WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSE RUBALCAVA, *Applicant*

vs.

DOMINGO RUBALCAVA; UNINSURED EMPLOYERS BENEFITS TRUST FUND; MARK BECCARIA AND DARLENE BECCARIA, INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA, administered by CORVEL; HOMEMADE CUSTOM BUILDERS, INC., STATE COMPENSATION INSURANCE FUND; AGAM POOL & SPA, STATE COMPENSATION INSURANCE FUND; DREXEL CONSTRUCTION MANAGEMENT, LLC, STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ12822296
Anaheim District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant Uninsured Employers Benefits Trust Fund (UEBTF), seeks reconsideration of the December 15, 2025 Amended Findings of Fact issued by the workers' compensation administrative law judge (WCJ). By the Findings of Fact, as relevant herein, the WCJ found that applicant was an employee of Domingo Rubalcava (D. Rubalcava), an illegally uninsured individual, at the time of the claimed injury, and applicant was not an employee of Darlene and Mark Beccaria, Drexel Construction Management, LLC (Drexel), Homemade Custom Builders, Inc. (HC Builders), or Agam Pool and Spa at time of the claimed injury.

UEBTF contends the WCJ erred by not finding that applicant was an employee of HC Builders. UEBTF argues the Findings of Fact should be amended to reflect that applicant was an employee of HC Builders as a matter of law, and that D. Rubalcava, HC Builders, and Drexel, as applicant's joint employers, are jointly and severally liable to provide workers' compensation benefits to applicant.

We received an Answer from defendant, State Compensation Insurance Fund (SCIF) on behalf of defendant HC Builders. The WCJ issued a Report and Recommendation on Reconsideration (Report) recommending that we deny 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 the Petition for Reconsideration, rescind the WCJ's December 15, 2025 Amended Findings of Fact, and return this matter to the trial level for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved party may timely seek reconsideration.

FACTS

We will briefly review the relevant facts. As summarized by the WCJ in the Report, the facts are as follows:

> Applicant, born_, while allegedly employed on 06/08/2018 as a laborer at Los Angeles, California by Domingo Rubalcava, Illegally Uninsured; Darlene and Mark Beccaria, then insured by [Interinsurance] Exchange of the Automobile Club of California administered by Corvel; Homemade Custom Builders, Inc., then insured by State Compensation Insurance Fund; Agam Pool & Spa, then insured by State Compensation Insurance Fund; and Drexel Construction Management, LLC, then insured by State Compensation Insurance Fund, claims to have sustained injury arising out of and occurring in the course of employment to his back. The issues in dispute are employment and joint and several employment.
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> Trial was held on these issues on 08/27/2025 and 10/22/2025. Testimony was taken of the applicant and defense witnesses Ilan Douek and Kaveh aka Kevin Atyabi.
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> On 11/19/2025 a Findings of Fact was issued finding that Applicant was an employee of Domingo Rubalcava at the time of the claimed injury of 06/18/2025 and that Applicant was not an employee of Darlene and Mark Beccaria, Drexel Construction Management, LLC, Homemade Custom Builders, Inc., or Adam Pool & Spa at the time of the claimed injury of 06/18/2025.
>
> On 12/01/2025 defendant Agam Pool & Spa filed a letter dated 11/25/2025 requesting that an amended Findings of Fact be issued to correct clerical errors contained in the Findings of Fact and Opinion on Decision to list the correct date of the alleged injury and the name of defendant Agam Pool & Spa.
>
> On 12/15/2025 an Amended Findings of Fact was issued finding that Applicant was an employee of Domingo Rubalcava at the time of the claimed injury of 06/08/2018 and that Applicant was not an employee of Darlene and Mark Beccaria, Drexel

Construction Management, LLC, Homemade Custom Builders, Inc., or Agam Pool & Spa at the time of the claimed injury of 06/08/2018.

(Report, January 12, 2026, p. 2, ¶¶ 2-6.)

UEBTF sought reconsideration of the Findings of Fact via a Petition for Reconsideration filed on December 15, 2025.

DISCUSSION

I.

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 January 12, 2026, and 60 days from the date of transmission is March 13, 2026. This decision is issued by or on March 13, 2026, 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 workers' compensation administrative law judge, the Report was served on January 12, 2026, and the case was transmitted to the Appeals Board on January 12, 2026. 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 January 12, 2026.

II.

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) The "essence of due process is simply notice and the opportunity to be heard." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (*McKernan*) (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd*. (2001) 89 Cal.App.4th 1284, 1295; *Rucker*, *supra*, 82 Cal.App.4th at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com.* (*Baskin*) (1952) 109 Cal.App.2d 54, 58; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish*, *supra*, 89 Cal.App.4th at p. 1295, citing *Rucker, supra*, 82 Cal.App.4th at pp. 157-158.)

Labor Code section 5504 requires that "a notice of the time and place of hearing shall be served upon the applicant and all adverse parties." (Lab. Code, § 5504; Cal. Code Regs., tit. 8, § 10750; *Katzin*, *supra*, 5 Cal.App.4th at p. 710.) Notice of hearing "shall be served on all parties and their attorneys…of the time and location…of each hearing scheduled, whether or not the hearing affects all parties, as provided in rule 10625." (Cal. Code Regs., tit. 8, § 10750.) An

unrepresented party must be served directly, and a proof of service must be filed, which identifies the parties served and the document or documents that were served. (Cal. Code Regs., tit. 8, § 10625(a), (b) and (c).) The method of service of any notice, order or decision must comply with the requirements of Labor Code section 5316. (Lab. Code, § 5316.) After a case is submitted, the WCJ must "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.)

Here, it is unclear whether defendant D. Rubalcava was provided with adequate notice of trial or of subsequent Findings of Fact. D. Rubalcava was named as an employer in applicant's original Application for Adjudication dated December 12, 2019. Minutes of Hearing from April 2, 2025 state, "uninsured employer not served w/second amended application for adjudication dated 11/18/2020. AA needs to re-serve." The MOH also reflect that trial was set for August 27, 2025. However, the record contains no proof of service demonstrating that D. Rubalcava was served with the second amended Application, as directed by the WCJ. In addition, the WCJ did not create a record demonstrating that D. Rubalcava was served with notice of the hearing.

A review of the proof of service for the "Minutes of Hearing 8-27-25" does not include D. Rubalcava. Similarly, the September 11, 2025 proof of service for the "August 27, 2025 Minutes of Hearing and Summary of Evidence" (MOH/SOE) and the October 22, 2025 proof of service for the "October 22, 2025 Further Minutes of Hearing and Summary of Evidence" (Further MOH/SOE) do not include D. Rubalcava. The MOH/SOE and Further MOH/SOE do not reflect D. Rubalcava made appearances, and the WCJ did not address on the record whether D. Rubalcava was served. Thus, there is doubt as to whether D. Rubalcava was provided with notices of the hearings and whether he had the opportunity to appear and present evidence at the August 27, 2025 and October 22, 2025 trials. Moreover, although the proofs of service for the Petition and Answer reflect that they were served on D. Rubalcava, the proofs of service for the November 19, 2025 Findings of Fact, the December 15, 2025 Amended Findings of Fact, and the Report do not reflect they were served on D. Rubalcava. These notice failures violate both the statutory notice requirements and D. Rubalcava's right to due process. (Lab. Code §§ 5504, 5313; Cal. Code Regs., tit. 8, §§ 10625, 10750; *McKernan*, *supra*, 74 Cal.App.4th at p. 936 [the "essence of due process

is simply notice and the opportunity to be heard"]; *Gangwish*, *supra*, 89 Cal.App.4th at p. 1295.) D. Rubalcava is a defendant in this case and was found to be applicant's sole employer, yet he was provided with neither adequate notice nor the opportunity to be heard. For this reason, we rescind the Findings of Fact and return the matter to the WCJ for further proceedings consistent with this decision.

III.

Upon return to the trial level, all interested parties shall be afforded adequate notice and an opportunity to be heard, including defendant D. Rubalcava, who is unrepresented.

However, we suggest that in determining who employed applicant at the time of injury, the WCJ consider the following.

California has a no-fault workers' compensation system. With few exceptions, all California employers are liable for the compensation provided by the system to employees injured or disabled in the course of and arising out of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no-fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms of 'service to an employer' and by including a general presumption that any person 'in service to another' is a covered 'employee.'" (Lab. Code, §§ 3351, 5705(a); *S. G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].)

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.) 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].) An "independent contractor" is defined as "any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished." (Lab. Code, § 3353.)

Consequently, unless the hirer can demonstrate that the worker meets specific criteria to be considered an independent contractor, all workers are presumed to be employees.

Traditionally, the determination of whether an injured worker is an employee or independent contractor is determined by consideration of the *Borello* factors, as enumerated in *Borello*, *supra*, 48 Cal.3d at p. 349. Under *Borello*, the "principal test" of an employment relationship is "[w]hether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." (*Id.* at p. 350.) What matters is whether the hirer "retains all *necessary* control" over its operations. (*Id.* at p. 357, italics in original.) While the right to control is paramount in the *Borello* analysis, other factors to be taken into consideration are: whether the work is part of the principal's regular business; the level of skill required; whether the worker supplies the instrumentalities, tools, and place of work; the length of time for which the services are to be performed; the method of payment, whether by time or by the job; whether the person performing the services is engaged in a distinct occupation or business; whether the type of work involved is normally done without supervision; and whether the parties believe that they are creating the relationship of employer and employee. (*Id.* at p. 355.)

Then, in 2018, the court adopted the ABC test as detailed in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 [83 Cal. Comp. Cases 817].[1] The court made clear that the burden is on the hiring entity to establish that the worker is an independent contractor, and to meet this burden, the hiring entity must establish that each of the three factors of the ABC test are satisfied, specifically: "(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and (B) that the worker performs work that is outside the usual course of the hiring entity's business; and (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. [citation]." (*Id*. at pp. 956-957, italics in original.)

Another consideration is that workers' compensation insurance coverage is required for all those who employ one or more employees. (Bus. & Prof. Code, § 7125.2; *Wright v. Issak* (2007)

[1] In *Dynamex*, which issued on April 30, 2018, the California Supreme Court set forth the ABC test. Although the Legislature has since expanded the reach of the ABC test articulated in *Dynamex*, those initiatives were adopted in 2019 and 2020, which is after applicant's alleged injury, which occurred on June 8, 2018. (Stats. 2019, ch. 296, § 2 (AB 5), eff. January 1, 2020; Amended Stats. 2019, ch. 415, § 1 (AB 170), eff. January 1, 2020; Repealed Stats. 2020, ch. 38, § 1 (AB 2257), eff. September 4, 2020.)

149 Cal.App.4th 1116 [72 Cal.Comp.Cases 438].) With respect to contractors on construction projects, Labor Code section 2750.5 applies in workers' compensation cases, and Labor Code section 3351, subdivision (d) is read together with section 2750.5. (*Cedillo v. Workers' Comp. Appeals Bd.* (2003) 106 Cal.App.4th 227, 232-233 [68 Cal.Comp.Cases 140]; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Meier*) (1985) 40 Cal.3d 5 [50 Cal.Comp.Cases 562].) "There is a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required . . . 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; see also, *Cedillo*, *supra*.)

Once the person hired by an owner or general contractor is shown to be an employee rather than an independent contractor, "the general contractor may be liable under workers' compensation for injuries to persons hired by the employee, on the theory that such persons are also the general contractor's employees." (*Blew v. Horner* (1986) 187 Cal.App.3d 1380, 1387 [51 Cal.Comp.Cases 615].) "For workers' compensation purposes, under section 2750.5, the hirer of a contractor for a job requiring a license is the statutory employer of the unlicensed contractor. In addition, the hirer is the statutory employer of those workers employed by the unlicensed contractor. . . Accordingly, the presumption that the person who employs the unlicensed contractor is the employer is conclusive." (*Cedillo*, *supra*, 106 Cal.App.4th at p. 233, citations omitted; see also, *Rinaldi v. Workers' Comp. Appeals Bd.* (1987) 196 Cal.App.3d 571 [52 Cal.Comp.Cases 366]; *Meier*, *supra*.) Thus, when status as an independent contractor is lost for lack of a license, the unlicensed contractor becomes both the employee and the employer, and when the unlicensed contractor lacks workers' compensation insurance coverage, the "ultimate hirer" who does have workers' compensation insurance coverage becomes liable. (*Cedillo*, *supra*, 106 Cal.App.4th at p. 233; *Hernandez v. Chavez Roofing, Inc*. (1991) 235 Cal.App.3d 1092 [56 Cal.Comp.Cases 650]; *Rinaldi*, *supra*.)

Lastly, California law also recognizes the possibility that a worker may have two employers for workers' compensation purposes. (*Kowalski v. Shell Oil Co.* (1979) 23 Cal. 3d 168, 174 [44 Cal. Comp. Cases 134]); *Caso v. Nimrod Productions, Inc.* (2008) 163 Cal.App.4th 881; *Riley v. Southwest Marine* (1988) 203 Cal. App. 3d 1242, 1247–1248.) Joint employment exists where services are performed for the mutual benefit of two or more employers. (*National Automobile and Casualty Insurance Co. v. IAC* (1947) 80 Cal. App. 2d 769.)

On return, the parties and the trier of fact should consider each of the potential employer relationships. If it becomes clear that a service was being rendered, then the various employment relationships must be discussed consistent with this decision, including determination of the "ultimate hirer" if defendant D. Rubalcava was not a duly licensed contractor at the time of injury. We emphasize once again that a worker is presumed to be an employee, and the burden rests with a defendant to show that they were not the worker's employer.

Accordingly, we will grant the Petition for Reconsideration and, as our Decision for Reconsideration, we will rescind the Amended Findings of Fact and return the matter to the trial level for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved party may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the December 15, 2025 Amended Findings of Fact is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 15, 2025 Amended Findings of Fact is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 13, 2026

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

JOSE RUBALCAVA
BRETT MURDOCK, ATTORNEY AT LAW
DOMINGO RUBALCAVA
DEPARTMENT OF INDUSTRIAL RELATIONS, OFFICE OF THE DIRECTOR – LEGAL UNIT
PREETI G. SHAH LAW, APC
STATE COMPENSATION INSURANCE FUND (2)
UNISURED EMPLOYERS BENEFITS TRUST FUND

DC/*cs*

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