

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

SURINDER SINGH, *Applicant*

vs.

**S LINE TRANSPORTATION, AJAIB SINGH KAHLON; UNISURED EMPLOYERS
BENEFIT TRUST FUND
*Defendants***

**Adjudication Number: ADJ16790828
Oakland District Office**

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

Applicant seeks reconsideration of the Findings and Order (F&O) issued on July 15, 2025. The workers' compensation administrative law judge (WCJ) found that applicant was not an employee of defendant S Line Transportation (S Line).

Applicant argues that applicant's testimony as to his job duties as well as evidence of payment from S Line to applicant support a finding that applicant was employed by defendant (S Line).

Defendant filed an answer. Because the trial WCJ is no longer available, the Presiding WCJ issued a Report and Recommendation (Report) recommending denial of the Petition.

We have considered the allegations of the Petition for Reconsideration and the Answer 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 reconsideration, rescind the decision and return the matter to the trial level for further proceedings consistent with this opinion.

FACTS

Applicant filed an application for adjudication on October 7, 2022 alleging a specific injury to his back, neck, right hand, chest, right finger, and lower extremities while employed by S Line

on December 16, 2021. The limited medical record indicates that applicant was actually injured on December 13, 2021, when a container truck backed up and pinned applicant against a wall resulting in a crush injury. (Defendant A & Applicant 1.) On December 20, 2021, the applicant advised his physician that he was employed as a security guard. (Applicant 1, p. 29.)

This matter proceeded to a Mandatory Settlement Conference on November 15, 2023. Applicant objected to the matter being set for trial as they were pending further discovery to develop the record, but the matter was set over his objection.

The first day of trial was June 18, 2024. The parties stipulated that the date of injury was December 16, 2021 and that applicant claimed to have been working as a security guard for S Line at the time of injury. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 06/18/2024, 2:19-24.) The only issue set was the issue of employment. (MOH/SOE, 06/18/2024, 2:40.)

Applicant was called as a witness through the assistance of a Punjabi interpreter and testified as follows:

Applicant testified that he began working for S Line on August 31, 2021 as a security guard in an area where trucks were loaded. (MOH/SOE, 06/18/2024, 3:26-29). His understanding was that he was hired by Ajab Singh, a manager for S Line, but that the company was owned by Bobby Singh. (MOH/SOE, 06/18/2024, 3:32.) They agreed to a salary of \$3,000 per month which was ultimately paid by direct deposit into a bank account set up by Ajab Singh. (MOH/SOE, 06/18/2024, 3:38, 4:17-18.) Applicant testified that he lived in an RV located on the S Line Yard. (MOH/SOE, 06/18/2024, 3:40-41.) He did not testify as to whether this was part of the employment agreement or who allowed him to live on site. He was not provided with meals, but other co-workers would bring groceries and cook. (MOH/SOE, 06/18/2024, 4:21-23.) He would rotate morning and evening shifts weekly with another security guard. Each shift was 8am-8pm and 8pm-8am. (MOH/SOE, 06/18/2024, 3:34-36.) Keys to unspecified trailers were kept in the security guard room and were numbered. (MOH/SOE, 06/18/2024, 5:45-47.)

He provided detailed testimony regarding his job duties. He would keep a log of vehicles that came and went. The summary indicates that there were log forms in English with entries for where the deliveries were going, origination and destination addresses, name of company, etc. (MOH/SOE, 06/18/2024, 4:4-9.) He would take pictures and send them to dispatch. (MOH/SOE, 06/18/2024, 4:11.) There is no information in the record about what was being photographed. Ajab Singh and another person only identified as “Sonu” would assign him tasks. (MOH/SOE,

06/18/2024, 4:11-13.) The logs were given over to another security guard during shift changes. (MOH/SOE, 06/18/2024, 6:2-4.) The applicant witnessed Ajab paying “KK” in cash, and the applicant wrote down the date, time, and how much was paid. (MOH/SOE, 06/18/2024, 6:7-12).

Applicant was in the process of applying for asylum through an immigration attorney Anil Vinij. His attorney referred him to Ajab Singh. (MOH/SOE, 06/18/2024, 4:39-45). A reason for the referral is not clarified.

His phone is through TMobile and he used WhatsApp to text. He stated “Henry” or someone else at the yard helped him pay for the phone. (MOH/SOE, 06/18/2024, 5:4-6.) There was no clarification as to who Henry is or whether the other person were employed by S Line or otherwise affiliated.

No questions were asked about the date of the injury or the circumstances involving the injury. Applicant testified that after his injury Ajib Singh and Bobby Singh visited him and made him sign documents. (MOH/SOE, 06/18/2024, 5:16-25.) He was told that they would not fill out disability documents for him. (MOH/SOE, 06/18/2024, 16-17.)

The second day of trial was August 12, 2024. Applicant was not present. Sukhbinder Singh Sibhu,¹ the owner of S Line, was called by defendant. He testified that he is the sole owner of S Line which is a company that hauls ocean containers. (MOH/SOE, 08/12/2024, 2:11-13.) S Line does not own any of the trucks used to do the hauling and all of their drivers are independent contractors. (MOH/SOE, 08/12/2024, 2:12.) S Line receives jobs from brokers, which are sent to drivers who can refuse any job. The drivers get 90% of the money and S Line gets 10%. (MOH/SOE, 08/12/2024, 3:14-19.) He testified that every independent contractor uses their name as their business name. (MOH/SOE, 08/12/2024, 4:1.)

The containers are picked up and dropped off at the S Line yard at the Port of Oakland. The yard is open with two modular trailers that do not have a kitchen or living space, but do have a bathroom (MOH/SOE, 08/12/2024, 2:15-18.) They do not use security guards at the yard. (MOH/SOE, 08/12/2024, 2:26.) Dispatch is located in India who keeps track. There is no log. (MOH/SOE, 08/12/2024, 2:29-32.) The witness was shown pictures of a module, but the pictures were not identified or admitted into evidence. He testified that no one has ever lived on the lot. (MOH/SOE, 08/12/2024, 3:36-38.)

¹ From the context of the record, it appears that this individual is also referred to as “Bobby” but that is never confirmed. We will refer to the persons by the names as they are used in the record throughout testimony.

Mr. Sibhu testified that he did not hire the applicant, but knew him through Ajab Singh. (MOH/SOE, 08/12/2024, 2:20-21.) He testified that Ajab Singh is not an employee. (MOH/SOE, 08/12/2024, 2:41.) He did give Ajab Singh \$3000.00 as a loan, then stated that he gave two loans without knowing what the loan was for. (MOH/SOE, 08/12/2024, 3:43-44.)

The next witness called was Ravisher Singh. He testified that he performs sales for S Line. (MOH/SOE, 08/12/2024, 4:15.) S Line used to have a physical office, but the office moved to the yard during COVID. (MOH/SOE, 08/12/2024, 4:19-20.) According to Mr. Singh, no one works at the yard on a daily basis and he never works at the office at the yard either. (MOH/SOE, 08/12/2024, 4:25, 32.) They do not keep logbooks as they have a third party software and a company overseas that plans the loads. (MOH/SOE, 08/12/2024, 4:39-40.) They do not tell the drivers where to park. (MOH/SOE, 08/12/2024, 4:44.)

He does not know the applicant. (MOH/SOE, 08/12/2024, 4:30.) He believes that if someone were living in the yard, a driver would tell them and the Port would not allow anyone to live there. (MOH/SOE, 08/12/2024, 5:1, 5:27.) Ajab has a key to the modular units which he hides so that the drivers can find it to use the restroom. (MOH/SOE, 08/12/2024, 5:21-22.)

Ajaib Khlon, who appears to be the same person as the aforementioned Ajab Singh and is later referred to as Ajaib Singh Kahlon also testified. He is a truck owner/operator. He has worked for S Line since 2009 and is at the yard one to five days per week to drop off an empty container or pick up a load. (MOH/SOE, 08/12/2024, 5:39-41.) He testified that he is not a manager. (MOH/SOE, 08/12/2024, 6:13.)

He knew applicant from a temple that they attended in Sacramento. (MOH/SOE, 08/12/2024, 5:5.) Applicant asked the witness for money to assist with his asylum claim. The witness borrowed money from "Bobby." (MOH/SOE, 08/12/2024, 6:1-4.) He testified that he does not know if the loan was part of his 1099 and he paid the applicant with a personal check. (MOH/SOE, 08/12/2024, 7:4-6.) He has never taken the applicant to the yard, has never seen him there before, never showed him where the key was, but has dropped him off in Oakland across from the yard. (MOH/SOE, 08/12/2024, 6:27-28.) He testified that applicant never worked for him. (MOH/SOE, 08/12/2024, 7:3.)

There is a trailer on the yard that has office supplies and a bathroom. He has the key with him sometimes, but the key is mostly under the mat so that the drivers can use the restroom. (MOH/SOE, 08/12/2024, 6:17-23.)

The matter was continued again to September 24, 2024 when the applicant was re-called to testify. He was asked again about the RVs at the yard in S Line. He confirmed that in his deposition he testified to staying in an RV on the property and confirmed that there were two RVs on S Line's property, one of which people stayed in and the other used as an office. (MOH/SOE, 09/24/2024, 2:4-9.) There was no kitchen, but people would bring a gas cylinder to cook with. (MOH/SOE, 09/24/2024, 2:9-10.)

Applicant testified to the specifics of his job as follows:

He worked in the S Line yard as a security guard. The items loaded into the trucks came from different locations. Some containers on the yard were empty and some full. They were transported from the yard. The containers are sealed, but there is a paper on the container indicating its contents. At the security post, when people were coming in, they would say if the containers were full or empty, and the witness would direct them where to park, and keep a handwritten log. His job was to document who was coming in and out. He would also look at which trailers were full and contact dispatch. He was not responsible for repairing punctures to tires, but would over see when people came out to repair them.

(MOH/SOE, 09/24/2024, 2:10-11.)

He testified that he received instructions from Ajaib and would speak to Ajaib everyday as Ajaib would come in the morning between 4:30 to 5:00am and then again in the evening. (MOH/SOE, 09/24/2024, 2:20-23.) He testified that he slept on a green cot purchased by Ajaib. (MOH/SOE, 09/24/2024, 3:3-4.)

Applicant filed an amended application on October 21, 2024, added Ajaib Singh Kahlon as an additional defendant. Service of the application on Mr. Kahlon was unsuccessful and on December 12, 2024 the matter was continued with an order that applicant publish a special notice of lawsuit. The parties appeared for a status conference on February 27, 2025, but the matter was continued again.

The final day of trial proceeded on May 20, 2025. Applicant objected to the proceeding moving forward as applicant's counsel was attempting to serve "the new defendant," presumably with the amended application, but was unable to. The "new defendant" was "drop served" at the trial. Applicant requested a continuance so that a petition for joinder could be filed. There was no ruling on the objection noted, but the proceedings did move forward. (MOH/SOE, 05/20/2025, 2:5-8.)

“Ravi Sher Singh” was recalled as a witness.² He testified again that he does not have a key to the portable without the bathroom (thereafter referred to as portable 2) and that he never furnished a cot for ‘portable 2.’ (MOH/SOE, 05/20/2025, 2:15-16.) He has never seen a cot in the portable and does not believe there is room for a cot. (MOH/SOE, 05/20/2025, 3:1-3.) He was then shown pictures of the alleged ‘portable 2’ which were not offered or admitted into evidence. (MOH/SOE, 05/20/2025, 3:4-7.)

Ajaib Kahlon was then recalled to testify. He testified that “Bobby” is the only person who has a key to portable 2. He has only seen ‘portable 2’ three times a month and has never been inside of it. (MOH/SOE, 05/20/2025, 3:14.)

Sukhbinder Singh Sidhu was recalled. He confirmed that he is the only person with a key to portable 2 which is the smaller storage unit. (MOH/SOE, 05/20/2025, 3:17-19.) All of the items in the unit are his and came from a move from their prior physical office. (MOH/SOE, 05/20/2025, 3:20-23.)

On June 5, 2025, applicant filed a petition to join Ajaib Singh Kahlon. The order joining Ajaib Singh Kahlon issued on June 10, 2025.

On July 15, 2025, the WCJ issued the F&O findings that applicant is not an employee of S Line and deferring all other issues. In the accompanying opinion, the WCJ indicated that she did not find applicant as credible as the defense witnesses.

DISCUSSION

I

Former Labor Code section 5909³ 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:

- (2) 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 This appears to be Ravisher Singh, who testified in part 2 of the trial on August 12, 2024.

³ All further statutory references will be to the Labor Code unless otherwise indicated.

(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 September 11, 2025 and 60 days from the date of transmission is November 10, 2025. This decision is issued by or on November 10, 2025, so that we have timely acted on the petition as required by Labor Code 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 September 11, 2025 and the case was transmitted to the Appeals Board on September 11, 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 September 11, 2025.

II

We first address the issues with the record.

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.) “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.) 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.)

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (§§ 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].) The law has long recognized that where the WCAB cannot reach a just and reasoned decision on the existing record because the evidence is insufficient, unclear or conflicting, the WCAB has the power and even the duty to further develop the record under sections 5701 and 5906. When the record is inadequate to address the issues framed by the parties, “the WCJ has a duty to develop an *adequate* record.” (*Kuykendall v Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal. Comp. Cases 264], italics added; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) The duty arises out of the Board’s obligation to completely adjudicate the issues submitted for decision by the parties, consistent with principles of due process. (*Telles Transport v. Workers’ Comp. Appeals Bd. (Zuniga)* (2001) 92 Cal.App.4th 1159, 1165 [66 Cal.Comp.Cases 1290].) Here, the record is replete with inconsistencies and missing information, and it is inadequate to address the issue of employment.

For example, the record refers to photographs which were shown to defendant’s witnesses on August 12, 2024 and again on May 20, 2025. WCAB Rule 10787(c)(3) requires a descriptive

listing of all exhibits received for identification or in evidence with the identity of the part offering the same. These were never identified or admitted into the record as exhibits, nor were they listed in the pre-trial conference statement. As a result, they are not properly part of the record and cannot be relied upon. Further, not only were the photographs not identified by the date taken, they were also not shown to applicant, and in fact, applicant was not present on either date that the photographs were shown. Moreover, it is unclear whether the witnesses were talking about the same portable, which has created a very confusing record.

We agree with applicant that the bank account statement is vital to their argument and lends itself to a finding of employment. However, the parties imply, and the WCJ reiterates (Opinion, p. 8), that the account belonged to Ajaib Kahlon Singh, but the document itself indicates that the account is in the name of applicant. (Exhibit 2.) Applicant testified that he opened the account with Ajaib, but it is never clarified whether Ajaib opened it in his own name. This is highly relevant because the other witnesses testified that the “loan” was to Ajaib, not the applicant. The evidence shows that the account is in applicant’s name and two payments directly from S Line in the amount of his alleged salary were remitted to him on December 2, 2021 and October 25, 2021. Further confusing the issue, Sukhbinder Singh Sibhu testified that, “payments were marked as security on the bank statement for his accountant.” (MOH/SOE, 08/12/2024, 2:34-35.) There is no clarification as to what payments were being discussed. He testified that he never paid applicant. (MOH/SOE, 08/12/2024, 3:43-44.) However, on the bank statement, again in applicant’s name, the 10/25/2021 payment of \$3000.00 states, “ACH Pmt S Line Transport Pay Payment from Month of September 9/1/2021 to 09..” The payment appears to be made from S Line directly to applicant and correlates to the first date that applicant testified working for S Line. Then on December 2, 2021 a second payment is made and is described as, “ACH Pmt S Line Transport pay for S Line *yard security guard* Month of 10/15/20.” Defendant Sukhbinder Singh Sibhu must clarify not only why he was told by the accountant to list security, but why he actually listed “yard security guard.” Quite frankly, the bank statement listing applicant’s name with a payment from S Line indicating payment for “yard security guard” services may be sufficient on its own to support a finding that applicant was an employee.

The record indicates the existence of documentary evidence that is relevant to deciding the issue of employment. Applicant testified that he was asked to keep a log of inbound and outbound trucks and report the same to dispatch through the text app WhatsApp. While it is unclear whether

the logs are available as defendant denies keeping them, defendant apparently made a demand for the WhatsApp messages at the deposition and applicant did not offer them into evidence. In *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986] (*McKernan*)), the court granted the Board the ability to, “act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee.” Here, the record is so inconsistent that the production of these documents or verification that they do not exist or are not available is necessary to creating a substantial record. While the WCJ may have not found applicant credible, applicant did provide fairly detailed testimony regarding the alleged process of S Line, including knowing that they used dispatch in India. It is troublesome that defendant’s witness indicated that they did not use logs or people on site. Yet, they did not clarify how dispatch knew when the trucks were inbound and outbound.

Further, the WCJ relies on Exhibit C, a letter purportedly authored by applicant, as evidence that applicant “just happened” to be at the yard as opposed to working at the yard. Section 5708 makes clear that the WCAB is not bound by the common law or statutory rules of evidence and procedure, and that it “may make inquiry into the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties.” While not required, Evidence Code section 1400 is instructive that a “writing is authenticated by (a) the introduction of evidence sufficient to sustain a finding that it is what the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law.” (Evid. Code, § 1400.) Though applicant did not object, we cannot rely on this document as it was not authenticated, and its origin is questionable. First, applicant was not asked to authenticate this letter at trial, nor was he asked about its contents. Second, it is written in English when applicant only speaks Punjabi. Third, the letter is not addressed to any person or entity. Beyond the authenticity issue, the WCJ only relies on one comment while ignoring that the letter does indicate that the accident happened in the yard while he was removing the king pin lock from a container so that a truck driver could attach it. Defendant offers this letter to disprove employment, yet the activities outlined in the letter support applicant being at the S Line site and performing duties that are ostensibly consistent with his testimony regarding the job requirements. All of the defense witnesses were adamant that no one stayed or worked at the yard, yet they offered a letter that

indicates otherwise. Further testimony is required to verify the information in the letter as well as to authenticate it.

Finally, Ajaib Kahlon Singh was joined as an additional party after the trial had already been submitted.⁴ Over applicant's objection, the WCJ continued with proceedings. In this case, Mr. Singh is an indispensable party as a potential employer. The matter should not have been heard or decided until he was properly joined. All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is ". . . one of 'the rudiments of fair play' assured to every litigant . . ." (*Id.* at p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, [The] commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law. (*Id.* at p. 577.) Because the parties are so intertwined, the issue of multiple employments cannot be bifurcated, and due process requires that all potential employers be given notice and an opportunity to be heard. Even if the record were not in shambles as it is here, due process would still require that the decision be rescinded and remanded.

III

While we make no final conclusions as to the merits, due to the flawed legal analysis by the WCJ, we wish to outline the correct legal analysis with respect to the instant employment dispute.

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].)

⁴ For the sake of clarity, the application was first amended to include Mr. Kahlon as an additional defendant but service could not be effectuated. Subsequently, a petition for joinder was filed, and an order for joinder issued.

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.) Here, the WCJ apparently disregarded the evidence of the bank statement listing applicant’s name with a payment from S Line indicating payment for “yard security guard” services. Defendant’s claims that it did not intend to hire applicant cannot change the fact that the evidence appears to indicate that applicant rendered the service.

Based on our preliminary review, it appears that defendant’s argument is that applicant never provided service and that it never intended to hire applicant in any capacity. In her Opinion, the WCJ discussed the analysis of whether defendant met its burden to show that applicant was an independent contractor, but that would be irrelevant if applicant did not render service and defendant never intended to hire applicant. However, so as to make sure that the law is clearly explained, section 3351 was amended, effective July 1, 2020, so that if applicable, defendant must meet its burden to show that applicant was an independent contractor pursuant to section 2775 and not *Borello, supra*.

Once an applicant meets the burden of proving that they rendered service for defendant, 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].) That is, 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, unless the hirer can demonstrate that the worker meets specific criteria to be considered an independent contractor, all workers are presumed to be employees.

The courts have consistently held that an owner or general contractor is not liable under workers’ compensation for injury to the employee of an independent contractor hired by the general contractor. (*State Comp. Ins. Fund v. I.A.C.* (1941) 46 Cal.App.2d 526, 528-530 (*Grashel*); *Western Ind. Co. v. I.A.C.*, (1916) 172 Cal. 766 [158 P. 1033] (*Turner*); *Sturdivant v.*

Pillsbury (1916) 172 Cal. 581 (*Silva*); *Carstens v. Pillsbury* (1916) 172 Cal. 572; *S. A. Gerrard Co. v. I.A.C.* (1941) 17 Cal. 2d 411 (*Valdez*).) Likewise, it has been held that where a person hired by a primary employer is an employee rather than an independent contractor, the primary employer may be liable for workers' compensation injuries to person hired by the employee on the theory that they are also the primary employer's employees. (*Blew v. Horner* (1986) 187 Cal.App.3d 1380 [51 Cal.Comp.Cases 615]; *Valdez, supra*, 17 Cal. 2d 411; *Brietigam v. I.A.C.* (1951) 37 Cal. 2d 849).)

Section 2775(b) states in pertinent part:

- (1) For purposes of this code and the Unemployment Insurance Code, and for the purposes of wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that *all of* the following conditions are satisfied:
 - (A) The person 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 person performs work that is outside the usual course of the hiring entity's business.
 - (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

In *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 [83 Cal. Comp. Cases 817], the court provided the ABC test, which was then codified in section 2775. It is important to recognize that a hiring entity must satisfy all three factors in order to meet its burden to show that a worker was an independent contractor.

Part A of section 2775 requires that the presumed employee is free from control and direction of the hiring entity. In *Dynamex*, the court remarks, "depending on the nature of the work and overall arrangement between the parties, a business need not control the precise manner of or details of the work in order to be found to have maintained the necessary control that an employer ordinarily possesses over its employees." (*Dynamex, supra*, at p. 958.) The right to control has been demonstrated by evidence that the worker must obey instructions and is subject to consequences, including discipline or termination, for failure to do so. (*Toyota Motor Sales v. Superior Court* (1990) 220 Cal.App.3d 864, p. 875; *Borello, supra*, 48 Cal.3d at p. 350.) Moreover, "the unlimited right to discharge at will and

without cause has been stressed by a number of cases as a strong factor demonstrating employment.” (*Toyota, supra*, at p. 875.) So long as the employer has the authority to exercise complete control “whether or not that right is exercised with respect to all details, an employer-employee relationship exists.” (*Id.* p. 874.) Hence, when considering the right to control, the focus is on the necessary control, and an employment relationship for purposes of workers’ compensation may be found even when the company “is more concerned with the results of the work rather than the means of its accomplishment.” (*JKH Enterprises v. Dept. of Ind. Relat.* (2006) 142 Cal.App.4th 1046, 1064-1065 [71 Cal.Comp.Cases 1257]; see also *Borello, supra*, at pp. 355-360; *Air Couriers, Intl. v. Emp. Dev. Dept.* (2007) 150 Cal.App.4th 923, 937.)

Part B requires the hiring entity to establish that the worker performs work that is outside the usual course of its business. Last, part C requires the hiring entity to prove that the worker is customarily engaged in an independently established trade, occupation, or business as the work performed for the hiring entity. In *Dynamex*, the court notes that an independent contractor is ordinarily understood to refer to an individual that has independently made the decision to go into business for themselves. The court points out, “such an individual generally takes the usual steps to establish and promote his or her independent business—for example, through incorporation, licensure, advertisements, routine offerings to provide the services of the independent business to the public or to a number of potential customers.” (*Dynamex, supra*, at 962.) They go on to state, “the fact that a company has not prohibited or prevented a worker from engaging in such a business is not sufficient to establish that the worker has independently made the decision to go into business for himself.” (*Id.*)

On return, and once the record is clarified as outlined in part II, the parties and the trier of fact should consider each of the potential employer relationships if indicated by the developed record. If it becomes clear that a service was being rendered, then the various employment relationships must be discussed. S Line contends that it has no employees. However, if Mr. Kahlon is the hirer of applicant, S Line as the hirer of Mr. Kahlon must prove that Mr. Kahlon is an independent contractor pursuant to section 2775 or its exceptions. If S Line cannot prove that he is an independent contractor, then applicant will also be an employee of S Line.

We conclude that the record should be developed, as appropriate, on the issue of employment with both S Line and Mr. Kahlon.

Accordingly, we will grant the Petition for Reconsideration and, as our Decision for 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 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the WCJ's decision of July 15, 2025 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 10, 2025

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

**SURINDER SINGH
DANDRE LAW
FLETCHER BROWN**

TF/md

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