

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

**MANUEL ALEJANDRE, *Applicant***

**vs.**

**PAUL GUPTA and CASTLE REAL ESTATE, *Defendants***

**Adjudication Number: ADJ9275319  
Stockton District Office**

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

Defendant Paul Gupta seeks reconsideration of the Findings of Fact, Orders and Opinion on Decision (F&O) issued on August 22, 2023, wherein the workers' compensation administrative law judge (WCJ) found that applicant was an employee of defendant on the date of injury and was not an independent contractor.

Defendant contends that applicant was an independent contractor on the date of injury whose work did not require a contractor's license.

We received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will grant reconsideration; and, as our Decision After Reconsideration, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

**FACTUAL BACKGROUND**

On April 28, 2022, the parties proceeded to trial on the following issues:

1. Employment on the date of injury.
2. Defendant asserts that applicant was an independent contractor pursuant to Labor Code Section 3353.  
(Minutes of Hearing and Summary of Evidence, April 28, 2022, p. 2:20-22.)

The WCJ admitted an exhibit entitled Invoices and Emails for Tristan Property into evidence. (*Id.*, p. 4:2.) The exhibit contains applicant's March 27, 2013 invoice for the following work performed at the Tristan property:

Replace rollers on sliding door  
remove damage roof and frame on porch and install a new frame  
install a new [s]ink with new faucet and bottom board damage with mold parts  
(Exhibit E, Invoices and Emails for Tristan Property, April 11, 2022, p. 3.)

It also contains a March 29, 2013 email from defendant Gupta to his property manager asking a question about applicant's invoice:

can you confirm:  
...  
Tristan your list? I dont recall and I did pay him 150 for a previous sink in December. Roller OK - roof/frame \$250 was this approved? Also sink faucet - was this on  
(*Id.*, p. 10.)

It also contains a March 29, 2013 email from defendant Gupta's property manager answering defendant Gupta's question:

did not approve this on my list. I am aware Jim worked on the bathtub issue.  
(*Id.*)

At trial, defendant Gupta testified that applicant performed work at his rental units in 2013. To his knowledge, the only work applicant performed on February 13, 2013 was on the sink, sliding door, and porch of the Tristan property. (Minutes of Hearing and Summary of Evidence, April 28, 2022, p. 6:8-20.) He testified that he only hires licensed contractors for roofing work like that which applicant claims to have been engaged in at the time of injury. (*Id.*, p. 6:21-22.)

Applicant testified that he was fixing the roof, repairing a door and performing other jobs at the Tristan property on February 13, 2013, that he was injured when he fell from a ladder while inspecting the roof, and that he had previously met with defendant Gupta at the property to be shown what needed to be done. (*Id.*, p. 7:15-24.)

On June 22, 2023, the matter proceeded to continued trial. (Minutes of Hearing and Summary of Evidence, June 22, 2023, p. 1.) Defendant Gupta testified that neither he nor his property manager approved applicant's work on the roof. (*Id.*, p. 3:4-5.)

In the Report, the WCJ states:

The Court found the Applicant to be an employee of Paul Gupta and not an independent contractor. The basis was that Applicant did not have a license to do repairs on the roof of a rental property of Paul Gupta's. It is noted that the facts presented otherwise would indicate the relationship was that of an independent contractor. *Blew v. Horner, supra, 187 Cal.App.3d 1380, Neighbours v. Buzz Oates Enterprises, 217 Cal. App. 3d 325.*

...

Applicant, age 42 was employed on 2/13/13 as a handyman in Stockton, California by Paul Gupta. The Applicant claims to have sustained injury arising out of and in the course of employment to his neck, back and right shoulder. The alleged employer was uninsured at the time.

...

Only the Applicant and Defendant (Paul Gupta) testified. Defendant testified that he was in India and he communicated by email through the property management company. The property management company dispatched Applicant on the day of injury. Minutes of Hearing and Summary of Evidence (MOH/SOE) 6-22-23 page 3 lines 1-25.

The evidence is not disputed that only Defendant (Paul Gupta) paid Applicant for the work he did on Defendant's property. Defendant testified that he owned rentals and had a business license under Paul Gupta and operated under the name of "Gupta Rentals". page 5 lines 6-10, MOH/SOE 4/28/22.

The Applicant received pay from Defendant for work done on his properties. There is no evidence the Applicant was paid by anyone else while working on Defendant's properties. Applicant's 3. An email of jobs done by Applicant for Paul Gupta dated 3/11/13 after the date of injury herein. The "Tristen Property is the job in which the injury is alleged. The patio overhang was the specific area the injury was alleged. Defendant's E.

...

Center to this determination is that Applicant was required to have a contracts license to work on the roof as indicated in invoice 135 Defendant's E "remove damage roof and frame on porch and install a new frame."

...

Based on this and the work which was commenced on 2-13-13 by Applicant to remove damaged roof and frame and replace with new frame (invoice 135 Defendant's E) required a license per B&P C 7026 above. See *Blew v. Horner, supra, 187 Cal.App.3d 1380, Neighbours v. Buzz Oates Enterprises, 217 Cal. App. 3d 325.* Both cases involved roof work and contractors license required ... among other relevant opinions.

(Report, pp. 2-6.)

## DISCUSSION

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)<sup>1</sup>; *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." (§ 3351.) Further, any person rendering service for another, other than as an independent contractor or other excluded classification, is presumed to be an employee. (See § 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] (*Cristler*); *Narayan v. EGL, Inc.* (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724] (*Narayan*).) 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.

In addition, pursuant to section 2750.5, there is a rebuttable presumption that a worker performing services for which a contractor's license is required is an employee rather than an independent contractor. (See § 2750.5.)

In this case, the WCJ determined that (1) defendant hired applicant to "remove damage roof and frame on porch and install a new frame"; and (2) the scope of this work required a contractor's license pursuant to Business and Professions Code section 7026. (Report, p. 4.) Based upon these determinations, the WCJ concluded that defendant did not meet his burden of proving that applicant was an independent contractor on the date of injury.

However, the Report fails to disclose the WCJ's reasons or grounds for determining that defendant hired applicant to "remove the damage roof" and that the work required a contractor's license. Specifically, the Report does not state why the WCJ relied upon applicant's invoice for the roof work and not on defendant's email questioning whether the work was approved and defendant's property manager's email stating that the work was not approved. Notably, each

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

of these documents was generated after the date of applicant's injury and the record lacks documents contemporaneously evidencing the scope of applicant's work on the Tristan property.

The Report also fails to disclose how the WCJ determined that a contractor's license was required for the work to "remove the damage roof," given that the record is otherwise lacking evidence as to the scope of roof work to be performed at the Tristan property.

Section 5313 requires the WCJ to produce "a summary of the evidence received and relied upon and the reasons or grounds upon which the [court's] determination was made." (See also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22.) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision "must be based on admitted evidence in the record" (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (§§ 5903, 5952, subd. (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. Workers' Comp. Appeals Bd.* (1970) 1 Cal. 3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at p. 475.)

In this case, pursuant to the discussion above, we are unable to ascertain the reasons or grounds upon which the WCJ determined that defendant hired applicant to "remove the damage roof" and that such work required a contractor's license. We therefore conclude that the WCJ should develop the record as to what, if any, work applicant was hired to perform at the Tristan property on the date of injury and whether the scope of any such work required a contractor's license. Accordingly, we will rescind the F&O and return the matter for further proceedings consistent with this decision.

In addition, as we have explained, any person rendering service for another is presumed to be an employee unless the hirer proves that the worker meets the criteria of an independent contractor. It follows that the issue of whether applicant was an employee or independent contractor does not necessarily depend upon a showing that he was hired to perform work requiring

a contractor's license. Hence, if the developed record fails to show that applicant was injured performing work requiring a contractor's license, the record should be developed as to whether applicant met other criteria for the determination of his employment/independent contractor status. But because there is no dispute that applicant was performing service for defendant when he sustained injury, defendant bears the burden of proving that applicant's status was that of an independent contractor and must present sufficient evidence to meet that burden. (§ 3357; *Cristler, supra.*)

Accordingly, we conclude that the record should be developed, as appropriate, on the issue of whether applicant was an employee or independent contractor.

Accordingly, we will grant reconsideration and, as our Decision After 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 of the Findings of Fact, Orders and Opinion on Decision issued on August 22, 2023 is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that Findings of Fact, Orders and Opinion on Decision issued on August 22, 2023 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**NOVEMBER 14, 2023**

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

**MANUEL ALEJANDRE  
LAW OFFICES OF GUY ALLEN MEDFORD  
LAW OFFICES OF BRUNN & FLYNN**

**SRO/es**

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