WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JORGE ARMANDO GARAY SANCHEZ, *Applicant*

vs.

BLAKE MCCLURE, *Defendant*

Adjudication Numbers: ADJ14951750 (MF); ADJ15106978
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Finding of Fact and Order (F&O) issued on March 24, 2025 by the workers' compensation administrative law judge (WCJ). The WCJ found in part that while allegedly employed on July 15, 2021 and on February 3, 2020, applicant claims to have sustained injury arising out of and in the course of employment to his left knee, left ankle, left foot, head and neck; at the time of injury, the alleged employer was uninsured; and applicant failed to meet his burden to show industrial injury on either date.

Applicant contends, in pertinent part, an industrial injury on July 15, 2021 has been established because an interpreter may not have been used at the emergency department medical treatment appointment on July 15, 2021, the provider "modified" his report one day after the emergency department medical treatment, and that he testified credibly about seeking same day medical treatment after the industrial injury occurred. Applicant further contends that not only did defendant fail to rebut the same day emergency department medical treatment record but also confirmed through testimony that applicant reported knee pain on July 15, 2021.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on the Petition for Reconsideration (Report) recommending that we deny reconsideration.

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 applicant's Petition for Reconsideration, rescind the F&O and substitute a new F&O that finds that in ADJ14951750, while employed for defendant on July 15, 2021, applicant claims to have sustained injury arising out of and in the course of employment to his left knee, left ankle, and left foot; that in ADJ15106978, applicant, while allegedly employed by defendant on February 3, 2020, claims to have sustained injury arising out of and in the course of employment to his head and neck; and that defendant was uninsured at the time of the claimed injuries. We defer all other issues. We return the matter to the WCJ for further proceedings consistent with this decision.

FACTS

In ADJ14951750, applicant while allegedly employed on July 15, 2021, claims to have sustained injury arising out of and in the course of employment to his left knee, left ankle, and left foot. (10/01/2024 MOH/SOE at p. 2:18-20.)

Applicant testified about the alleged July 15, 2021 industrial injury as follows:

> Applicant was moving dirt to install a pipe. Applicant said he slipped and his knee hit a rock. Applicant said he reported the injury to [defendant employer], and [he] said he would come down in 15 to 20 minutes, but he never came down. Applicant transported himself to a clinic on Wilshire in Los Angeles where an MRI was done. Applicant said [defendant employer] texted him and asked if he was coming to work, but Applicant was still in pain.

(10/01/2024 MOH/SOE at p. 5:20-24.)

On July 15, 2021 applicant sought emergency department medical treatment for his left knee. (Exhibit 7.)

Defendant employer testified about the alleged July 15, 2021 industrial injury as follows:

> Applicant last worked on July 15, 2021. [Defendant employer] claims that on Applicant's last day, Applicant told the [him that] he had a prior motorcycle accident and sometimes his knee hurts. On Applicant's last day, the defendant employer said Applicant told him he wanted to leave early because his knee hurt.

(01/28/2025 MOH/SOE at pp. 2-3:24-2.)

Thereafter, on July 16, 2021 defendant employer contacted applicant about his knee and returning to work. (Exhibit A at p. 29.)

On August 5, 2021 applicant began treating his left knee, left ankle and left foot on an industrial basis. (Exhibit 5.)

In ADJ15106978, applicant while allegedly employed on February 3, 2020 claims to have sustained injury arising out of and in the course of employment to his head and neck. (10/01/2024 MOH/SOE at p. 3:8-10.)

Applicant testified about the alleged February 3, 2020 industrial injury as follows:

> In 2020 he was working for [defendant] when he was handing beams to someone on a scaffold. The person on the scaffold dropped the seventh beam and it fell on Applicant's head. Applicant said he was knocked out. Applicant said [defendant employer] was present. [Defendant employer] did not offer medical treatment and did not talk about it after it happened.

(*Id*. at p. 5:16-19.)

Defendant employer does not recall applicant being injured on February 3, 2020. (01/28/2025 MOH/SOE at p. 3:4-5.)

On May 18, 2022 applicant began treating his head and neck on an industrial basis. (Exhibit 4.)

The issues for trial in each case were as follows:

1. Employment.
2. Injury arising out of and in the course of employment, with defendant alleging applicant was not an employee pursuant to Labor Code § 3351, Labor Code § 3352, and Labor Code § 3550.
3. The applicant alleges presumption of compensability pursuant to Labor Code § 5402.

(10/01/2024 MOH/SOE at p. 3:2-6, 3:14-18.)

DISCUSSION

I.

Former Labor Code section 5909[1] 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.

[1] All further references are to the Labor Code unless otherwise noted.

(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 May 5, 2025 and 60 days from the date of transmission is Friday, July 4, 2025, a holiday. The next business day that is 60 days from the date of transmission is Monday, July 7, 2025. (See Cal. Code Regs., tit. 8 § 10600(b).)[2] This decision was issued by or on July 7, 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 WCJ, the Report was served on May 5, 2025, and the case was transmitted to the Appeals Board on May 5, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 May 5, 2025.

II.

We begin with the issue of employment. In his F&O and Opinion on Decision, the WCJ did not make a specific finding on employment in either case. In ADJ14951750, the WCJ seems to indicate applicant was employed by defendant employer on July 15, 2021.

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.) In *Barragan v. Workers' Comp. Appeals Bd.* (*Barragan*) (1987) 195 Cal.App.3d 637 [52 Cal.Comp.Cases 467], the Court of Appeal explicitly held that "there is a long line of case law establishing the rule that one need not receive actual payment of money or wages in order to be an employee for purposes of the Workers Compensation Act." (*Id.* at p. 649.)

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.

In the case before us, applicant bears the burden of proving that he rendered service for defendant, whereupon the burden shifts to defendant to rebut the employment presumption. Here, defendant admitted at trial that applicant worked for him on July 15, 2021, and presented no evidence that applicant was an independent contractor, so it is unclear why the WCJ did not find that applicant was an employee at the time of his claimed injury on July 15, 2021. Thus, we will find in ADJ14951750 that while employed for defendant on July 15, 2021, applicant claimed injury.

III.

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).) Furthermore, decisions of 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].) 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, former § 10566, now § 10787 (eff. Jan. 1, 2020).) "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 Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138

(Appeals Board en banc), we stated that "[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record . . . the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*Id.* at p. 141.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*Id*.) If the existing physicians cannot cure the need for development of the record, the selection of an AME should be considered by the parties. If the parties cannot agree to an AME, the WCJ can appoint a physician to evaluate applicant pursuant to section 5701.

Although these cases are consolidated, the WCJ must address all issues identified in each case. In ADJ14951750, the WCJ considered the August 5, 2021 report of Renee Kohanim, DC, (Exhibit 5) and determined that it contained an inaccurate medical history and was therefore not substantial medical evidence. Because of this, the WCJ determined that applicant did not prove injury arising out of and in the course of employment for ADJ14951750. The WCJ did not consider the medical treatment record(s) for ADJ15106978. Without substantial medical evidence including an accurate medical history, the WCJ has no basis to find applicant's injuries to be non-industrial and we cannot analyze any of applicant's testimony at this time as we have no substantial medical evidence to guide such an analysis.

Lastly, an en banc panel of the Appeals Board comprehensively outlined the roles of both the physician and the WCJ in determining permanent impairment. (*Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613 (Appeals Board en banc). In this case, the WCJ's opinions based on his own medical determinations about internal derangement of the knee are inappropriate. (Report at p. 3.)

Accordingly, we grant applicant's Petition for Reconsideration, rescind the F&O and substitute a new F&O that finds that in ADJ14951750, while employed by defendant on July 15, 2021, applicant claims to have sustained injury arising out of and in the course of employment to his left knee, left ankle, and left foot; that in ADJ15106978, applicant while allegedly employed by defendant on February 3, 2020 claims to have sustained injury arising out of and in the course of employment to his head and neck; and that defendant was uninsured at the time of the claimed injuries. We defer all other issues. We return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the decision of March 24, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Finding and Order of March 24, 2025, is **RESCINDED** and the following is **SUBSTITUTED** therefor and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

FINDING OF FACT

1. In ADJ14951750, applicant Jorge Armando Garay Sanchez, while employed on July 15, 2021, by Blake McClure, claims to have sustained injury arising out of and in the course of employment to his left knee, left ankle, and left foot.

2. In ADJ15106978, applicant Jorge Armando Garay Sanchez, while allegedly employed on February 3, 2020, by Blake McClure, claims to have sustained injury arising out of and in the course of employment to his head and neck.

3. At the time of the claimed injuries, defendant Blake McClure was uninsured.

4. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 7, 2025

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

JORGE ARMANDO GARAY SANCHEZ
INJURED WORKERS LAW GROUP
IGLOW & BACHRACH
MR. BLAKE MCCLURE
OFFICE OF THE DIRECTOR-LEGAL UNIT (LOS ANGELES)

SL/abs

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