WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JAQUELINE GARCIA, *Applicant*

vs.

AMAZON.COM, INC.;
administered by LIBERTY MUTUAL, *Defendants*

Adjudication Number: ADJ18961005
San Bernadino District Office

OPINION AND ORDER GRANTING
PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact issued on June 25, 2025, wherein the workers' compensation administrative law judge (WCJ) found that (1) applicant was an independent contractor as an Amazon Flex delivery partner and not an employee of defendant when she fell delivering packages on February 14, 2024; and (2) all other issues are moot.

Applicant contends that the WCJ erroneously found that applicant was an independent contractor.

We received an Answer from defendant.

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

We have considered the Petition for Reconsideration, the Answer, the contents of the Report, and have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant applicant's Petition for 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 Labor Code[1] section 5950 et seq.

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

FACTUAL BACKGROUND

On January 30, 2025, the matter proceeded to trial on several issues, including employment, insurance coverage, injury arising out of and in the course of employment (AOE/COE), earnings, temporary disability, and attorney fees.

The parties stipulated that applicant claims to have sustained injury arising out of and in the course of employment to her head, trunk, hips, psyche, brain, sleep, face, teeth, right leg, lumbar spine, right knee, and in the form of headaches while allegedly employed as a delivery driver on February 14, 2024, by defendant. (*Id*., p. 2:4-6.)

With respect to applicant's claim of employment with defendant, the following was stated as the relevant issue:

> 1. Employment. There is an issue as to whether Ms. Garcia is an employee versus an independent contractor per Proposition 22 and the Business and Professions Code sections 7448 through 7467.

(Minutes of Hearing and Summary of Evidence, January 30, 2025, p. 2:22-23.)

The WCJ admitted an exhibit entitled Amazon Flex Independent Contractor Terms of Service. It provides:

> **AMAZON FLEX**
>
> **INDEPENDENT CONTRACTOR TERMS OF SERVICE**
>
> Welcome to the Amazon Flex program (the "**Program**"). These Terms of Service (this "**Agreement**"), including the Program Policies, attached at Exhibit A, govern the transportation, delivery and related services contemplated by this Agreement (the "**Services**") and constitute a binding agreement between Amazon Logistics, Inc. ("**Amazon**") and you. Any reference to this Agreement includes the Program Policies. If there is a conflict between the Program Policies and any other section of this Agreement, the Program Policies prevail.
>
> . . .
>
> **1. The Services.**
>
> a) You agree to provide the Services in a safe and competent manner in accordance with the level of professional care that would be observed by a prudent person rendering similar services and subject to the Service Standards described in the Program Policies. Failure to comply with the Service Standards will constitute a breach of this Agreement.
>
> b) This Agreement requires no minimum amount or frequency of Services. A "Delivery Block" is the block of time, scheduled to begin and end as specified in the Amazon Flex app, for delivering the parcels, packages, totes, bags or other deliverables tendered to you by Amazon or its designees, or otherwise made

available to you for pick-up ("Deliverables"). Unless you cancel a scheduled Delivery Block as permitted under the Program Policies, you will arrive on-time to deliver the assigned Deliverables during the Delivery Block.

2. Independent Contractor Relationship.

This Agreement creates an independent contractor relationship, not an employment relationship. As such, you agree that this Agreement is not a contract of employment, does not involve conditions of employment, and is not evidence of an employment relationship. As an independent contractor of Amazon you are not required to purchase or rent any products, equipment or services from Amazon as a condition of entering into this Agreement. Nothing in this Agreement will create any partnership, joint venture, agency, franchise, or employment relationship between you and Amazon. As an independent contractor, you will not be considered as having the status of an employee of Amazon for any purpose, including federal, state, and local tax purposes, and you will not be required or entitled to participate in any employee benefit or other plans or arrangements in which employees of Amazon and its affiliates may participate. You are solely responsible for all taxes applicable to you, including, but not limited to, income and social security taxes. Amazon will not withhold taxes from fees paid to you, including taxes for unemployment insurance or workers' compensation benefits. You have no authority to bind Amazon, and you will not make any representation identifying yourself as an employee of Amazon or make any representations to any person or entity that you have any authority to bind Amazon as an employee, partner, or otherwise. This Agreement applies while you are actively performing the Services. "Actively performing the Services" means that you are loading or unloading Deliverables, actively delivering Deliverables, waiting to receive more Deliverables during a Delivery Block, or actively and directly on your way back to the delivery station with undeliverable or damaged Deliverables. You will not be engaged to provide Services between the time you are no longer actively performing the Services in connection with one Delivery Block and before the start of any subsequent Delivery Block.

(Ex. C, Amazon Flex Independent Contractor Terms of Service, pp. 1-2.)

At trial, applicant testified that she was hired in mid-2021 by Amazon Flex, not defendant Amazon.com, after going to Amazon.com online and choosing a link option for Amazon Flex and applying for employment. (*Id.*, p. 5:12-16.) Once hired, her position was "Amazon Driver." (*Id.*, p. 5:19.) Her duties included picking up packages at defendant's warehouse and delivering them in her own car, which was identified by sign as an "Amazon" delivery car by signage which could be removed when she was not delivering packages. (*Id.*, p. 6:6-9.) She wore an "Amazon" uniform and carried "Amazon" personal identification. (*Id.*)

At the continued trial, defendant's representative, Abby Mackenzie Rudd, testified that it was applicant's job to pick up packages and deliver them to the person addressed on the package; that, as a delivery partner, applicant was to pick up and attempt delivery of the packages to defendant's customer; and that applicant was paid a service fee which was on offer for the block of delivery. (Minutes of Hearing and Summary of Evidence, March 11, 2025, p. 10:5-12.)

In the Report, the WCJ states:

> The key issue raised at trial was whether Ms. Garcia was an employee versus an independent contractor per Proposition 22 and the Business and Professions Code Sections 7448 – 7467.
> . . .
> Regarding Exhibit C, the Amazon Flex Independent Contractor Terms of Service, an objection was lodged to admissibility of that document and it was marked for identification at trial with a determination to be made by the court as to its admissibility. I find that document to be admissible. It was authenticated by defense witness, Abby Mackenzie Rudd, who is senior manager program management for Amazon Flex. Further, applicant's deposition testimony (Defense Exhibit D) also confirms Ms. Garcia saw the document when she signed on to become a Flex driver, even though she denied that at trial.
>
> ***Employment***
>
> In January of 2020, Assembly Bill 5 took effect. This bill codified the "ABC test" set forth in ***Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018)***. Under this "ABC test," a worker could be treated as an independent contractor only if the hiring entity could meet 3 conditions. It was virtually impossible to classify workers as independent contractors after enactment of AB-5. Thereafter, app-based transportation and delivery companies lobbied for an exception to AB-5, asserting that app-based drivers were in fact independent contractors. In November of 2020, Proposition 22 was put on the ballot and passed with the support of 58% of the voters. Proposition 22 was codified as California Business and Professions Code sections 7448 to 7467 and was given the name "Protect App-Based Drivers and Services Act." This Act set forth straightforward criteria for workers to be classified as independent contractors.
>
> Under the Act, and specifically Section 7451, drivers using rideshare and delivery applications and platforms are exempt from the ABC test and are independent contractors, and not employees or agents, if their relationship with the company meets four conditions.
> . . .
> Applicant became an Amazon Flex delivery partner, by her own trial testimony, in the middle of 2021, which was after enactment of Proposition 22. She described completing an online application process, wherein she was not permitted to go any further into the process until she completed each step of the process and agreed to the conditions. This included accepting the Independent Contractor Terms of Service (Exhibit C).

Defense witness, Ms. Rudd, provided testimony that supported the contention that Amazon Flex met all the requirements of Business and Professions Code Section 7451 (a) – (d).

. . .

Based upon the above, I find that applicant was an independent contractor and NOT an employee of Amazon.Com, Inc. when she fell on 2/14/2024 when delivering packages as an Amazon Flex delivery partner.

. . .

Insofar as the document was authenticated by the employer representative, a senior manager in program management for Amazon Flex, Abbie MacKenzie Rudd, who is in a position where she would know the requirements for the "onboarding" of an independent contractor Amazon Flex delivery partner, the undersigned had no issue with admitting the document into evidence. It is important to note that the entire process of "onboarding" is app-based and there are no paper forms to fill out, but that a person seeking to become an Amazon Flex delivery partner, must agree to the terms of the Independent Contractor Terms of Service, or they cannot complete the on-line application process. It was not error to admit Exhibit C.

. . .

These [four section 7451] conditions were confirmed as being met through the testimony of Ms. Rudd at trial, and specific reference was made to the pages and lines in the Minutes of Hearing and Summary of Evidence from the proceedings in defendant's Answer. Ms. Rudd pointed out that delivery partners have no set specific dates, times or minimum number of hours to be logged into the app. Delivery partners are not required, but have the option, to select an offer for a delivery block from the app and each block has the amount to be paid to the driver for completion of the block, but there is no requirement to take specific blocks. Delivery partners are not prevented from performing other services through other app-based companies, except when they have accepted a block through Amazon Flex, and then they are expected to comply with the standards of the contract for that delivery block. Delivery partners are also not prevented from performing any other kind of work. Even applicant's testimony at trial confirmed that she, in fact, had also engaged in deliveries for Instacart during the periods of time when she was also serving as an Amazon Flex delivery partner.

Applicant's attempt to rebut the PADSA (B&P Section 7451) with the *Dynamex* "ABC" test is fruitless insofar as Proposition 22 very clearly classified app-based drivers as independent contractors regardless of any contrary statutes, regulations, or administrative ruling, for all purposes under California law. The language is unambiguous and there is no clause that allows rebuttal as long as the four criteria are met.

(Report, pp. 2-6.)

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. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

> (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 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 July 25, 2025 and 60 days from the date of transmission is September 23, 2025. This decision is issued by or on September 23, 2025, 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 July 25, 2025, and the case was transmitted to the Appeals Board on July 25, 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 July 25, 2025.

II.

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. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].)

Hence 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.) And any person rendering service for another, other than as an independent contractor or other excluded classification, is legally 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]; *Narayan v. EGL, Inc*. (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724].) Consequently, all workers are presumed to be employees unless the hirer can demonstrate that the worker meets specific criteria to be considered an independent contractor.

Business and Professions Code section 7451 provides that a hirer can demonstrate that it is a network company engaged in an app-based transportation and delivery business and that its presumed employee driver is an independent contractor by showing the following:

> (a) The network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network company's online-enabled application or platform.
> (b) The network company does not require the app-based driver to accept any specific rideshare service or delivery service request as a condition of maintaining access to the network company's online-enabled application or platform.
> (c) The network company does not restrict the app-based driver from performing rideshare services or delivery services through other network companies except during engaged time.
> (d) The network company does not restrict the app-based driver from working in any other lawful occupation or business.

(Bus. & Prof. Code, § 7451; *Castellanos v. State of California*, (2024) 16 Cal.5th 588, 595 [89 Cal.Comp.Cases 744].)

Section 2775 provides the "ABC" test which allows the hirer to rebut the presumption that a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor by demonstrating that all of the following conditions are satisfied:

> (A) The [presumed employee] 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.
> (B) The [presumed employee] performs work that is outside the usual course of the hiring entity's business.
> (C) The [presumed employee] is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.
> (§ 2775.)

In this case, applicant bears the burden of proving that she rendered service for defendant, whereupon the burden shifts to defendant to rebut the employment presumption with proof that 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].)

Testimony from both applicant and Ms. Rudd suggests that applicant rendered service for defendant because both parties testified that she picked up and delivered its packages. (Minutes of Hearing and Summary of Evidence, January 30, 2025, p. 6:6-9; Minutes of Hearing and Summary of Evidence, March 11, 2025, p. 10:5-12.)

However, the record does not reflect whether the WCJ initially determined that applicant met her burden of establishing the employment presumption, and, if so, whether defendant rebutted the employment presumption under either the Business and Professions Code section 7451 (Proposition 22) test or the section 2775 ABC test.

The record rather suggests that WCJ may have misapplied the parties' respective burdens of proof because the Report states that Ms. Rudd's testimony established "all the requirements of Business and Professions Code Section 7451" and that applicant failed to "rebut the PADSA (B&P Section 7451) with the *Dynamex* 'ABC' test." (Report, p. 6.)

In addition, the record is unclear as to whether the WCJ correctly applied the substantive provisions of Business and Professions Code section 7451. In particular, the WCJ relied upon the Independent Contractor Terms of Service document to conclude that applicant was an independent contractor. (Report, p. 5.) Yet the record is unclear as to why (1) defendant as opposed to the contracting party identified in the document, Amazon Logistics, Inc., may rely on its terms; and (2) the undated and unsigned Independent Contractor Terms of Service in which defendant made no contractual provision or representation was considered persuasive by the WCJ. (Ex. C, Amazon Flex Independent Contractor Terms of Service, pp. 1-2; see also, e.g., *Robledo v. Pedro*so, 2018 Cal. Wrk. Comp. P.D. LEXIS 444 (stating that evidence of the contractual dispensation of control over an alleged employee's activities may not rebut ample evidence of the alleged employer's actual practice of control over work activities).)

Finally, we note that although the WCJ relied upon exhibit C in part, and states in her Opinion that such exhibit is admissible, there is no formal Order of admission of same accompanying the WCJ's findings. Consequently, we are unable to discern grounds to conclude whether applicant established the employment presumption, and, if so, whether defendant established that she was an independent contractor.

Accordingly, 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.

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 §§ 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 § 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"].)

Section 5901 states in relevant part:

> "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, and we will order issuance of the final decision after reconsideration deferred. Once a final decision is issue by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

V.

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 issued on June 25, 2025 is **GRANTED**.

IT IS FURTHER ORDERED that the 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/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 23, 2025

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

JAQUELINE GARCIA
HINDEN & BRESLAVSKY, APC
EMPLOYER DEFENSE GROUP, LLP

SRO/*bp*

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