Araujo closed his business; King Auto Sales, before the date of injury in this case. He calls the Court's attention to the out-of-business report dated June 30, 2019 that he filed with copies of bankruptcy documents. The bankruptcy documents in evidence as UEBTF's Exhibit A show that his debts have been discharged. All dates after this are not his.

On cross-examination, Mr. Araujo admitted that he saw Mr. Bermeo a few times at Mr. Bermeo's home in Lynnwood. Mr. Bermeo had a mechanic's shop at his house. Mr. Bermeo had spare parts at his house. Sometimes Mr. Araujo used Mr. Bermeo's help,

Mr. Araujo further testified that he did not use Mr. Bermeo's services as a mechanic after July 2019. Mr. Bermeo did work as a mechanic at his own home. Mr. Araujo does not remember exactly when this was. He doesn't know whether it is possible that Mr. Bermeo contracted COVID at home. Jose Luis Carpio, Jr. (Mr. Carpio) testified that he has a family business. He works with his brother, dad, and uncles. He never knew the people in this case, and never signed the receipts in Applicant's Exhibit 1. He doesn't recall making these receipts, He never saw the person in the picture in Applicant's Exhibit 2. He feels like there's a mix-up regarding the location, because he is at 905 Long Beach Boulevard, not 1405.

On cross-examination, Mr. Carpio clarified that the names of his relatives who are in business with him are Jiron Carpio (his brother), Jose Luis Carpio (his father), Miguel Carpio and Carlos Carpio (his uncles). Their business has been open for a few years now. They sell all kinds of used cars. The full address of Rex Auto Sales is 905 N. Long Beach Blvd., Compton, CA 90221. Mr. Carpio is a sole proprietor and does not run the business through a corporation. He thinks he registered with the California Secretary of State and has a fictitious business name certificate. Everything is up to date. Mr. Carpio is the sole owner of Rex Auto Sales.

Based on all of the evidence provided, including testimony of witnesses, it appears from the receipts Applicant's 1 that applicant Luis Arnulfo Bermeo Cueva rented space from King Auto Sales to work at 1405 North Long Beach Boulevard in Compton as of May 15, 2019. Based on page 2 of Defendant's A, page 2 of Applicant's 1, and Mr. Araujo 's testimony, it appears that Mr. Araujo did stop doing business as King Auto Sales as of his November 5, 2019 bankruptcy discharge, and thereafter applicant paid a "Rex Auto Sales" at the same address. Based on Mr. Carpio's credible testimony that his business called Rex Auto Sales is at 905, not 1405 North Long Beach Boulevard, and the indication on the first receipt on page 2 of Applicant's 1 that is was "for 1405" suggests that applicant was not renting from Mr. Carpio 's business. On the other hand, while street numbers 905 and 1405 would seem to be five blocks apart, on a map they appear to be only two blocks away from each other. Also curious is the manner in which the names are also related, "rex" being Latin for "king." Applicant's widow and witness Mr. Nunez testified that King Auto Sales and Rex Auto Sales paid applicant in cash, which is plausible because used car dealer would need someone to inspect and work on the cars that they sell, and Mr. Araujo states that he did use applicant's services as a mechanic. However, Mr. Araujo also testified that applicant performed mechanical services at home, and both Mr. Araujo and Mr. Nunez agreed that applicant used his own tools, and Mr. Nunez admitted that applicant rented space for tools. The receipts shown in Applicant's 1, while disavowed by the defendants, corroborate the allegation that applicant was an independent contractor.

The California Supreme Court first adopted the "ABC" test for determining whether a person hired by another is an employee or an independent contractor in the case of *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903. In September 2019, this test was signed into law by ABS. Under the "ABC" test, a worker is an employee unless (A) 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) performing work that is outside the usual course of the hiring entity's business, and (C) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

In this case, while Mr. Nunez stated that he did not think that applicant worked on cars on his own, he also did not establish any kind of control exercised by either King Auto Sales or Rex Auto Sales, and the rental receipts in Applicant's 1 suggest that there was in fact no control, because applicant was paying King Auto Sales and Rex Auto Sales, perhaps more than they were paying him for doing work on their cars. The receipts suggest that applicant paid one or both defendants a significant amount of rent for space on the business premises at 1405 North Long Beach Boulevard, which around the time of the alleged injury was offset for mechanic services performed by applicant ("Chevy Repair"). The witnesses did not describe the amount of alleged cash payments the other way around, from defendants to applicant, which suggests that it was on a piecemeal basis and varied. Mr. Carpio does not even know who applicant is, although it is speculatively conceivable that one of his relatives used the mechanical services of applicant or Mr. Nunez. So, given these considerations, it does not appear by a preponderance of the evidence that applicant was under any control or direction by the individual defendants. That is part "A" of the "ABC" test to determine whether a worker is *not* an employee.

As for part "B" of the "ABC" test, mechanic work is in fact different than used car sales. The two kinds of business may feed off of one another, with used car dealers (and perhaps their customers) needing the service of mechanics, but people go to a used car dealer to buy a car, not to repair one that they already own, and there was no evidence to suggest that either Mr. Araujo or Mr. Carpio was running a car repair service. So, part B of the "ABC" test is also met to show that applicant was *not* an employee of King Auto Sales or Rex Auto Sales.

With respect to part "C"; of the "ABC" test, the evidence that applicant used his own tools that occupied a significant amount of space, both at 1405 North Long Beach Boulevard and, per Mr. Araujo, at his home, and the evidence that he paid rent to store tools and use them at 1405 North Long Beach Boulevard, despite the fact that he may also have been paid cash to work on the lessor's cars for sale, would weigh in favor of concluding that applicant was customarily engaged in an independently established trade, occupation, or business as a mechanic. Thus, it appears that applicant meets part "C" of the "ABC" test as well.

Since the evidence leans in favor of the conclusion that applicant was *not* an employee under the "ABC" test, employment cannot be found. The most probable explanation for all of the evidence is that applicant paid a used car dealer at 1405 North Long Beach Boulevard, starting before it changed its name in 2019, for the privilege of using the premises to store heavy tools and use them to work on cars. This relationship was mutually beneficial, insofar as the used car dealer probably paid applicant and his associate Mr. Nunez cash (or offset of rent) for working on cars that were offered for sale, The defendants did not employ applicant; they did business with him.

The location on the rent receipts in Applicant's 1, Mr. Araujo's testimony, as well as Mr. Carpio's testimony all suggest that it was Mr. Araujo who was doing business with applicant, not Mr. Carpio. On the other hand, the use of the name "Rex," Mr. Araujo 's bankruptcy the year before the injury, the proximity of the two businesses, and Mr. Nunez's belief that perhaps Mr. Carpio was an owner of both businesses all call this conclusion into question. In any event, it does not matter whether Mr. Carpio rented space to applicant asked applicant to work on his cars or not, because the evidence is sufficient to establish that applicant was paying for the right to work with his own tools at 1405 North Long Beach Boulevard in a manner distinct from the used car sales that was Mr. Araujo's business and is Mr. Carpio's family business, with no indication that either defendant controlled how applicant worked. As much as the Court would like to assist Ms. Bemeo after her husband's tragic and untimely passing from Covid-19, all of the available evidence tends to point to the conclusion that applicant Luis Arnulfo Bermeo Cueva was not an employee of either Emil Benjamin Araujo Galvez, an individual doing business as King Auto Sales} or of Jose Carpio, doing business as Rex Auto Sales; for purposes of eligibility for workers' compensation benefits. Accordingly it must be ordered that applicant takes nothing on his workers' compensation claim against these defendants.

DATE: 2/24/2025

Clint Feddersen

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE