WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DANIEL FLORES CAMPOS, ***Applicant***

vs.

AMPCO CONTRACTING INC.; SAFEWAY, INC.; permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.; BARRETT BUSINESS SERVICES, INC.; FEDERICO VELARDE, JR., an individual DBA as FV SALVAGE; ACE AMERICAN INSURANCE COMPANY, administered by CORVEL ENTERPRISE COMP, INC.; STATE COMPENSATION INSURANCE FUND; CALVAR CONSTRUCTION, ***Defendants***

ROMAN HERNANDEZ AGUILAR, ***Applicant***

vs.

AMPCO CONTRACTING INC.; SAFEWAY, INC.; permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.; BARRETT BUSINESS SERVICES, INC.; FEDERICO VELARDE, JR., an individual DBA as FV SALVAGE; ACE AMERICAN INSURANCE COMPANY, administered by CORVEL ENTERPRISE COMP, INC.; STATE COMPENSATION INSURANCE FUND; CALVAR CONSTRUCTION, ***Defendants***

Adjudication Numbers: ADJ11934915, ADJ11733861
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Reconsideration has been sought by Defendant AMPCO Contracting, Inc., with regard to Findings and Order issued by the workers' compensation arbitrator (WCA) in both of these matters on April 10, 2026.

We have considered the Petitions for Reconsideration, the contents of the Arbitrator's Report and Recommendation on Reconsideration, and we have reviewed the record in this matter.[1] Based upon our preliminary review of the record, will grant reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to section 5950 et seq.

I.

Preliminarily, we note that former Labor Code[2] section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
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> (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 <u>Event Description</u> is the phrase "Sent to Recon" and under <u>Additional Information</u> is the phrase "The case is sent to the Recon board."

Here, according to Events, these consolidated cases were transmitted to the Appeals Board on May 27, 2026 and 60 days from the date of transmission is Sunday, July 26, 2026. The next business day that is 60 days from the date of transmission is Monday, July 27, 2026. (See Cal.

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[1] Commissioners Lowe and Sweeney, who were on the panel that issued a prior decision in this matter, no longer serve on the Appeals Board. Other panelists have been appointed in their place.

[2] All further statutory references are to the Labor Code, unless otherwise noted.

Code Regs., tit. 8, § 10600(b).) This decision is issued by or on Monday, July 27, 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 WCA, the Report was served on May 21, 2026 and the case was transmitted to the Appeals Board on May 27, 2026. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as the commencement of the 60-day period on May 27, 2026.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on May 27, 2026.

II.

The WCA provided the following discussion in the Report:

FACTS

> AMPCO Contracting was a general contractor and contracted with Safeway Company to perform a demolition project demolishing a large existing structure for Safeway Company. (Stipulation 1)
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> AMPCO Contracting hired FV Salvage, owned by Frederico Velarde to perform demolition at the Aden Way demolition project. (Stipulation 2)
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> AMPCO and FV Salvage, owned by Frederico Velarde entered into a Master Subcontract Agreement. The contract was entered into on September 3, 2018. (Exhibt-3)

FV Salvage and Frederico Velarde hired Ramon Hernandez Aguilar and Daniel Flores Campos to work on the demolition project. (Stipulation 3)

Neither FV Salvage nor Frederico Velarde had a contractor's license or workers' compensation insurance on the date of injury, September 28, 2018. (Stipulation 6)

On September 28, 2018, both the applicants, Ramon Hernandez Aguilar and Daniel Flores Campos were severely injured falling through a roof while performing demolition at the Arden Way Project and sustained various injuries. (Stipulation 7)

The matter of employment in this case went to a hearing before the Workers' Compensation Appeals Board. The Appeals Board issued two identical joint Opinions on Decision and Findings and Award dated July 7, 2021, that applicants, Ramon Hernandez Aguilar and Daniel Flores Campos were statutorily employed by AMPCO because both FV Salvage nor Frederico Velarde had a contractor's license, and both applicants were found to be statutorily employed by AMPCO as the ultimate higher and responsible as the employer. (Stipulation 8)

The Opinion on Decision of the same date indicated that Labor Code §2750.5 has a rebuttable presumption that any company who hires a contractor for a job requiring a license is the statutory employer of any unlicensed subcontractor. The WCJ found this applies to AMPCO construction and the facts herein. (Joint exhibits 5 and 6)

AMPCO filed a Petition for Reconsideration which was denied by the WCAB.

Both applicants were not hired by BBSI, nor were they paid by the BBSI. (Stipulation 4)

AMPCO did not hire or pay the applicants. (Stipulation 5)

BBSI and AMPCO entered into a PEO agreement. (Stipulation 10 and Exhibit 1)

The PEO Agreement (Agreement for Client Services) between BBSI and AMPCO contained the following relevant provisions for this arbitration:

Barrett Business Services, Inc., (BBSI) as a Maryland corporation entered into an agreement with Client Services with AMPCO Contracting Inc. as the client as set forth in part as follows:

1. Scope of Agreement-it is expressly understood and agreed that an employee will not be covered by the terms of this agreement (and will not be covered for

payroll, workers' compensation, or any other purpose) in lesson until be BBSI as received from client copies of the employees fully and accurately completed new hire paperwork as designated by BBSI from time to time. New hire paperwork includes, without limitation documentation of the employee's authorization to work in the United States, MPN (medical provider network) related paperwork, information necessary for the processing of payroll and other employment paperwork obtained by client from employee. Employees will not be covered retroactively like this agreement, but only prospectively following receipt by BBSI of all required new hire paperwork.

2. BBSI Responsibilities and Duties-BBSI will process payroll and provide workers' compensation coverage to client's employees as described in this agreement. BBSI may also provide certain administrative services related to client sponsored benefit plans.3 2- client's responsibilities and duties-Client acknowledges and understands that BBSI relies on clients to provide accurate, timely and verifiable hours worked in other such information for the purpose of circulating accurate payroll and benefits. It is client's responsibility to inform BBSI of any individual's job status as "exempt" or "nonexempt" under federal or state wage and hours laws and to be in compliance with all federal, state and local wage and hour laws.

3. Client responsibilities and duties-it is understood and agreed that client is the employer of the employees and that BBSI is not the employer or joint employers of the employees. BBSI engages in a co-employment relationship only for purposes of providing workers' compensation coverage under this agreement. Client is considered to be the sole employer in the application of any rule or law included within the scope of the Patient Protection and Affordability Care act of 2010.

4. Client Supervision-client shall only be responsible for the verification of identity and employment eligibility of the employees, including the accurate completion and maintenance of forms I-9 on a timely basis and in compliance with federal regulations. Client is solely responsible for maintenance and retention of all employee records. Client shall be the sponsoring employer for purposes of immigration applications for employees and client is solely responsible for any costs related to such applications. Furthermore, client shall fully comply with all state and federal laws related to hiring and retention of employees.

5. Workers' Compensation Insurance; workplace Health and safety-A client agrees that, as defined under applicable state workers' compensation law, it shall do all acts necessary to permit BBSI to comply with all workers' compensation laws and related laws and to provide workers' compensation insurance benefit for the employees through a qualified insurance rider or writers, or through self-insurance.

8. Client Disclosure-in the event client fails to timely notify BBSI of the clients employment and assignment of any person to a place, BBSI may, in its sole discretion, in writing, and without limiting its ability to seek any other remedy, elect to retroactively process payroll and perform any other necessary administrative functions normally provided for employees of Client pursuant to the agreement and may retroactively charge client for all appropriate changes (including government penalties) as previously agreed to by BBSI.

9. client warrants that have made such complete disclosure, and shall indemnify, defend and hold BBSI harmless for any and all damages, costs, claims expenses, or legal consequences arising from or caused by an inaccurate, incomplete, or incorrect disclosure.

Schedule 31-6-The following provisions are applicable to clients that are licensed by the California Contractors State License Board:

(a) Notwithstanding any other provision of this agreement, Barrett agrees to provide workers' compensation coverage through a certificate of self-insurance or through a qualified insurance carrier for all people working for a client who may be deemed employees of Barrett or client as defined by the California Workers' Compensation laws.

(b) Barrett will notify the California Contractors State License Board in writing and by email within seven days of the termination of the agreement with Client

At the time of injury AMPCO, other than claiming insurance under the ACE Policy, had no other workers' compensation insurance policy or certificate of Self-Insurance for the date of injury. (Stipulation 9)

Ace Insurance is the only insurance policy at issue in this case for this injury on September 28, 2018. BBSI. (Stipulation 1)

Relevant portions of insurance policy issued by Ace (Exhibit 2)

Insurance policy between Chubb/ACE Companies/ACE USA Property & Casualty and Barrett Business Services.

The policy is listed as written to Barrett Business Services, Inc. L/C/F AMPCO Contracting Inc. and indicates it is standard workers' compensation and employers' liability policy.

The issuing company is Ace American Insurance Company.

The policy period is July 1, 2018, through July 1, 2019.

The insurance policy contains an alternate employer endorsement which provides that the endorsement applies only with respect to bodily injury to your employers while in the course of special or temporary employment by the alternate employer in the state named in item 2 of the schedule. Part one (Workers' Compensation insurance) and part two (employers liability insurance) will apply as though the alternate employer is insured. If an entry is shown in item 3 of the schedule the insurance afforded by this endorsement only applies to work you perform under the contract or the project named in the schedule.

Under part one (Workers' Compensation insurance) they will reimburse the alternate employer for the benefits required by the workers' compensation law if they are not permitted to pay the benefits directly to people entitled to them.

The insurance afforded by this endorsement is not intended to satisfy the alternate employer's duty to secure obligations under the workers' compensation law. They will not file evidence of this insurance on behalf of the alternate employer with any government agency.

They will not ask any other insurer of the alternate employer to share with the loss covered by this endorsement.

Premium will be charged for your employer while in the course of special or temporary employment by the alternate employer.

Part Four (your duties if the injury occurs) applies to you and the alternate employer. The alternate employer will recognize their right to defend under parts one and two and their right to inspect under part six.

The alternate employer is listed as AMPCO Contracting.

The policy contains an Endorsement Agreement Limiting and Restricting this Insurance-Labor Contractor has Named Insured with LCF designation-Restriction of Coverage to Client Workers-

LIABILITY NOT INSURED-The insurance under this policy is limited as follows: it is agreed that anything in this policy to the contrary notwithstanding, this policy does not insure: any liability labor contractor named in item 1 of the policy may have, other than with respect to employees provided to the client shown in item 1 (following the designation "Lease Coverage for or LCF) pursuant to an employee leasing arrangement subject to the California Workers' Compensation Experience Rating plan-1995, Section Rule four, Application of experience Modification to Policies Covering Employee Leasing Arrangements.

LIABILITY NOT INSURED-Any liability the client shown in item 1 may have, other than respect to workers provided by the labor contractor named in item 1

> of this policy pursuant to an employee leasing arrangement subject to California Workers' Compensation Experience Rating Plan/1995, Section V, Application of Experience Modification to Policies Covering an Employee Leasing Arrangements.
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> The Certificate of Liabity Insurance (Exhibit 4) as set forth below.
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> Certificate of Liability Insurance- showing the insured as Barrett Business Services, Inc. L/C/F AMPCO contracting with Ace America Insurance with certificate holder Safeway Inc. effective July 1, 2018, with waiver of subrogation in favor of: Safeway Inc. Re: Arden Weight Demolition Project, for Properties at Arden Way, El Monte, CA.
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> Based upon the above facts, the Arbitrator issued the Findings and Order of April 10, 2026, which is now the subject of the Petition for Reconsideration filed by AMPCO Contracting Inc.
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> (Report, at pp. 1-11.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

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)1; *S. G. Borello & Sons, Inc. v. Department 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 or other excluded classification. (*Cristler v. Express Messenger Sys.,* *Inc. (Cristler)* (2009) 171 Cal.App.4th 72, 84 [74 Cal.Comp.Cases 167]; *Narayan v. EGL, Inc. (Narayan)* (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724].)

An employer is defined, in relevant part, as "every person including any public service corporation, which has any natural person in service." (Lab. Code., § 3300(c).). In the seminal case of *Kowalski v. Shell Oil Company* (1979) 23 Cal.3d 168 [44 Cal.Comp.Cases 134], the California Supreme Court explained the concept of "general" and "special" employment as follows:

> The possibility of dual employment is well recognized in the case law. "Where an employer sends an employee to do work for another person, and both have the right to exercise certain powers of control over the employee, that employee may be held to have two employers -- his original or 'general' employer and a second, the 'special' employer." [Citation.] In *Industrial Ind. Exch. v. Ind. Acc. Com*. (1945) 26 Cal.2d 130, 134–135 [156 P.2d 926], this court stated that "an employee may at the same time be under a general and a special employer, and where, either by the **terms of a contract** or during the course of its performance, the employee of an independent contractor comes under the control and direction of the other party to the contract, a dual employment relation is held to exist. [Citations.]" [Emphasis added] If general and special employment exist, "the injured workman can look to both employers for [workers'] compensation benefits. [Citations.]"
>
> (*Id*. at pp. 174–175.)

The paramount consideration in determining whether a special employment relationship exists "is whether the special employer has the right to control and direct the activities of the alleged employee or the manner and method in which the work is performed, whether exercised or not. [Citation.]" (*Kowalski*, 23 Cal.3d at p. 175.) Although the *Kowalski* case and a number of cases following it reiterate that the issue of control is the primary criterion in the determination of the existence of a special employment relationship, the following other relevant factors have also been enumerated:

> (1)whether the borrowing employer's control over the employee and the work he is performing extends beyond mere suggestion of details or cooperation; (2) whether the employee is performing the special employer's work; (3) whether there was an agreement, understanding, or meeting of the minds between the original and special employer; (4) whether the employee acquiesced in the new work situation; (5) whether the original employer terminated his relationship with the employee; (6) whether the special employer furnished the tools and place for performance; (7) whether the new employment was over a considerable length of time; (8) whether the borrowing employer had the right to fire the

> employee and (9) whether the borrowing employer had the obligation to pay the employee.
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> (*Riley v. Southwest Marine, Inc.* (1988) 203 Cal.App.3d 1242, 1250, 250 Cal. Rptr. 718.)

The concept of general/special employment is further clarified for Professional Employer Organizations (PEOs), such as BBSI, by Section 3602(d)(1) which provides, in relevant part:

> For the purposes of this division, including Sections 3700 and 3706, an employer may secure the payment of compensation on employees provided to it by agreement by another employer by entering into a valid and enforceable agreement with that other employer under which the other employer agrees to obtain, and has, in fact, obtained workers' compensation coverage for those employees. In those cases, both employers shall be considered to have secured the payment of compensation within the meaning of this section and Sections 3700 and 3706 if there is a valid and enforceable agreement between the employers to obtain that coverage, and that coverage, as specified in subdivision (a) or (b) of Section 3700, has been in fact obtained, and the coverage remains in effect for the duration of the employment providing legally sufficient coverage to the employee or employees who form the subject matter of the coverage.
>
> (Lab. Code §3602(d)(1)).

A PEO acts as a general employer and typically is an entity that leases back employees to another employer, provides payroll services, and agrees to obtain workers' compensation coverage for joint employees. Pursuant to section 3602(d), the PEO must be an employer to obtain workers' compensation coverage for joint employees.

Here, it does not appear that the WCA followed the proper analysis on these issues. Additional development of the record may be necessary. Therefore, taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci*. *Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075

[65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

V.

Accordingly, we grant defendant's Petitions for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. ***While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to*** WCABmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that defendant's Petitions for Reconsideration are **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 27, 2026

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

DANIEL FLORES CAMPOS
ROMAN HERNANDEZ AGUILAR
MICHAEL BURGIS & ASSOCIATES
PEARL LEGAL, APC
HEYWOOD FRIEDMAN

PAG/oo

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