**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**IRINEO RUVALCABA,** ***Applicant***

**vs.**

**OCTAVIO MARTINEZ dba NIEVES TIRES, UNINSURED; UNINSURED EMPLOYERS BENEFITS TRUST FUND,** ***Defendants***

**Adjudication Number: ADJ8013666 (MF); ADJ8013668; ADJ8013943**
**Van Nuys District Office**

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

Applicant seeks reconsideration of the Joint Finding of Fact and Order (F&O) issued on November 10, 2025. The workers' compensation administrative law judge (WCJ) found that applicant "did not have an employer-employee relationship with Nieves Tires." The parties previously stipulated that applicant, while allegedly employed on December 6, 2010, as a laborer, by Octavio Martinez, doing business as Nieves Tires, claims to have sustained injury arising out of and in the course of employment to his fingers, hands, and psych. (Minutes of Hearing and Summary of Evidence (MOH), 11/21/23, at p. 2:13-14.)

Applicant contends that the WCJ erred in failing to find employment arguing that he has met his burden of proof necessary to trigger the presumption of employment pursuant to Labor Code sections 3351 and 3357.[1] Applicant also appears to argue that defendant failed to meet their burden to rebut the presumption because applicant was doing the same work as defendant at defendant's worksite and because defendant may have provided other tools excluded in testimony.

Defendant Uninsured Employers Benefits Trust Fund (UEBTF) filed an Answer. Defendant Octavio Martinez doing business as Nieves Tires (Nieves) did not file an answer. The

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

WCJ issued a Joint Report and Recommendation of Workers' Compensation Administrative Law Judge on Petition for Reconsideration (Report) recommending denial of the Petition.

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, and for the reasons discussed below, we will grant reconsideration, rescind the decision and return the matter to the trial level for further proceedings consistent with this opinion.

**FACTS**

Applicant alleges three injuries while allegedly working for defendant Nieves on January 10, 2011, September 11, 2010, and December 6, 2010.

After many years, the matter finally proceeded to trial beginning on November 21, 2023. The cases were consolidated and the matter went forward on the issues of employment and "presumption of compensable injury pursuant to Labor Code 5402." (MOH, 11/21/2023, 3:11-13.) No exhibits were entered into evidence.

Applicant testified that he worked for Nieves from 2008 until the end of January 2011, working six days per week from 7:30 am to 7:00 pm. (*Id.* 3:20-22.) He was paid $50.00 per day for eleven and half hours of work. (*Id.* 5:2-3.)

Applicant testified that he sold used tires to a manager at Nieves, Marcelino Martinez. (*Id.* 4:7.) Applicant's father and uncle would buy used tires from various tire shops and sell them to Nieves and other shops for a profit. (*Id.* 4:7-9.) Applicant sold tires without installation. (*Id.* at 4:11.) On two occasions, however, applicant installed tires in the Nieves parking lot. Applicant coordinated payment with the customer and paid Marcelino for the labor of dismounting and mounting the tires and Applicant kept the remainder of the money (*Id.*, 4:12-15.)

Applicant's father and uncle owned and operated a tire business called Lalo's Tires at his grandmother's house. (*Id.*, 5:8-10.) Applicant denied working for his dad as he did not get paid, but then later testified that he helped his father sell tires from 2002 until roughly 2011. (*Id.*, 5:13-15.) He indicated that all money earned from selling tires was given to his father. (*Id.*)

On the second day of trial, on April 23, 2024, Applicant was called to continue testimony. He testified briefly that the owner of Nieves would ask applicant to find tires that were not in inventory and would obtain the same from his family members. (MOH, 04/23/2024, 2:13-14.)

The owner of Nieves, Octavio Martinez, was then called to testify. He testified that applicant would bring in customers for tire services and applicant would supply tires if the specific

tires were not in stock. (*Id*., 3:2-3.) Applicant sold tires to Nieves and each sale was negotiated separately. (*Id.* 3:4-5.) Applicant was paid for the tires, but no additional money was paid for any other service. Applicant paid Mr. Martinez to mount tires. (*Id.*, 3:7.) The price of mounting the tires varied by tire profile with an extra charge for taking the wheel off the car. (*Id.* 3:9-11.) If the customer was applicant's customer, applicant would take the tires off the vehicle and give them to Mr. Martinez for dismounting and mounting the new tire. Then, the applicant would put the tires back on the car in the parking lot. (*Id.*, 3: 10-12.) Applicant brought his own tools and would connect to the shop's hose rail and use compressed air. (*Id.*, 3:14-16.) Applicant paid Mr. Martinez $20 per day for use of the parking lot and hose rail. (*Id.,* 3:14-15.) According to the witness, applicant also did oil changes, brakes, and spark plug changes in the parking lot. (*Id*. 3:16-17.) Applicant would not work on cars belonging to Nieves customers as applicant had his own customers. (*Id*., 4:7.)

Mr. Martinez admitted that there was no rental agreement for applicant's use of the premises, nor was there documentary evidence of the purchase of tires from applicant. (*Id.*, 4:9-10.) He testified that applicant would just "hang out" at the Nieves shop. (*Id*. 4:10.) Mr. Martinez did not supervise applicant's work. (*Id*. 4:22.) Applicant was not paid for being on site. (*Id.* at 5:4.)

On the third day of trial, March 11, 2025, Mr. Octavio Martinez reiterated prior testimony. Marcelino Martinez was called but needed the assistance of an interpreter, so the matter was continued.

On September 9, 2025, Marcelino Martinez, a manager at Nieves, was called to testify. He testified that for Nieves' customers, he would buy tires from applicant and Mr. Martinez would mount and install the tires himself. (MOH, 09/09/2025, 2:22-23.) Applicant had his own customers for whom Mr. Martinez would mount the tires on the rim and return the mounted tire back to applicant. Then applicant would install the tire with his own tools and did not do any other mechanical work in the parking lot as they did not have permits for any other type of mechanical work. (*Id.*, 3: 3-4.)

On November 5, 2025, the WCJ issued the F&O finding that there was no employer-employee relationship between the applicant and Nieves. In the opinion, the WCJ held that pursuant to the factors outlined in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) (*Borello*) 48 Cal.3d 341 [54 Cal.Comp.Cases 80] (*Borello*) the applicant was an independent

contractor. He also opined that the presumption of compensability pursuant to section 5402 did not apply to people who were not employees.

## DISCUSSION

### I

Former 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:

> (2) 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 December 15, 2025 and 60 days from the date of transmission is February 13, 2026. This decision is issued by or on February 13, 2026, 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 December 15, 2025 and the case was transmitted to the Appeals Board on December 15, 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 December 15, 2025.

**II**

An "employee" is defined as "every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed." (Lab. Code, § 3351.) Further, any person rendering service for another, other than as an independent contractor or other excluded classification, is presumed to be an employee. (Lab. Code, § 3357.) Employment relationships that result in workers' compensation liability are based upon an analysis of the definition of an employee, rather than upon the definition of the employer. (See *Heiman v. Workers' Comp. Appeals Bd.* (*Aguilera*) (2007) 149 Cal.App.4th 724 (*Heiman*).)

Once an applicant meets the burden of proving that they rendered service for defendant, the burden shifts to defendant to rebut the employment presumption with proof that the service was rendered in the excluded status 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].) The determination of "employee" status must precede the application of any exclusion. (See Lab. Code, §§ 3351, 3357; *Cedillo v. Workers' Comp. Appeals Bd*. (*Cedillo*) (2003) 106 Cal.App.4th 227 [68 Cal.Comp.Cases 140, 145]; *Unicare Ins. Co. v. Workers Comp. Appeals Bd*. (1996) 61 Cal.Comp.Cases 1516, 1517 (writ den.). The presumption outlined in section 3357, together with evidence of a contract of employment or hire, casts upon the alleged employer the burden of overcoming the presumption. (*Van Horn v. Industrial Acci. Com.* (1963) 219 Cal.App.2d 457, 464 [28 Cal.Comp.Cases 187]; citing *Gale v. Industrial Acci. Com.* (1930) 211 Cal. 137, 141.) That is, 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].)

In this matter, there was no determination made as to whether or not applicant met his burden of proving the presumption of employment status. Rather, the WCJ simply concluded that applicant was an independent contractor. Presumably, the WCJ assumed the applicant was rendering a service to Nieves, but the record is unclear as to whether that assessment was made prior to determining if applicant was excluded from the definition as an independent contractor.

Frankly, the record is not clear as to what service, if any, applicant is arguing that he rendered for the benefit of defendant. Applicant only testified to selling tires to Nieves at their request, akin to any other distributor or vendor. Defense witnesses testified that applicant paid them for labor and to utilize their facilities to provide a service to his own customers. This only demonstrates that applicant was receiving a service and benefit from defendant not for defendant. Applicant testified that he was paid $50.00 per day for roughly twelve hours of work but does not say what work he was being paid to do. Defendant disputes paying applicant anything more than the price of tires which was negotiated based on the condition of each individual tire. Applicant did not testify that he worked on any of Defendant's customer's cars. The gaps in applicant's testimony regarding the work he was allegedly hired do not contradict the defendant's testimony per se, but do not provide a suitable record upon which to make a finding on the issue of employment.

The law provides that section 3357's presumption of employee status is overcome if the essential contract of hire, express or implied, is not present under section 3351. (*Jones v. Workmen's Comp. Appeals Bd.* (1971) 20 Cal.App.3d 124, 128 [97 Cal.Rptr. 554]; *Parsons v. Workers' Comp. Appeals Bd.* (1981) 126 Cal.App.3d 629, 638 [46 Cal.Comp.Cases 1304]; *Barragan v. Workers' Comp. Appeals Bd.* (1987) 195 Cal.App.3d 637 [52 Cal.Comp.Cases 467]) The traditional features of an employment contract are (1) consent of the parties, (2) consideration for the services rendered, and (3) control by the employer over the employee. Although these common law contract requirements are not to be rigidly applied, a consensual relationship between the worker and his alleged employer nevertheless is an indispensable prerequisite to the existence of an employment contract under Labor Code section 3351. (*Parsons, supra*). Liberal construction has allowed replacement of the traditional elements of

a common law employment contract with right to control by employer and benefit to the employer. (*Laeng v. Workers' Comp. Appeals Bd.* (1972) 317 Cal.3d 771 [37 Cal.Comp.Cases 185])

Here there is no evidence of consent of the parties to enter into an *employment* arrangement or, more specifically, for Nieves to be the employer of applicant. There is testimony by applicant about consideration for alleged services but no discussion of the services he agreed to render *for* Nieves. Finally, there is no discussion of what control Nieves had over applicant. There was testimony from the applicant regarding the sale of tires, but the consideration paid was only for the product not a service. There simply is not enough evidence to make a determination that applicant was an employee pursuant to section 3351.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 475.)

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (§§ 5903, 5952(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. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566].)

The WCJ must make a determination as to whether the applicant is an employee of defendant in accordance with section 3351 and 3357 in the first instance and may develop the record as necessary. Accordingly, we will grant the Petition for Reconsideration and, as our

Decision for Reconsideration, we will rescind the F&O 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 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the WCJ's decision of November 10, 2025 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ PAUL F. KELLY, COMMISSIONER**

**ANNE SCHMITZ, DEPUTY COMMISSIONER**
**CONCURRING NOT SIGNING**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**FEBRUARY 13, 2026**

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

**IRINEO RUVALCABA**
**EQUITABLE LAW TARZANA**
**OCTAVIO MARTINEZ DBA NIEVES TIRES**
**SHATFORD LAW**
**OFFICE OF THE DIRECTOR- LEGAL UNIT**

**TF/md**

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