

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

JOSE GARCIA, *Applicant*

vs.

**BERNABE SOTO, an Uninsured Employer; DANIEL SOLIS; ALLSTATE
CORPORATION, *Defendants***

**Adjudication Number: ADJ11742595
Riverside District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the Findings of Fact and Orders issued by the workers' compensation administrative law judge (WCJ) in this matter on August 11, 2023. In that decision, the WCJ found in pertinent part that defendant Bernabe Soto was applicant's employer at the time of his industrial injury on September 16, 2018, and that defendant Daniel Solis was not applicant's employer at the time of his injury.

Applicant contends that defendant Daniel Solis was a joint employer of applicant at the time of his injury.

We received an Answer from defendant Allstate.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ, recommending that the Petition for Reconsideration be denied.

We have reviewed the allegations in the Petition for Reconsideration and the Answer, and the contents of the Report. Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration. Our order granting applicant's 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 Labor Code section 5950 et seq.

I.

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

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*).) Under Labor Code section 3357, "[a]ny person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee." Labor Code section 3351 defines "employee" 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. . ." Thus, unless it can be demonstrated that a worker meets specific criteria to be considered an independent contractor or fits within one of the several narrowly defined categories as an excluded employee, *all workers are presumed to be employees*.

Workers' compensation insurance coverage is required for all those who employ one or more employees. (Bus. & Prof. Code, § 7125.2; *Wright v. Issak* (2007) 149 Cal.App.4th 1116 [72 Cal.Comp.Cases 438].) With respect to contractors on construction projects, Labor Code section 2750.5 applies to workers' compensation, and Labor Code section 3351, subdivision (d) is read together with Labor Code section 2750.5. (*Cedillo v. Workers' Comp. Appeals Bd.* (2003) 106 Cal.App.4th 227 [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].) Labor Code section 2750.5 provides that when a worker is "performing services for which a license is required" or is "performing such services for a person who is required to obtain such a license" that worker is *presumed to be an employee* rather than an independent contractor. In order to successfully prove independent contractor status, a person must satisfy certain factors set forth within section 2750.5, and, additionally, must "*hold a valid contractors' license as a condition of having independent contractor status.*" (Lab. Code, § 2705.5, italics added.) (*Cedillo v. Workers' Comp. Appeals Bd., supra*, 106 Cal.App.4th 227; *Blew v. Horner* (1986) 187 Cal.App.3d 1380 [51 Cal.Comp.Cases 615].) A contractor's license must be valid at the time of applicant's injury. (See *Zellers v. Playa Pacifica, Ltd.* (1998) 61 Cal.App.4th 129 [63 Cal.Comp.Cases 48].)

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, supra*, 187 Cal.App.3d 1380, 1387; see *Rinaldi v. Workers' Comp. Appeals Bd.* (1987) 196 Cal.App.3d 571 [52 Cal.Comp.Cases 366].) "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 v. Workers' Comp. Appeals Bd., supra*, 106 Cal.App.4th 227, 233; see *Rinaldi v. Workers' Comp. Appeals Bd., supra*, 196 Cal.App.3d 571; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Meier), supra*, 40 Cal.3d 5; see also *Sanders Construction Co., Inc. v. Cerda* 175 Cal.App.4th 430, 435.) 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 v. Workers' Comp. Appeals Bd., supra*, 106 Cal.App.4th 227; *Hernandez v. Chavez Roofing, Inc.* (1991) 235 Cal.App.3d 1092 [56 Cal.Comp.Cases 650]; *Rinaldi v. Workers' Comp. Appeals Bd., supra*, 196 Cal.App.3d 571.)

Here, applicant is an employee. Soto was not only unlicensed, but also uninsured for workers' compensation, and so, he too was an employee. Once Solis hired Soto, because Soto was an employee, Solis was then required to carry workers' compensation coverage. Thus, while Soto was an employer of applicant, as the ultimate hirer, our preliminary review suggests that Solis became Soto's employer and an employer of applicant.

II.

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 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], emphasis removed, and citations omitted.)

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; see also Cal. Code Regs., tit. 8, § 10787.) “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.) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) Based on our preliminary review, it appears that further development of the record may be appropriate.

III.

Finally, we observe that 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 [62 Cal.Rptr. 757, 432 P.2d 365]; *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”].)

Labor Code 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 Labor Code sections 5950 et seq.

IV.

Accordingly, we grant applicant's Petition 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.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact and Orders issued on August 11, 2023 by a workers' compensation administrative law judge is **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/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 16, 2023

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

**JOSE GARCIA
THE MORRIS LAW GROUP
PURINTON, JIMENEZ, LABO & WU, LLP
OFFICE OF THE DIRECTOR, LEGAL**

AS/mc

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