

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

ELVIS QUINTANILLA, *Applicant*

vs.

HERNANDEZ ENTERPRISES ROOFING, INC.; STATE COMPENSATION INSURANCE FUND; BAMA AUTO CENTER; PENNSYLVANIA MANUFACTURING ASSOCIATION; MATTES AUTO SALES; MIKE MATTES; GABRIELA MATTES; MATTES 1997 FAMILY TRUST UTD 8/27/97; JAVIER ROMERO; ANTONIO VASQUEZ; UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants*

**Adjudication Number: ADJ10616244
Marina del Rey District Office**

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

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on January 8, 2024, wherein the WCJ found that that there was no employment on the date of injury.

Applicant contends that the WCJ erred in not finding applicant a presumptive employee. Applicant further contends that defendants Hernandez Enterprises Roofing, Inc. ("Hernandez Roofing"), Bama Auto Center, Javier Romero, and/or Mike Mattes did not meet their burden of rebutting the presumption of employment.

We received an answer from State Compensation Insurance Fund, carrier for Hernandez Enterprises Roofing, Inc. and Mattes Auto Sales, Mike Mattes.

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

We have considered the allegations in the Petition, the answers, and the contents of the Report with respect thereto.

Based on our review of the record, and as discussed herein, we will rescind the Findings and Order issued by the WCJ on January 8, 2024, and we will return the matter to the WCJ for further proceedings consistent with this decision and to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

There is an extensive record, but we will briefly review the relevant facts.

Applicant claimed injury to various body parts, including his wrist, knee, head, skull, arm, nervous system and psyche while employed by defendants as a laborer on September 14, 2016.

The matter proceeded to trial over six days. The following is an overview of the pertinent events on each day of trial: April 13, 2022, where the WCJ framed the stipulations and issues; August 24, 2022, where Javier Romero testified; October 19, 2022, where exhibits were admitted to the record and Victor Hernandez testified; February 1, 2023, where Victor Hernandez's testimony continued, Mike Mattes testified, and applicant testified; April 12, 2023, where applicant's testimony continued and Victor Hernandez gave rebuttal testimony; and on November 8, 2023, where Antonio Vasquez testified. Magdalena (Maggie) Lopez, employee of Bama Auto Center, did not testify at trial, but her deposition testimony taken on September 17, 2018 was admitted as Exhibit W. (Minutes of Hearing and Summary of Evidence (MOH/SOE), October 19, 2022, trial, p. 10.)

The matter proceeded to trial on the sole issue of "Employment. Applicant asserts presumption of employment. State Compensation Insurance Fund raises independent contractor." (April 13, 2022, MOH/SOE, p. 3.)

On February 2, 2023, applicant testified at trial through a certified Spanish interpreter, relevant excerpts are as follows:

Applicant was employed as an employee for Hernandez Roofing and performed work for Hernandez Roofing in 2008. Applicant was performing work for Hernandez Roofing on the morning of September 14, 2016. From 2008 to 2016, applicant was an employee of Hernandez Roofing.

(Elvis Quintanilla's trial testimony, February 2, 2023, MOH/SOE, pp. 5-6.)

From 2008 to 2016 while working for Hernandez Roofing, the applicant's supervisor was Antonio Vasquez. During the time when applicant was working for Hernandez Roofing and being supervised by Mr. Vasquez, he was paid by both check and cash. Applicant was personally handed cash by Victor Hernandez during that same period of time. From 2008 to 2016 when applicant

received checks, Hernandez Enterprises Roofing was on the checks. When he was receiving checks from Hernandez Roofing, he was a roofer.

Applicant does not remember the date of the last year he received a check with Hernandez Roofing being listed as payor. He estimated that might be in 2010. From 2010 to 2016, applicant received cash for performing work for Hernandez Roofing.

Mr. Vasquez was his supervisor during this period of time. When Mr. Vasquez was his supervisor, he did not tell applicant the jobs they would go to. They would go to Mr. Hernandez's house. By "they," he means Mr. Vasquez, himself, and sometimes other people if they needed more people. On the date of injury, the first person he spoke to that morning was Mr. Vasquez who picked him up from his home at 3435 Gilman Road in El Monte. Applicant is still living at the same address. To his best knowledge, his home is about a mile from the Bama property in El Monte.

On the date of injury, Mr. Vasquez came to his house and told him that they were going to work for Hernandez. Mr. Vasquez picked up applicant in his Toyota Tundra. From 2010 to 2016, Mr. Vasquez would go to applicant's house and pick him up every workday. When Mr. Vasquez picked applicant up for Hernandez jobs, Mr. Vasquez would drop him back home at the end of the day.

(Elvis Quintanilla's trial testimony, February 2, 2023, MOH/SOE, p. 6.)

On the date of injury, from Hernandez's home he loaded tools for work and plaster for leaks into Mr. Vasquez's pickup truck. That day they were going to use a saw, paint, and plaster. The ladders and other tools were at job sites. When questioned whether he brought any tools with him when Mr. Vasquez picked him up, applicant responded that he brought his basic things in a bag.

(Elvis Quintanilla's trial testimony, February 2, 2023, MOH/SOE, pp. 6-7.)

They traveled in Mr. Vasquez's truck that morning to Long Beach. It was not their first day at this Long Beach job. They had been there before. They had been there in January for about four days more or less. For those more-or-less four days, Mr. Vasquez always picked applicant up from home and dropped him back home after work.

Mr. Vasquez paid applicant \$100 a day. During those four days in Long Beach, he saw Mr. Hernandez at a property. Mr. Hernandez was there putting a trailer for the trash because they were going to finish the job and put the trash in the trailer and then dump the trash.

Mr. Vasquez was applicant's supervisor at the Long Beach job for those four days. As his supervisor, Mr. Vasquez instructed applicant what to do. Applicant

was told to put papers and shingles, to paint, and to pick up trash and everything on the roof.

(Elvis Quintanilla's trial testimony, February 2, 2023, MOH/SOE, p. 7.)

Within the last three years, he was picked up by Mr. Vasquez at 5:30 a.m. to start his day. Lunch would be at 12:00 p.m. and would last 45 minutes. Other than working Monday to Friday, sometimes applicant would work on Saturday on Hernandez Roofing jobs. The workday started at 7:00 a.m. and ended at 3:00 p.m. at the job sites, Monday through Friday.

Within the last three years, it would take Mr. Vasquez sometimes an hour to drop him at home, and that would be at 4:00 p.m. During the last three years from 2013 to 2016 before his date of injury, there was a period of time when only applicant and Mr. Vasquez were working on Hernandez Roofing jobs. For the Long Beach job, applicant was picked up at 5:30 a.m. and dropped off at 4:00 p.m.

On the Hernandez Roofing jobs, applicant worked with Mr. Vasquez. Based on applicant's experience, Mr. Vasquez could not have completed these jobs alone. He needed a helper to do the entire roofing. When applicant assisted Mr. Vasquez with roofing, his duties would be to get materials closer, to load the tools, and clean.

(Elvis Quintanilla's trial testimony, February 2, 2023, MOH/SOE, p. 9.)

At the end of the day when Mr. Hernandez was present at home, the general topic between Mr. Hernandez and Mr. Vasquez would be about jobs that they were going to do the following day and what they were going to need. After debriefing with Mr. Hernandez, Mr. Vasquez would speak to applicant about the following day, specifically about jobs and what they were going to pick up in terms of materials in the morning from Mr. Hernandez's home.

(Elvis Quintanilla's trial testimony, February 2, 2023, MOH/SOE, pp. 9-10.)

On the date of injury, he was also working on the roof at a Long Beach job which ended at noon. Then they went to lunch. Applicant had lunch that day with Mr. Vasquez and Gustavo Vasquez who is Mr. Vasquez's son. They had Chinese food. Applicant did not consume alcohol at lunch.

After lunch he traveled from Long Beach to El Monte. The first destination was Mr. Vasquez's home because they were going to do a job at Bama and they needed materials. Gustavo Vasquez stayed home. On the ride from Long Beach

to Mr. Vasquez's home was when applicant discovered he was going to work on the job at Bama.

They picked up white Mastic and white coating and things for cleaning from Mr. Vasquez's home but no other tools like hammers, nails, and caulking that would be needed for the Bama job because they were already on Mr. Vasquez's truck.

Applicant had been to the Bama job approximately three to four months before the date of injury to install a pipe, flashing, and a patch in an area in the shop on the roof. At that time applicant and Mr. Vasquez got up to the Bama roof through the stairs.

Applicant confirmed that there was a ladder that was affixed to that structure. On that occasion applicant and Mr. Vasquez ascended the ladder that was permanently affixed to the Bama building. The gate to the ladder was locked. No one unlocked it on that occasion. They put Mr. Vasquez's ladder on top of the permanently affixed ladder. When they did this, it was the day he fell.

Applicant was up on the Bama roof twice. He fell on the second visit, which was the last visit, on September 14, 2016. He was there three to four months before he fell. That very first time three to four months prior to his fall, applicant and Mr. Vasquez got up to the roof the same way: They put another ladder on top of Bama's ladder affixed to the wall.

(Elvis Quintanilla's trial testimony, February 2, 2023, MOH/SOE, p. 10.)

When he went up that first time with Mr. Vasquez to install the pipe, he was up there for about three hours. The roof was white in color. They did a patching on the roof and installed a pipe. For that job Mr. Vasquez paid applicant \$100.

(Elvis Quintanilla's trial testimony, February 2, 2023, MOH/SOE, pp. 10-11.)

Mr. Vasquez's home was about a mile from applicant's home. Applicant did not request Mr. Vasquez to take him to Bama. Mr. Vasquez informed applicant that he would be performing a roofing job at Bama.

(Elvis Quintanilla's trial testimony, February 2, 2023, MOH/SOE, p. 11.)

Applicant's testimony continued on April 12, 2023, relevant excerpts are as follows:

At the time of his fall at Bama Auto, Applicant was not aware of Antonio Vasquez working on his own roofing jobs separate from Hernandez Enterprises Roofing. At the time of his fall, Applicant was not aware of Mr. Vasquez only helping with Hernandez Enterprises Roofing jobs a day or two every few weeks and sometimes having no work.

At Applicant's deposition on March 9, 2017, Applicant testified that he would go to Victor Hernandez's house Monday through Friday every day that he worked. When asked how he got to Mr. Hernandez's house if Mr. Vasquez was not working on a Hernandez Enterprises Roofing job, Applicant responded that he would get a ride from his worker, Carlos Ceballos, and no one else.

(Elvis Quintanilla's trial testimony, April 12, 2023, MOH/SOE, p. 3.)

Antonio Vasquez testified at trial on November 8, 2023, relevant excerpts are as follows:

The witness is friends with applicant. On the date of injury of September 14, 2016, he picked up applicant at applicant's house at 6:30 a.m. to go to a job in Long Beach. At the time of pickup, applicant did not look normal, but the witness picked the applicant up anyway because he had to finish the job in Long Beach. Both applicant and the witness's son were helping to finish that job. That job came from Hernandez Enterprises Roofing.

They arrived at the job site and did a couple of details that day and finished around 10:30 or 11:00 a.m. They took lunch together. Applicant did not want to eat anything, so only the witness and his son took lunch in Long Beach. After that he drove to his house and dropped off his son at home.

He and applicant drove to Baldwin Park to meet a friend of his, Luis Pacheco. Both Mr. Pacheco and applicant drank two bottles of Corona each while the witness only drank one. He received a call from Javier Romero to check out a job for him. He drove applicant back to applicant's house to leave him there, but applicant did not want to get out of the truck, so he took applicant to the job at Bama Auto on Garvey Avenue in El Monte.

(Antonio Vasquez's trial testimony, November 8, 2023, MOH/SOE, p. 3.)

At Bama he put a ladder against the wall to another ladder to go up the building. He told applicant to wait for him. He was going to go up there and check. He went up on the roof and was taking a look to do the repair, and then he heard applicant screaming his name. He went back to the ladder and saw applicant on the ground.

(Antonio Vasquez's trial testimony, November 8, 2023, MOH/SOE, pp. 3-4.)

A lady saw applicant coming down from the ladder and called paramedics or 911. At first the witness could not remember the name of the lady, but when the name Maggie Lopez was mentioned, he said yes. Maggie Lopez called the paramedics, and they showed up two or three minutes later.

The paramedics took applicant to the general hospital. After they took him to the hospital, the witness went back to his own house and talked to his wife about applicant's falling from the roof. He and his wife went to the hospital to visit applicant that day.

By lunchtime on September 14, 2016, they were done with the Hernandez job in Long Beach. When Mr. Romero called him that day, he said they had another leak in a different building and asked if the witness could check out what it was. The witness had not been given the okay to do anything at that point. The witness interpreted "check out" to mean to take a look and see what they needed to do to fix the leak in the roof and to provide an estimate. The witness did not yet have that job.

The witness would pay applicant for any job he asked him to do. The witness was not sure about Mr. Romero's relationship with the property on Garvey in El Monte. If the witness were to get the job, Mr. Romero would pay him in cash. The witness had hired applicant for jobs on some days.

(Antonio Vasquez's trial testimony, November 8, 2023, MOH/SOE, p. 4.)

The location where applicant fell on September 14, 2016, was at Bama Auto. The reason the witness went to Bama Auto on the day of the injury was that Javier Romero requested that he check the roof for a leak. In the process of checking the roof, he heard applicant cry out his name after the fall.

(Antonio Vasquez's trial testimony, November 8, 2023, MOH/SOE, pp. 4-5.)

If Mr. Romero had not called him to check the roof that day, he would not have gone to Bama on that. That was his own job and not Hernandez's.

When he spoke to Mr. Romero on September 14, 2016, he did not know Maggie Lopez. On the day he spoke to Mr. Romero, Mr. Romero told the witness to see Maggie Lopez. When he arrived at Bama Auto, he went into one of the mechanic's shop and told them he was going up to check the roof. He went to see Maggie Lopez, but she was not there. There was no one in the office. He went to his truck and put his ladder against the other ladder.

Mr. Romero told the witness that Maggie Lopez would give him approval to go on the roof. Mr. Romero spoke to Maggie Lopez. Before the witness went on the roof, Mr. Romero told him that he spoke to Maggie Lopez. The witness remembered his deposition being taken on May 12, 2017. When Mr. Romero told him he should see Maggie Lopez, he believed that she was in charge.

(Antonio Vasquez's trial testimony, November 8, 2023, MOH/SOE, p. 5.)

The witness confirmed his testimony today that on the day of the injury he picked up applicant from his house for the Long Beach job. He also testified that he drove applicant back to his house on the date of injury.

The witness did not know the lady was Maggie Lopez when she showed up but knew it when she told him that she had called the paramedics. That was the first time he knew she was Maggie Lopez. The witness cannot remember if he spoke to her after applicant's fall.

[] She saw applicant falling down the ladder. The witness and Maggie Lopez spoke. The witness did not know her until the end when she gave him her number. The witness cannot remember if he told her that Mr. Romero sent him there to check the roof and that is what he was doing.

When he arrived at the Bama location on the date of injury, he had roofing materials and supplies in his truck, but he did not have the roofing materials to complete the repairs. The bucket applicant was carrying at the time of the fall was not part of roofing materials to repair the leak.

When he was interviewed by the investigator, the witness told the investigator that he specifically told applicant to stay in the truck. He cannot remember if he told the investigator that Mr. Romero told him to see Maggie Lopez. He cannot remember if he told the investigator that Maggie Lopez told him that she did not know who had requested the bid to repair the roof.

(Antonio Vasquez's trial testimony, November 8, 2023, MOH/SOE, p. 6.)

Mike Mattes's brother-in-law Javier Romero testified at trial on August 24, 2022, relevant excerpts are as follows:

In the witness's experience working with Michael Mattes, the witness would perform work for Mr. Mattes, and Mr. Mattes would pay him cash. When Mr. Mattes asked him to perform work for him at his property, Mr. Mattes would usually provide the witness with a Home Depot card or cash to pay for repairs.

(Javier Romero trial testimony, August 24, 2022, MOH/SOE, pp. 3-4.)

The witness was informed by Mr. Mattes that the property on Garvey had a leak that needed to be repaired. Mr. Mattes provided him with cash to take care of the repair of the leak. The witness called Antonio Vasquez to look at the roof leak repair.

The witness was aware that applicant fell from a roof in or about September of 2016. Immediately prior to the fall, the witness called Antonio Vasquez to take a look at the roof leak. The first occasion before September 2016 when the witness called Mr. Vasquez for a roof leak, the witness went up on the roof with

Mr. Vasquez. The witness does not recall if applicant was present on that first occasion.

For this first repair, the witness paid Mr. Vasquez cash. The witness did not know if Mr. Vasquez had a roofing license. The witness does not recall if Mr. Mattes told him to check whether or not Mr. Vasquez had a roofing license.

He checked with Maggie Lopez for permission to go up on the roof during the first occasion months before September 2016. He does not recall if he informed Ms. Lopez that he and Mr. Vasquez were going up on the roof for repairs. He obtained a key from Ms. Lopez to the grating that covers access to the ladder.

The witness confirmed that he must have spoken to Ms. Lopez and gotten permission to climb up on the roof. When questioned whether Mr. Mattes gave him permission to climb up on the roof, the witness responded that Ms. Lopez handed him the key.

Before September 2016, the witness does not recall if he texted Mr. Mattes about the roof leak. He does not recall if he texted Mr. Mattes about a roof leak at the Garvey property at any time in 2016. He does not recall if he produced text messages from 2016 pertaining to roof leaks regarding this litigation. He did on occasion text Mr. Mattes related to various requests for repairs.

It is his practice to text Mr. Mattes and inform him what he is doing regarding the repairs. He does not recall if Mr. Mattes was aware he and Mr. Vasquez were going up on the roof. When Mr. Mattes instructs him to perform repairs, he follows his instructions.

(Javier Romero trial testimony, August 24, 2022, MOH/SOE, p. 4.)

Regarding the roof leak repair, the witness was first made aware from Mr. Mattes that the Garvey property needed repair. The witness does not remember how much it cost to take care of the first roof repair. He does not remember how much cash he was provided. He did not provide Mr. Mattes with a cash receipt.

After the first roof repair, he received another call that the roof was leaking in September of 2016 and needed repair. The witness called Mr. Vasquez to again take care of the roof. The witness called Mr. Vasquez for roof repairs twice with respect to the Garvey property.

When the second roof repair call was made to Mr. Vasquez, the witness told Mr. Vasquez to check with the store manager regarding the roof repair. The store manager did not call the witness personally and inform him the roof was leaking and needed repair. Mr. Mattes called him about it. When questioned whether Mr. Mattes informed the witness and gave him instructions to give a

key to Mr. Vasquez for the roof repairs, the witness denied it. Mr. Mattes did not provide the witness with keys for access to the roof.

The witness provided Mr. Vasquez with the name of the store manager, but he does not recall the name. The witness did not tell Mr. Vasquez what time he should arrive and what materials to use. Based on his experience with Mr. Vasquez, the witness trusted that Mr. Vasquez would bring the materials necessary to repair the roof. The witness is in the construction business, but he is not a roofer. He does not have an understanding as to what is involved in roof repairs.

The witness did not communicate with anyone at Bama Auto Sales that he had directed Mr. Vasquez to go to the Garvey property to make roof repairs in September of 2016. The witness also denied that Mr. Mattes informed him that Mr. Mattes had communicated with Bama Auto Sales to make them aware that Mr. Vasquez was on his way to make repairs.

Mr. Vasquez did not communicate with the witness regarding the charges of the September 2016 roof repair. In his dealings with Mr. Vasquez, only after Mr. Vasquez finishes his repairs would he pay for repairs. He would pay with cash provided by Mr. Mattes.

The witness does not recall the first time Mr. Vasquez went to the Garvey property to do a full roof repair. He could not estimate.

(Javier Romero trial testimony, August 24, 2022, MOH/SOE, p. 5.)

Mr. Mattes gave the witness an amount of cash for a roof repair several months before the September 2016 incident. Regarding the second roof repair in September 2016, Mr. Mattes simply asked the witness to refer someone or some company to Ms. Lopez at Bama Auto Sales. Mr. Mattes did not authorize the witness to hire anyone or any company regarding the roof repair at the Garvey property in September of 2016. There was no discussion about any price or cost regarding the roof repair in September 2016 when Mr. Mattes asked for a referral. Mr. Mattes simply requested that the witness refer someone or some roofing company to Ms. Lopez regarding the September 2016 roof leak.

Mr. Mattes did not tell the witness to hire anyone or any company specifically. Mr. Mattes never directed the applicant or Mr. Vasquez with respect to any activity on the property. Regarding the second roof repair event, Mr. Mattes never gave the witness or anyone else any money.

(Javier Romero trial testimony, August 24, 2022, MOH/SOE, p. 6.)

For the second roof repair, the witness intended to pay Mr. Vasquez for it after it had been completed.

The witness called Mr. Vasquez with the intention of having him repair the roof at the Garvey property on two occasions. The witness confirmed that he testified that he referred Mr. Vasquez to Ms. Lopez for roof repairs. Mr. Mattes requested the witness refer a roofer to Ms. Lopez, so he called Mr. Vasquez.

In his communication regarding the two roof repairs, Mr. Mattes never defined what he meant by “referral.” Mr. Vasquez was supposed to see Ms. Lopez so she could show him the leak in the building. The witness and Mr. Vasquez never talk about money. When Mr. Vasquez made the first repair a few months prior to September 2016, the witness paid Mr. Vasquez after the repair was completed.

When asked why he picked Mr. Vasquez over a roofing company, the witness responded that Mr. Vasquez did the first job, so that is why he called him back the second time. Like the first time, Mr. Vasquez was supposed to look for the store manager. He does not recall if Mr. Vasquez communicated with the store manager regarding the first repair. The witness was present during the first repair. The witness was given permission by the store manager to go up to the roof with Mr. Vasquez the first time.

When questioned whether the witness communicated with Mr. Mattes when he was on the roof with Mr. Vasquez involving the first repair, the witness responded that he communicated with Mr. Mattes after the job was done.

(Javier Romero trial testimony, August 24, 2022, MOH/SOE, p. 7.)

According to the witness, everything went through the store manager. Mr. Mattes told the witness that he had to have permission from the store manager to get up on the roof. He does not recall if he spoke face to face with the store manager for the first roof repair. He talked to a lady. She gave him a key. They went up to the roof and got it fixed, and then they came down to the ground and returned the key to the store manager. That is when the witness paid Mr. Vasquez cash. The witness did not pay out of pocket and get reimbursed.

(Javier Romero trial testimony, August 24, 2022, MOH/SOE, pp. 7-8.)

Mr. Mattes already knew the cost of the repair for the first repair. Mr. Vasquez got a quote for the first roof repair before the repair. Mr. Vasquez, in fact, gave the witness a quote before going up on the roof. The witness paid Mr. Vasquez cash after the repair.

The witness confirmed that he does not recall whether the applicant was on the roof with him and Mr. Vasquez during the first repair. He does not recall if the

store manager informed him that she had already communicated with Mr. Mattes regarding the first roof repair. He does not recall if the store manager gave any details regarding her communication with Mr. Mattes.

For the second roof repair, the witness did not physically drive down to the Garvey property to meet with the store manager. Regarding the first roof repair, the witness was instructed by Mr. Mattes to have the roof repaired, so he went in person to meet with Mr. Vasquez and the store manager. He does not recall if he did it to make sure that Mr. Vasquez performed the roof repair where it was necessary.

According to the witness, there was a hole in the roof, and Mr. Vasquez saw it from underneath the roof for the first repair. Mr. Vasquez only had to cover it up. The witness went up to make sure the work was done properly, but the witness did not have to go up on the roof. The witness saw Mr. Vasquez perform the first roof repair. He believed it was done properly. Flashing was necessary. The witness does not know what materials were necessary for the repair. All he saw was flashing.

The second time he did not go to meet with Mr. Vasquez and the store manager because he was working. The witness told Mr. Vasquez to go see the store manager, Maggie Lopez. Mr. Vasquez did not call him to let him know he was going on the roof. He never provided Mr. Vasquez the phone number for the store manager because the store manager is on site during business hours. Mr. Vasquez knew the store manager is on site.

(Javier Romero trial testimony, August 24, 2022, MOH/SOE, p. 8.)

The witness did not speak with the store manager regarding the second roof repair. He had no idea the store manager was on site for the second roof repair. At any point before the first or second roof repairs, the witness and Mr. Vasquez never talked about a roofing license. When questioned whether Mr. Mattes informed the witness that only licensed contractors are to be used for the roof, the witness responded that they never talked about it.

(Javier Romero trial testimony, August 24, 2022, MOH/SOE, pp. 8-9.)

Regarding the September 2016 repair, the witness testified that he was not going to pay Mr. Vasquez.

The witness does not recall when he went for the first roof repair whether the company name was Bama Auto Sales or Mattes Auto Sales. He does not recall if Mr. Mattes was also on site during that first repair.

(Javier Romero trial testimony, August 24, 2022, MOH/SOE, p. 9.)

Mike Mattes testified at trial on February 1, 2023, relevant excerpts are as follows:

Mr. Mattes was present during the testimony of Mr. Hernandez and Mr. Romero. Mr. Romero did not tell Mr. Mattes that he had been on the roof with Mr. Vasquez and applicant.

Mr. Mattes had a business before Bama took over the property. Ms. Maggie Lopez stayed on with Bama. They hired her. When Ms. Lopez was working for Mattes Auto Sales, she was a manager.

On the date of injury, Ms. Lopez had keys the roof in question. Mr. Mattes does not know if Ms. Lopez coordinated with the laborers to access the roof. He did not communicate with Ms. Lopez or Mr. Romero as to people coming to look at the roof.

On the date of injury, Ms. Lopez had no role for Mattes. Mr. Mattes was aware of Ms. Lopez's role for Bama on the date of injury. She was the business manager and facility manager. These are the roles of which Mr. Mattes was aware.

On the date of injury, there was a lease agreement that governed the tenancy between Mattes and Bama. Independent of the lease agreement, it is Mr. Mattes's position that Bama took over control of the roof repairs because that was what the lease said.

Ms. Lopez did not request that he repair the roof. Ms. Lopez informed Mr. Mattes that the roof was leaking. Mr. Mattes did not tell Ms. Lopez that Bama was responsible for the roof and not to bother him. Mr. Mattes did not tell Ms. Lopez that because Ms. Lopez did not request a roofer from him.

Mr. Mattes understands that the lease agreement required Bama to make roof repairs and to hire licensed and insured contractors. Mr. Romero did not inform Mr. Mattes that he spoke to Ms. Lopez about the leak. Mr. Mattes did not ask Mr. Romero if he had called Ms. Lopez after he spoke to Mr. Romero about the leak. He did not follow up with Mr. Romero because he was not involved in the conversation. He just asked if Mr. Romero had a referral for a roofer. He did not provide Mr. Romero with Ms. Lopez's address with Bama because Mr. Romero knows the address. Mr. Romero has purchased cars at that address.

(Mike Mattes trial testimony, February 1, 2023, MOH/SOE, p. 4.)

Mr. Mattes did not provide Mr. Romero with a key to access the roof. Both Mr. Mattes and Ms. Lopez maintained a key to access the roof.

(Mike Mattes trial testimony, February 1, 2023, MOH/SOE, pp. 4-5.)

Mr. Romero told Mr. Mattes that he had paid cash to Mr. Vasquez but not in the year of the date of injury. Mr. Mattes heard Mr. Romero testify that he paid cash to Mr. Vasquez. After trial Mr. Mattes did not ask Mr. Romero why he paid cash to Mr. Vasquez.

Mr. Mattes denied providing text messages or messenger messages between himself and Mr. Romero as part of this litigation. Mr. Mattes does not recall providing them to his attorney.

In 2016 about two months after the date of injury, he did not provide instructions to Mr. Romero on the issue of the leak. Ms. Lopez did not communicate to him that, on behalf of Bama, she had paid cash to repair the roof.

Mr. Mattes did enter into a lease with Bama and reviewed it before signing it. Mr. Mattes understood to the best of his knowledge the provisions of the lease before signing.

Counsel referenced Applicant's Exhibit 35, paragraph 7.2, which is entitled "Lessor's Obligations." When questioned whether or not the maintenance of the roof was the obligation of the lessor, Mr. Mattes responded that that would contradict the other paragraphs of the lease. The lease agreement was not drafted by Mr. Mattes but drafted by his broker, and Mr. Mattes signed it.

(Mike Mattes trial testimony, February 1, 2023, MOH/SOE, p. 5.)

Victor Hernandez testified at trial on October 19, 2022, relevant excerpts are as follows:

The witness is the qualifying contractor of the license and the president of the corporation. It is a C-39 Roofing License. In order to be a qualifying contractor, he had to take an exam, have proof of experience, and pass the exam. There is no one else at Hernandez Enterprises Roofing who has a roofing contractor license. There has been no one else working with him at Hernandez Enterprises Roofing within the last ten years who has been a licensed contractor. To his knowledge, Antonio Vasquez is not a licensed roofer for Hernandez Enterprises Roofing. Applicant is not a licensed roofing contractor for Hernandez Enterprises Roofing.

The witness has known Antonio Vasquez for the last 25 years. At one point in time within the last 25 or 30 years, Mr. Vasquez was an employee of Hernandez Enterprises Roofing. From 2012 to 2022 Hernandez Enterprises Roofing did not have any employees on its payroll. From 2012 to 2022, in and around 2016, Hernandez Enterprises Roofing would hire or contract labor to perform some of the handyman services for the roofing work.

In 2016, the morning of the day of injury, the witness contacted Mr. Vasquez to perform work in Long Beach, but not in the afternoon when the accident

happened. In or around 2016 Mr. Vasquez was the witness' tenant. In 2016 the witness would direct Mr. Vasquez to perform work for Hernandez Enterprises Roofing.

(Victor Hernandez's trial testimony, October 19, 2022, MOH/SOE, p. 10.)

Applicant never requested any benefits from the witness personally, but applicant did file a claim through workers' compensation, and the witness was contacted by a State Compensation Insurance Fund adjuster after the accident. When he was contacted by the State Compensation Insurance Fund adjuster, the witness did deny knowing applicant; however, in reviewing all the paperwork and depositions, the witness now knows that he is familiar with who applicant is. The witness explained that there are a lot of people that come and go through his company and he cannot recall everybody, but after reviewing the paperwork, he now knows who applicant is.

(Victor Hernandez's trial testimony, October 19, 2022, MOH/SOE, pp. 10-11.)

The witness does not recall having a conversation with Mr. Vasquez about applicant at the time when the claims adjuster asked the witness about applicant.

Having reviewed all of the documents and information, sitting here at trial today it is still the witness' testimony that he believes applicant was never on Hernandez Enterprises Roofing's payroll.

The witness had met applicant prior to 2016, as applicant had worked on Hernandez Enterprise Roofing work sites. Both applicant and Mr. Vasquez had worked for Hernandez Enterprises Roofing before 2008 as day laborers. At the time applicant was working for Hernandez Enterprises Roofing as a day laborer and Mr. Vasquez was on the payroll for Hernandez Enterprises Roofing, the witness managed the projects, because he is the contractor. The witness has no knowledge as to whether Mr. Vasquez physically picked up applicant and delivered him to work sites during the time applicant was a day laborer for Hernandez Enterprises Roofing and Mr. Vasquez was on the payroll. Unless the witness physically saw applicant being picked up and dropped off, he would have no knowledge or information to dispute testimony regarding Mr. Vasquez picking up applicant during the time applicant was a day laborer.

The witness does not recall the number of day laborers Hernandez Enterprises Roofing had assisting with roofing jobs in 2008 when Mr. Vasquez was on the payroll. The witness cannot give a time frame as to the period of time Hernandez Enterprises Roofing utilized day laborers to perform roofing jobs. He cannot say with certainty whether it was from 2008. When Hernandez Enterprises Roofing used day laborers, on occasion Mr. Vasquez would act as manager over them.

(Victor Hernandez's trial testimony, October 19, 2022, MOH/SOE, p. 11.)

When questioned whether day laborers were also given handyman duties as part of the roofing job during the period when the witness was overseeing the project and when Mr. Vazquez was on Hernandez Enterprises Roofing's payroll, the witness responded that he was not sure about the definition of "handyman" duties. The witness denies defining handyman jobs in his deposition as cleanup work involving roofing. The witness confirms that when he used the word "handyman" earlier today, he was indicating that Mr. Vasquez would perform handyman work and that handyman work was performed also for the roofing jobs.

(Victor Hernandez's trial testimony, October 19, 2022, MOH/SOE, pp. 11-12.)

As a roofing company the witness was hired at the Long Beach job to perform roofing work, and that roofing work required a license.

Prior to the morning of the accident, Mr. Vasquez did not inform the witness as to how many day laborers Mr. Vasquez was going to use. The witness had no idea that applicant was going to be used for the Long Beach job, and there is a reason for that.

After the accident Mr. Vasquez told the witness that Mr. Vasquez had previously been on the roof, the same roof that applicant fell from, but the witness is not aware Mr. Vasquez was on the roof with Javier Romero or anybody else. The witness has no knowledge whether or not, when Mr. Vasquez told him he had been on the roof prior to the 2016 accident, applicant had also been on the roof along with Mr. Vasquez.

(Victor Hernandez's trial testimony, October 19, 2022, MOH/SOE, p. 12.)

The witness had one conversation with Maggie Lopez regarding the September 14, 2016 roof incident. This was after the witness was informed of the injury by State Compensation Insurance Fund.

(Victor Hernandez's trial testimony, October 19, 2022, MOH/SOE, p. 13.)

In 2016 Mr. Vasquez' relationship to Hernandez Enterprises Roofing was as someone who performed handyman services for the company. Mr. Vasquez was not an employee of Hernandez Enterprises Roofing. As far as the witness is aware, Mr. Vasquez did not supervise anyone. In 2016 Mr. Vasquez did not

have actual or implied authority to hire anyone to perform services on behalf of Hernandez Enterprises Roofing.

With respect to the Long Beach job on the morning of the date of injury, Mr. Vasquez was working as a handyman. Mr. Vasquez was doing finish work for a partially completed roofing job. Mr. Vasquez was usually paid in cash. Whether Mr. Vasquez was paid a flat fee or an hourly fee depended on the size of the project.

(Victor Hernandez's trial testimony, October 19, 2022, MOH/SOE, p. 14.)

Victor Hernandez's trial testimony continued on February 1, 2023, relevant excerpts are as follows:

Mr. Hernandez indicated previously that Antonio Vasquez last worked for him before 2008. When Mr. Vasquez was working for Mr. Hernandez, Mr. Vasquez was working in the capacity of a roofer. The duties of a roofer are not the same as the duties of a handyman at his company. The differences are that one installs roofing and the other one does handyman work. Handyman work can include roof repair. Mr. Hernandez does not have direct knowledge whether or not Mr. Vasquez worked alone or with help. He cannot answer whether Mr. Vasquez ever obtained any type of assistance on any of the jobs. Whatever project Mr. Vasquez was working on, if Mr. Hernandez was not there, he could not substantiate whether or not Mr. Vasquez had helpers. The witness did indicate in his deposition testimony that he had requested Mr. Vasquez not to bring applicant to his jobs. His company did hire applicant ten years prior to May of 2017 as a laborer. Mr. Hernandez paid Mr. Vasquez by cash because he was providing handyman services. Mr. Vasquez was not his employee.

Mr. Hernandez testified that, ten years before the date of injury, applicant was hired as a laborer for his company. Mr. Hernandez does not recall whether or not Mr. Vasquez was applicant's supervisor when applicant was a laborer for his company.

(Victor Hernandez's trial testimony, February 1, 2023, MOH/SOE, p. 3.)

Victor Hernandez was called as a rebuttal witness on April 12, 2023, relevant excerpts are as follows:

Mr. Hernandez denied he or anyone from his company receiving any payment for Mr. Vasquez's work at Bama Auto at anytime. Mr. Hernandez denied paying Mr. Vasquez or Applicant by check or cash or otherwise for any work that either might have performed at Bama Auto on any occasion.

Assuming that Mr. Vasquez might have paid Applicant for work performed at Bama Auto on any occasion, Mr. Hernandez denied that money would have come from him or Hernandez Enterprises Roofing. Last time Applicant received payment from Mr. Hernandez was in approximately 2008. Last time Mr. Hernandez requested Applicant to perform any work for him was prior to 2008.

Mr. Hernandez denied that his company or him ever completed any work at Bama Auto at anytime. In 2016, if Mr. Vasquez was to perform any work for Hernandez Enterprises Roofing, Mr. Vasquez would have an option to accept that work as the work was offered to him.

When Mr. Hernandez offered work to Mr. Vasquez from 2016, going back three years, he did not offer work to him as a subcontractor. When Mr. Hernandez offered work to Mr. Vasquez from 2016 going back three years, he offered him work in the capacity of handyman as well, so Mr. Vasquez not only did roofing but other tasks for Mr. Hernandez.

(Victor Hernandez's trial testimony, April 12, 2023, MOH/SOE, p. 5.)

Magdalena (Maggie) Lopez's did not testify at trial, but her deposition was taken on September 17, 2018. Relevant excerpts of her testimony are as follows:

Q. Were you at some point in the past an employee of Bama Auto Sales?

A. Yes.

Q. Okay. When did you start working with them?

A. Um, September -- September 15th of 2016.

Q. Okay. That's the last time you worked for them?

A. Let me see. Um, no, that's when I started.

Q. The records that I reviewed show maybe like, um --

A. I'm sorry. May.

Q. May.

A. May 15th, 2016.

Q. Okay. That sounds about right. Okay.

Q. And before working at Bama, where were you working?

A. For Mattes Auto Sales, M-a-t-t-e-s.

Q. And how did you find out about the job opportunity at Bama?

A. Through Mattes Auto Sales.

Q. Okay. And is that Mike Mattes?

A. Yes.

Q. Okay. And Mike said Bama may be looking for someone?

A. Yes. They kind of had some sort of agreement, and the employees got to be -- were able to be hired by Bama.

Q. Okay. So is it fair to say that Bama was essentially going to start a new business in the same line of business that Mr. Mattes have previously operated his auto sales and shops?

A. Leasing. It was gonna be leasing, and the employees were gonna stay.

Q. Okay. But you had to go through filling out a job application in applying for this job?

A. Yes. Yes.

Q. Okay. What were your job duties at Bama Auto Sales?

A. Um, I was accounting, maintenance, payroll.

Q. What was your job title?

A. Controller.

Q. Like a controller?

A. Controller.

Q. Okay. Do you know who was the landlord on the site where Bama was operating their leasing company --

A. Yes.

Q. -- and sales? Who was it?

A. Mike Mattes.

Q. He was the landlord?

A. Yes.

Q. Are you aware of any of the lease negotiations that went on between Mattes and Bama?

A. No.

Q. And how long did you work for Mr. Mattes?

A. About 16 years.

Q. As a controller also?

A. Yes.

Q. At the same site?

A. Yes.

Q. Do you know why Mr. Mattes stopped operating his auto dealership or auto sales at that location?

A. I believe he was getting close to wanting to retire from the auto retail business.

Q. Okay. So as part of your jobs, if there was a maintenance issue with the building or the roof, is that something that you would be notified of by the employees?

A. Yes.

Q. And then you're in charge of repairing it or getting someone to fix it?

A. Yes.

Q. And typically if it's like something related to the building, how would you pay for that?

A. Um, it would be -- if I would -- since I was there, I would pay --

Q. Yes.

A. -- and depending on whatever situation or agreement, then I would try to get reimbursed from Mike Mattes.

Q. From the landlord?

A. Yes.

Q. Okay. So because you were on site, you would pay for it and then you submit the proof and the invoices to Mr. Mattes for reimbursement?

A. Right.

Q. Now, are you aware of any leaks that were going on that you noticed sometime on or about August of 2016?

A. Yes.

Q. And was it between the two auto bays, you said?

A. Yes.

Q. Okay. And did you try to have someone come and look at that time?

A. Yes.

Q. And were you successful in getting someone to come and look at it?

A. No. I had to call a couple of repair roofers and nobody showed up. So then I reached out to Mr. Mattes --

Q. Okay.

A. -- and asked him if he knew anyone or if he could give me any numbers so I can call to get that checked out. Because I wanted to get it fixed before the hard rainy season, you know, hit us and have a worse situation in the back.

Q. Okay.

A. And he said -- he says, "Well, instead of giving you numbers, what about -- what if I get someone to go and see you?"

Q. Okay.

A. And then -- to give you some estimates. And I said okay. So I just was waiting for the estimates and --

Q. Did anyone ever call you?

A. No.

Q. Did Mr. Mattes tell you who he would be sending?

A. No.

Q. Did Mr. Mattes tell you when he would be sending people?

A. I was expecting someone in a couple of days, because that's just how

Q. He operated?

A. -- he works. Yes.

Q. Okay.

A. And we didn't hear anything for a few days.

Q. Okay.

A. I don't know. Maybe 10 days.

Q. Okay. Is it typical practice for a vendor, when they come onto the dealership for either inspection, repairs, for them to come to you?

A. Yes.

Q. And the employees typically will say, "Go see Maggie Lopez"?

A. Yes.

Q. On the day of this accident for Mr. Quintanilla, I believe it was September 16th -I'm sorry, September 14th, 2016, were you at work that day?

A. Yes.

Q. What time did you start work?

A. Um, maybe 8:00, 8:30.

Q. And what time do you think the accident happened?

A. Around noon --

Q. Okay.

A. -- or maybe afternoon or -- I don't know which time.

Q. On or about?

A. Yeah.

Q. Okay. And on that day, did you have knowledge of anyone coming there to inspect the leak?

A. No.

Q. Did you know who would be coming to inspect

A. No.

Q. So you didn't expect anyone that day?

A. No.

Q. So how did you find out about these folks being there?

A. After the accident.

Q. Okay. So tell me in your words what were you doing and what's the first thing that you saw.

A. Um, I was -- I had just gotten back from running some errands, and I had parked my car. And I was putting them in office. I saw some kids on the lot. They were in the area where they shouldn't have been, and I kinda just told them that, you know, they had to be on that side because it was unsafe for them to be by the area where they were at.

Q. Okay.

A. And as I was gonna go back into the office, I saw something fall off the roof.

Q. Okay.

A. And at that moment I thought that -- that was a human that fell off the roof. And it almost looked like they jumped off the roof.

Q. Okay.

A. Um, and the first thing came to my mind was the gardener because that's the only person I expect anywhere there. But then I don't know why I thought that, but because he could have been on the palm trees. So, and I ran. As I ran, I yelled at to one of the co-workers, and I said, "Call 911."

Q. Did you hear someone screaming for help?

A. No.

Q. And did you see where that person fell from?

A. Yes.

Q. Where did he fall from?

A. From, um -- it looked like he fell from the ladder.

Q. Ladder that's attached to the building?

A. No.
Q. Okay.
A. He had a -- he had his own ladder on our ladder.
Q. Okay.
A. There's a fixed ladder on the building --
Q. Okay.
A. -- that has a door with a lock --
Q. Okay.
A. -- and he bypassed that and just put his ladder on top of that.
Q. And did he fall from the top of his ladder, insofar as you knew or from the top of the roof?
A. It was really hard to tell.
Q. You couldn't tell. Okay. But let's go back to that fixed ladder. It's got a lock box on it?
A. Uh-huh.
Q. And does it have a lock with a key?
A. Yes.
Q. And who has the key to that?
A. I do.

Q. Had you met the person that had fallen before?
A. No.
Q. So the first time that you met Antonio was after this fall?
A. Yes.
Q. Okay. And did Antonio tell you anything?
A. He was just saying that it was a shame that they hadn't started doing anything yet when this happened.
Q. "Shame." And then did he tell you what he was there for?
A. They were gonna go up there to work on the roof.
Q. Did you ever have to pay him?
A. No.

(Maggie Lopez's September 17, 2018, deposition, Ex. W, pp. 7-19.)

Q. Now, I'm gonna ask you -- I'm gonna bring up a bunch of names because there are a number of people involved in this, and I want you to know [sic] if you know them and how you know them?
A. Okay.
Q. So first one would be Mike Mattes.
A. The landlord and my former employer.
Q. Okay. Antonio Vasquez.
A. Antonio is the gentleman that I know was driving that work truck.
Q. Okay.

A. And, um, I'm not sure his relation with the gentleman that fell, though.

Q. Okay. Do you know Elvis Quintanilla?

A. Never seen him.

Q. Had you ever met or seen Antonio Vasquez?

A. No.

Q. Okay. How about did you know anyone from Hernandez Roofing?

A. Um, I believe the owner, I met him because he came into the office one day to speak to me.

Q. And was that Victor Hernandez? How did he identify himself?

A. He was the owner of the roofing company.

Q. And when did he come and see you?

A. Um, I wanna say it could have been within a month to three months.

Q. After the accident?

A. Yes.

Q. And what did he ask you or tell you?

A. He was just trying to find out, um – he said he took pictures, and he wanted to know, you know, what happened, what I saw. And he asked me if I had ever seen him before. I told him no. Um, he wanted me to sign something, stating that I never met him before until that day.

Q. Okay. And did you read what he gave you?

A. No. He wasn't gonna give me he just wanted to jot something down, saying, you know, this is the first day you've met me. We've never talked before.

Q. And what did you say?

A. I said I didn't feel comfortable doing that.

Q. Do you know a Javier Romero?

A. Yes.

Q. How do you know Javier Romero?

A. He is Mike's -- Mike Mattes' brother-in-law.

Q. Did Mr. Romero contact you after the accident?

A. No.

Q. Do you know what Mr. Romero does for living?

A. No.

Q. Do you know if Mr. Mattes had asked Mr. Romero to send someone to look at the leak?

A. I don't know.

(Maggie Lopez's September 17, 2018, deposition, Ex. W, pp. 23-26.)

Q. You mentioned you had the keys to the ladder that was outside the building at the Bama location where the injuries happened to Mr. Quintanilla?

A. Yes.

Q. Did anyone else have access to the keys that the ladder?

A. Not that I know of. Maybe Mike.

Q. Mike Mattes?

A. Yes

Q. Do you know who owned the property in September of 2016? And I'm talking about the property on Garvey where the Bama facility was.

A. Um ...

Q. The landlord; right? Is that what you're asking for, Counsel?

Q. Yeah.

Q. Who was the landlord?

A. The landlord was -- is Mike Mattes.

Q. As a controller of Bama, did Mike Mattes ever contact you about your maintenance duties?

A. Not Mike. But when I was hired, that was my responsibility was to safe -- safety and maintenance of the lot.

Q. Were you the one that was in charge of repairs of the roof?

A. Everything.

Q. Was there anyone else that worked at Bama that had any job duties that required them to ensure safety and maintenance?

A. I was a primary.

Q. Was there anyone else that also had their job duty to ensure safety and maintenance on the property?

A. Well, the -- I think on paper it was just me. I don't know if, on their job description, what it entailed, but I know on paper I was told that was my responsibility.

Q. Do you know if any of the employees ever contacted contractors or maintenance companies to perform repair work?

A. It would only be me.

Q. Do you know whether or not Mike Mattes ever contacted contractors or repair services to go to the Bama facility to do repairs?

A. Um, well, when I reached out to him, I asked him for some numbers, and he offered to call someone for me.

Q. Did you call Mike Mattes and tell him someone fell off the roof after he fell off the roof?

A. Yeah. I did mention it to him.

Q. When did you make that phone call?

A. That day.

Q. So approximately September 16, 2016?

A. Yes. And he was also was not aware that they were gonna be there.

Q. Mike Mattes said he was unaware that anyone was gonna be working on the roof that day?

(Inaudible response.)

Q. Did he tell you that he was gonna look into why they were there?

A. He said he was going to find out like -- 'cause he wasn't sure what they were doing there either because we were expect -- I was expecting someone like at least a week prior, not that day. I had no idea.

Q. Were you expecting any particular people to go to the Bama facility to work on the roof?

A. I was expecting someone to come and give me a quote.

Q. Did anyone tell you the names of who you expected to come give you a quote?

A. No. I would have probably received the name when they introduced themselves when they would come to the front door.

Q. Had repair services or contractors ever approached the Bama facility and spoken to you and said, "I'm here to give an estimate"?

A. Yes.

Q. What types of jobs?

A. Besides roofing you mean?

Q. Yes.

A. Yes.

Q. What types of other maintenance jobs?

A. We had a leak on the window, one of the office windows.

Q. When there was a leak in the office window, did you contact the repair services to come out for a quote?

A. Yes.

Q. You called them?

A. I'm pretty sure I did. I'm trying to remember.

Q. If you recall.

A. I don't recall. But I did have someone come in. I'm trying to think of the name of the company. It's not coming to me. But they did when they came, they came to the front. They asked me -- I would go out there -- the -- the standard thing was they'd come into the front, ask for Maggie. Or if they said, "We're here to fix this," everybody knew call Maggie.

A. I would go out and I'd walk them to whatever it is I'm gonna show them, whether it's a toilet or a window or, you know, a sprinkler, I would walk them to the area and explain what we're gonna do.

Q. And they would review the situation and give you a quote?

A. Yes.

Q. And if you were happy with the quote, you hired them?

A. I would say yes, depending on, of course, the price. I'd say go ahead.

Q. Did you need approval from anyone before --

A. No.

Q. -- you agreed to contract for their services?

A. No.

Q. Did you have a budget for maintenance?

A. No. No budget. I just –

Q. Carte blanche?

A. -- whatever I think is reasonable.

Q. Was there any decisions you made that Mike Mattes said was not reasonable as far as spending money for repairs?

A. Um, no, because I just -- I know if someone gives me a quote of 500 and 800, I'm gonna go with the 500.

Q. Was there ever a time when a quote was given to you and it was expensive to the point where you needed to ask Mike Mattes for permission to agree to it?

A. Um, are you referring to a Mattes repair or Bama? I'm not sure if you're asking me when I worked for him or when I worked for Bama.

Q. Just referring to any repairs where you were uncomfortable accepting an offer because it was very expensive --

Q. So this is both as --

Q. -- and you needed to ask Mike Mattes for permission? And it doesn't matter what capacity –

Q. Okay.

Q. -- you were in. Just asking Mike Mattes.

A. I think it depends on if I'm working for Mattes or if I'm working for Bama. It really would be different.

Q. When you were working for Bama, did you ever ask Mike Mattes for permission?

A. No.

Q. Who would you ask for permission when you were working with Barna?

A. Nobody. If it was gonna be -- if I thought it was something excessive, a major repair, then I -I never got to that point. But if it was gonna be something expensive, I would probably wait for a meeting that we'd have with corporate.

(Maggie Lopez's September 17, 2018, deposition, Ex. W, pp. 38-47.)

Q. You mentioned that the reason Elvis Quintanilla and [Antonio Vasquez]-- I mean allegedly was to work on the roof, to repair a leak; is that correct?

A. Um, that's what -- I'm assuming that's what they were there for, unless they were there for the estimate, because I never saw them. So I don't know if they were there for the estimate or for the repair.

Q. But it was about a leak in the roof; correct?

A. Right.

Q. But you don't recall if the leak was ever fixed?

A. I don't recall.

Q. When Mattes Autos transitioned to Bama Commercial Leasing --

A. Uh-huh.

Q. -- were new computer systems brought in, or were the same computers used?

A. No, they had new computer system.

Q. Was new furniture brought in?

A. Um, it was -- some new furniture was brought in and different furniture.

Q. Was the old furniture taken out that, the ones that was there with Mattes?

A. No. Just different -- different offices had different things. Some stayed, some came in.

Q. Around September 2016, let's say between June of 2016 and December 2016, say the second half of 2016, can you estimate approximately how many times a week you'd speak with Mike Mattes?

A. The end of 2016?

Q. June to December.

Q. If you recall. You can estimate. Do you recall once a week, three times a week, every other week?

A. Um, 2016, when we -- when we just transitioned over, I think -- I think quite a bit because I was getting phased out and phasing in to the company until there was a transition there.

Q. Couple times a week maybe?

A. Um, yeah. I would say a few times a week.

Q: And this was at the beginning or all throughout out?

A: Um, because when I -- when I was ending my -- my term, I was kind of helping him close and then transitioning into opening or starting fresh with Bama.

Q. Okay.

A: So there was -- you know, that's what the agreement was.

Q. Over time through 2017 until Bama dissolved, did you speak less with Mike Mattes on a weekly basis?

A. Over time when?

Q. In 2017, did you speak less over the phone with Mike Mattes than you did in 2016 during the transition period?

A. Well, less.

Q. Often, less often?

A. I honestly can't answer that without -- yeah, I can't -- I can't

Q. Do you know if Mike Mattes leased the property on Garvey to Bama Commercial Leasing in 2016?

A. Yes.

Q. Was rent due, that you know of, to Mike Mattes, the rent of the property?

A. When?

Q. When Bama took over the property in 2016 as a tenant.

A. Yes.

(Maggie Lopez's September 17, 2018, deposition, Ex. W, pp. 51-56.)

Q. Other than the time that Victor Hernandez came to the Bama location and took pictures and asked you to sign a statement that you didn't sign apparently, have you ever seen or spoken with Victor Hernandez?

A. No, other than that time.

Q. Other than the day where you spoke with Antonio Vasquez at the scene of the accident, have you ever since then spoken with Antonio Vasquez in any capacity?

A. Um, no.

Q. You mentioned that Javier Romero is related to Mike Mattes. And you mentioned he's Mike Mattes brother-in-law; correct?

A. Brother-in-law.

Q. In your capacity as a controller for Mattes and for Bama, do you recall Mr. Romero ever conducting any services for either Mattes or for Bama on the property?

A. No. Do I know if he did or -- ask the question --

Q. Are you aware of him ever working at the property on Garvey for any reason?

A. Um, it's hard to say because I don't know if I physically have ever seen him there working for Mattes Auto Sales, no.

Q. Do you know whether or not he ever performed any services, like construction or maintenance at the property, as an independent contractor?

A. Right. I can't answer that, um, like with certainty because I never hired him. So I don't know if Mike has hired him, you know, to do anything for him.

Q. So when you worked in your capacity as a controller for Bama Auto Sales, when you performed a repair on a property, to your knowledge, did that repair invoice then get billed to or submitted to Mr. Mattes for reimbursement?

A. We didn't have -- we had only been, I can say, a year. So we didn't have many repairs. So we were still trying to get the flow of repairs. Um, the only one I can recall was one, um, on a -- one of the hydraulic lifts and, I think, the window. So we only had like three repairs in the whole year.

Q. Uh-huh.

A. And I know we had -- certain things was, you know, we'll go ahead and pay it, or I'll go ahead and reimburse you, even though it wasn't your responsibility.

Q. So it just depend on what kind of agreement they made.

Q. So the agreement between Bama Commercial Leasing and Mike Mattes?

A. Uh-huh.

Q. Are you aware of the responsibilities of Mike Mattes as a landlord that was entered into in the leasing agreement with Bama?

A. No.

Q. Okay. But that -- you would leave that to the folks at Bama Auto Leasing; right?

A. Yeah. So if there was a repair, you know, first we'd have to get it repaired. And then after once it was repaired, then we would say, "Okay. So who's gonna pay for this?"

Q. Okay.

A. You know, "Let's discuss it." And then that's how we would --

Q. Okay.

Q. For example, if someone came to repair the roof and they went to Ernie, Ernie said, "Don't talk to me, go talk to Maggie."

A. He'd probably say, "Yeah, Maggie called you. Go talk to Maggie," yeah.

Q. Okay. Now, you know, I kind of informally went through this, identifying the change of ownership of the business from Mattes Auto Sales to Bama Auto, but it really wasn't a change. At some point Bama ceased to exist and -- I'm sorry, Mattes ceased to exist and Bama took over as a lessee of that property to operate their own business?

A. Yes. Mattes went out of business. Mattes Auto Sales went out of business, and then Bama Auto Center -- Bama Auto Leasing started conducting their business.

Q. That's what I wanna make sure. There's two separate entities completely unrelated?

A. Yes, they're unrelated.

Q. Okay.

(Maggie Lopez's September 17, 2018, deposition, Ex. W, pp. 60-77.)

On January 8, 2024, the WCJ issued the following Findings and Order:

FINDINGS OF FACT:

1. It is found that there was no employment on the date of injury.

ORDER:

It is found that there was no employment on the date of injury.

(January 8, 2024 Finding and Order, p. 2.)

DISCUSSION

I. Presumption of employer-employee relationship

Here, the first issue for consideration is whether applicant was an “employee” within the meaning of the California Workers’ Compensation Act (Act) at the time of his injury. As a preliminary matter, we note that employment relationships that result in workers’ compensation liability are based upon an analysis of the definition of an employee, rather than upon the definition of the employer. (See *Heiman v. Workers’ Comp. Appeals Bd. (Aguilera)* (2007) 149 Cal.App.4th 724 (*Heiman*).

Labor Code section 3351 defines “employee” as “every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed” (Lab. Code, § 3351.) Under Labor Code section 3357, “[a]ny person rendering service for another, *other than as an independent contractor*, or unless expressly excluded herein, *is presumed to be an employee.*” (Lab. Code, § 3357, italics added.) Thus, unless it can be demonstrated that a worker meets specific criteria to be considered an independent contractor, or fits within one of the several narrowly defined categories as an excluded employee, all workers are presumed to be employees. Labor Code section 3353 defines “independent contractor” as follows:

“Independent contractor” means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.

(Lab. Code, § 3353.)

With respect to contractors on construction projects, Labor Code section 3351 and Labor Code section 2750.5 are read together. (*Cedillo v. Workers’ Comp. Appeals Bd.* (2003) 106 Cal.App.4th 227 [68 Cal.Comp.Cases 140]; *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Meier)* (1985) 40 Cal.3d 5 [50 Cal.Comp.Cases 562].) In pertinent part, Labor Code section 2750.5 provides that:

There is a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required ..., or who is performing such services for a person who is required to obtain such a license is an employee rather than an independent contractor

(Lab. Code, § 2750.5.)

In order to successfully prove independent contractor status, a person must satisfy certain factors set forth within Labor Code section 2750.5, and, additionally, must “hold a valid contractors’ license as a condition of having *independent contractor status*.” (Lab. Code, § 2705.5, italics added; *Cedillo, supra*; *Blew v. Horner* (1986) 187 Cal.App.3d 1380 [51 Cal.Comp.Cases 615].) A contractor’s license must be valid at the time of the worker’s injury. (See *Zellers v. Playa Pacifica, Ltd.* (1998) 61 Cal.App.4th 129 [63 Cal.Comp.Cases 48].) Pursuant to Business and Professions Code section 7055 and the California Contractors State License Board,¹ a roofing contractor is considered a “specialty contractor” and must possess a C-39 license. (Bus. & Prof. Code, § 7055(c).

Labor Code section 2700 states that: The provisions of this division shall not limit, change, or in any way qualify the provisions of Division 4 of this code but shall be fully operative and effective in all cases *where the provisions of Division 4 are not applicable*.” (Italics added.) Labor Code section 2750.5 concludes by stating that: “For purposes of workers’ compensation law, this presumption is a supplement to the existing definition of employee and independent contractor and is not intended to *lessen* the coverage of employees under Division 4 and Division 5.” (Italics added.) The language of section 2750.5 thus makes clear that the presumption of employee status was intended to apply in workers' compensation cases. (*State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Meier)* (1985) 40 Cal.3d 5, 12 [50 Cal.Comp.Cases 562].)

“For workers’ compensation purposes, under Labor Code section 2750.5, the hirer of a contractor for a job requiring a license is the statutory employer of the unlicensed contractor. In addition, the hirer is the statutory employer of those workers employed by the unlicensed contractor. Accordingly, the presumption that the person who employs the unlicensed contractor is the employer is conclusive.” (*Cedillo, supra*, at 233; see *Rinaldi v. Workers' Comp. Appeals Bd.* (1987) 196 Cal.App.3d 571 [52 Cal.Comp.Cases 366]; *Meier, supra*; see also *Sanders Construction Co., Inc. v. Cerda* (2009) 175 Cal.App.4th 430, 434-435.)

Here, it is undisputed that Mr. Vasquez did not possess a contractor’s license, despite performing work for which a contractor’s license is required. (Victor Hernandez’s trial testimony, October 19, 2022, MOH/SOE, pp. 10, 12.) Similarly, it is undisputed that applicant was unlicensed. (Victor Hernandez’s trial testimony, October 19, 2022, MOH/SOE, p. 10.) Because

¹ The California Contractors State License Board’s licensing classifications can be found at https://www.cslb.ca.gov/about_us/library/licensing_classifications/

applicant was not an independent contractor at the time of his injury, nor does he fit into any of the categories of excluded employee, he is presumptively an employee. However, because Mr. Vasquez also did not possess a contractor’s license, we must look to the person who employed Mr. Vasquez as applicant’s statutory employer.

Turning to the common law standard for determining whether a worker is an independent contractor, rather than an employee, the case of greatest relevance here *Borello v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 349 [54 Cal.Comp.Cases 80]. In *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903 [83 Cal.Comp.Cases 817], the California Supreme Court set forth the ABC test. Although the Legislature has since expanded the reach of the ABC test articulated in *Dynamex*, those initiatives were adopted in 2019 and 2020, long after applicant’s injury, which occurred in 2016. (Stats. 2019, ch. 296, § 2 (AB 5), eff. January 1, 2020; Amended Stats. 2019, ch. 415, § 1 (AB 170), eff. January 1, 2020; Repealed Stats. 2020, ch. 38, § 1 (AB 2257), eff. September 4, 2020.) Because applicant’s injury occurred on September 14, 2016, the *Borello* standard is the relevant test for determining applicant’s employee status. However, to the extent that applicant raises *Borello/Dynamex* in support of their claim that applicant was not an employee, we find this argument unpersuasive and irrelevant based on the foregoing analysis under Labor Code section 2705.5.

Under *Borello*, the “principal test of an employment relationship is whether the person to whom service is rendered has the *right to control* the manner and means of accomplishing the result desired . . . [italics added.]” (*Borello, supra*, at 350.) “[T]he fact that a certain amount of freedom of action is inherent in the nature of the work does not change the character of the employment where the employer has general supervision and control over it. [citations]” (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 875 (*Toyota Motor Sales*). Right to control can be shown by considering whether a worker must obey instructions and whether the worker is subject to consequences, including discipline or termination, for failure to do so. (*Toyota Motor Sales, supra*, at 875; see *Borello, supra*, at 350; *Narayan v. EGL, Inc.* (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724].) 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. [italics added.]” (*Toyota Motor Sales, supra*, at 875.)

While the right to control is paramount in the *Borello* analysis, other factors to be taken into consideration are: whether the work is part of the principal’s regular business; the level of

skill required; whether the worker supplies the instrumentalities, tools, and place of work; the length of time for which the services are to be performed; the method of payment, whether by time or by the job; whether the person performing the services is engaged in a distinct occupation or business; whether the type of work involved is normally done without supervision; and whether the parties believe that they are creating the relationship of employer-employee. (*Borello, supra*, at 351, 355.)

Once a prima facie case of “employee” status is established, the burden shifts to the employer to affirmatively prove that the worker was “an independent contractor or otherwise excluded from protection under the [Workers’] Compensation Act.” (*Johnson v. Workmen’s Comp. Appeals Bd.* (1974) 41 Cal.App.3d 318, 321 [39 Cal.Comp.Cases 565]; Lab. Code, §§ 3202.5, 5705(a).) Here, the primary right to control factor must be determined in applicant’s favor, as Mr. Vasquez had the right to control the manner and means of accomplishing the desired result. Moreover, defendants have not provided evidence that applicant had control over his job duties. As discussed above, however, defendants cannot meet their burden to affirmatively prove that applicant was an independent contractor pursuant to analysis under Labor Code section 2705.5. (Lab. Code, §§ 2750.5, 3351, 3353, 3357.)

Turning to facts of the case before us, applicant claims that he was an employee of Hernandez Roofing, Bama Auto Center, Javier Romero, and/or Mike Mattes. Although not named as a defendant, our analysis would be incomplete if we do not also assess the role of Mr. Vasquez, for whom applicant performed work as a helper/laborer and who also paid applicant. With respect to the defendants other than Hernandez Roofing, the relationships are murky. Based on our review of the record, we have determined the following: applicant was injured at a building owned by Mike Mattes and/or the Mattes family trust (hereinafter “the Mattes building”). (Maggie Lopez’s September 17, 2018, deposition, Ex. W, pp. 10, 23, 40-41, 73-76.) As the relationships within the Mattes family and/or the structure of the ownership of the building is not before us we do not consider the matter, however for the sake of brevity we will refer the Mattes defendants collectively. Bama Auto Center was a leasee of the Mattes building.

Maggie Lopez was the controller at Bama Auto Center. (Maggie Lopez’s September 17, 2018, deposition, Ex. W, pp. 9-10, 41, 73-75.) She previously worked for Mattes and was facilitating a transition from Mattes Auto Sales to Bama Auto Center. (Maggie Lopez’s September 17, 2018, deposition, Ex. W, pp. 9-10, 23, 41, 54-56, 73-75.) Javier Romero performed work at

the building occasionally, at Mr. Mattes's request. (Mike Mattes trial testimony, February 1, 2023, MOH/SOE, pp. 3-5.) Mr. Romero testified that Mr. Mattes asked him to repair the roof at the Mattes building about three months prior to applicant's injury. (Javier Romero trial testimony, August 24, 2022, MOH/SOE, p. 3-8.) Also that Mr. Mattes provided the money for the repairs for the first job. (*Id.*) In his dealings with Mr. Vasquez, Mr. Romero paid only after the repairs were finish. He would pay with cash provided by Mr. Mattes. (Javier Romero trial testimony, August 24, 2022, MOH/SOE, p. 5.)

It is undisputed that applicant was injured in the afternoon of September 14, 2016. In the morning, Mr. Vasquez and applicant worked at a job for Hernandez Roofing in Long Beach. (Elvis Quintanilla's trial testimony, February 2, 2023, MOH/SOE, pp. 5-7; Victor Hernandez's trial testimony, October 19, 2022, MOH/SOE, p. 10; Antonio Vasquez's trial testimony, November 8, 2023, MOH/SOE, p. 3.) After the job for Hernandez Roofing concluded for the day, Mr. Vasquez and applicant went to lunch. (Antonio Vasquez's trial testimony, November 8, 2023, MOH/SOE, p. 4.) Mr. Vasquez received a call from Javier Romero regarding a roof leak at a building located on Garvey Avenue in El Monte, CA. (Antonio Vasquez's trial testimony, November 8, 2023, MOH/SOE, pp. 4-5.) After lunch, Mr. Vasquez, who was accompanied by applicant, went to the Mattes building to assess the roof. At some point, applicant began climbing a ladder and subsequently fell, injuring himself.

Hernandez Roofing:

Mr. Vasquez paid applicant to perform work as his helper/laborer on various jobsites, many which were for Hernandez Roofing. In the past, applicant also worked directly for Hernandez Roofing. On the morning of September 14, 2016, applicant had been working as Mr. Vasquez's helper on a job for Hernandez Roofing in Long Beach, CA. However, by the time applicant was injured, they had moved on to one Mr. Vasquez's side jobs – at the Mattes building. Based on the testimony, Hernandez Roofing did not perform work for the other defendants and did not perform work at the location where applicant was injured. At the time of his injury, applicant was assisting Mr. Vasquez at a side job, unrelated to Hernandez Roofing. Thus, although applicant was presumptively an employee of Hernandez Roofing, this relationship did not give rise to his claims here.

Bama Auto Center:

Maggie Lopez was the controller for Bama Auto Center and testified that Bama Auto Center was responsible for arranging repairs at the building it leased from Mattes. (Maggie Lopez's September 17, 2018, deposition, Ex. W, pp. 11-13, 40-47.) Ms. Lopez testified said she could not find a roofer to look at a leak on the roof, so she called Mr. Mattes to see if he knew anyone. (Maggie Lopez's September 17, 2018, deposition, Ex. W, pp. 40-42.) Mr. Mattes then asked his brother-in-law Mr. Romero if he had a referral for a roofer. (Mike Mattes trial testimony, February 1, 2023, MOH/SOE, p. 4.) Mr. Vasquez testified that he was at lunch with applicant and received a call asking if he could look at a leak on the roof at the Mattes building. (Antonio Vasquez's trial testimony, November 8, 2023, MOH/SOE, pp. 4-5.) After lunch, applicant rode with Mr. Vasquez to the Mattes building. It appears that applicant had assisted Mr. Vasquez with a prior roof repair at the site and was thus familiar with how to access the roof. In any event, applicant was accessing the roof via a ladder when he fell and sustained the injuries that are the basis for his claim.

It is undisputed that Bama was responsible for repairs, that Mr. Vasquez was called to look at a leak on the roof, that Mr. Vasquez paid applicant to help him with roofing jobs at the beginning of the day, that Mr. Vasquez brought applicant to the site with him, and that applicant was injured trying to access the roof. It is also undisputed that applicant and Mr. Vasquez are not licensed roofers and are both uninsured. Thus, to the extent that Bama Auto Center has insurance, as an "ultimate hirer" of an unlicensed and uninsured contractor, Bama Auto Center becomes liable for applicant's injuries. (*Cedillo, supra.*)

Mattes:

Although it is less clear-cut as to whether Mattes can be considered the "ultimate hirer," the record supports such a conclusion. Because Ms. Lopez held a similar job for both Mattes and Bama, and Mattes was transitioning staff and operations to Bama, it is unclear whether she was acting on behalf of Bama, Mattes, or both with respect to the roof repair. (Maggie Lopez's September 17, 2018, deposition, Ex. W, pp. 40-47.) Mr. Mattes asked his brother-in-law Mr. Romero if he had a referral for a roofer. (Javier Romero trial testimony, August 24, 2022, MOH/SOE, pp. 6-7; Mike Mattes trial testimony, February 1, 2023, MOH/SOE, p. 4.) Although Mr. Mattes denies asking Mr. Romero to repair the leak, Mr. Romero testified that Mr. Mattes told him there was a leak that needed to be repaired, gave him cash to take care of the leak, and that he (Romero) called Mr. Vasquez to look at the roof leak repair. (Javier Romero trial testimony, August 24, 2022, MOH/SOE, pp. 3-9.) Additionally, Mr. Romero hired Mr. Vasquez to perform

repairs for Mr. Mattes in the past. (Javier Romero trial testimony, August 24, 2022, MOH/SOE, pp. 3-9.) To the extent that Mr. Mattes gave Mr. Romero cash to fix the roof and Mr. Romero asked Mr. Vasquez to provide an estimate or to fix the roof, then the facts support the conclusion that Mattes was an “ultimate hirer” of an unlicensed and uninsured contractor. Thus, to the extent that Mattes has insurance, Mattes becomes liable for applicant’s injuries.

Mr. Romero:

Based on the discussion above, it appears that Mr. Romero was likely acting on behalf of Mattes and/or Bama Auto Center when he retained Mr. Vasquez to repair the roof. As there is no evidence that Mr. Romero hired Mr. Vasquez in any capacity other than on behalf of Mattes and/or Bama Auto Center, the record does not establish that he was an “ultimate hirer” or that he should carry workers’ compensation insurance.

Mr. Vasquez:

Applicant regularly performed work for Mr. Vasquez. Mr. Vasquez paid him to assist him on roofing jobs, including paying applicant \$100 to work as his helper on the day applicant was injured. (Antonio Vasquez’s trial testimony, November 8, 2023, MOH/SOE, p. 3-6; Elvis Quintanilla’s trial testimony, February 2, 2023, MOH/SOE, pp. 5-11.) Thus, applicant was presumptively and literally Mr. Vasquez’s employee. When Mr. Vasquez, and by extension applicant, responded to a request from Mr. Romero to look at a leak and presumably provide an estimate or repair the leak, they were rendering a service. (Antonio Vasquez’s trial testimony, November 8, 2023, MOH/SOE, pp. 4-5.)

In reaching the conclusion that there was no employment, the WCJ made several flawed assumptions, stating that “at the time of the inspection of the roof on the date of injury, Mr. Vasquez had not gotten the roofing job yet” and thus no service had been rendered. The WCJ also states that “Mr. Vasquez did not ask applicant to go up to the roof with him to check the roof.” However, a certain amount of freedom of action is inherent in the nature of the work and does not change the character of the employment where, as here, the employer has general supervision and control over it. (*Toyota Motor Sales, supra*, at 875).

Based on the record before us, tangled though it is, it is undisputed that applicant was rendering service for another at the time he was injured. Specifically, he was rendering a service by way of his role as Mr. Vasquez’s helper, and Mr. Vasquez was rendering a service inasmuch as he was called to the site to assess a leak on the roof.

It appears that the WCJ was persuaded by defendant's arguments about the lack of an employer-employee relationship, but "[t]he label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced. [Citations.] (*Johnson v. Berkofsky-Barret Prods.* (1989) 211 Cal.App.3d 1067, 1072.) In the Opinion on Decision, the WCJ noted that "[b]oth Mr. Hernandez and Mr. Vasquez testified that Mr. Vasquez was not an employee of Hernandez Enterprises Roofing on the date of injury contrary to applicant's testimony." (Opinion on Decision, pp. 2-3.) The WCJ did not find applicant credible whereas the WCJ found Mr. Vasquez to be highly credible. (Opinion on Decision, pp. 2-3.) We afford the WCJ's determination regarding credibility great weight. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Given Mr. Vasquez's testimony, the WCJ's finding that Mr. Vasquez was highly credible supports the conclusion that applicant was a employee. However, the WCJ's credibility determinations notwithstanding, testimony from applicant that he was an employee is not germane to the ultimate issues in this matter, particularly where, as here, the employee-employer relationship is determined pursuant to Labor Code sections 2750.5 and 3357.

Accordingly, we rescind the Findings and Order issued by the WCJ on January 8, 2024, and return the matter to the WCJ for further proceedings consistent with this decision and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued by the WCJ on January 8, 2024 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 2, 2024

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

**ELVIS QUINTANILLA
REYES & ASSOCIATES
STATE COMPENSATION INSURANCE FUND
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK
ROBERT ROBIN & ASSOCIATES
LAW OFFICES OF MICHAEL C. HEWITT
OFFICE OF THE DIRECTOR – LEGAL UNIT
ANTONIO VASQUEZ**

JB/cs

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