WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CAROLINA CERAS GARCIA, *Applicant*

vs.

KNIGHT-CALABASAS, LLC; INSURANCE COMPANY OF THE WEST, *Defendants*

Adjudication Number: ADJ20018307
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order (F&O) dated August 12, 2025, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant was not an employee of defendant, Knight-Calabasas, LLC, during the period from November 1, 2021, through September 13, 2024, and thus ordered a take nothing.

Applicant contends that pursuant to Labor Code[1] sections 2775(b), 3351, and 2750, she should be considered an employee of defendant during the period from November 1, 2021, through September 13, 2024, and that lack of direct payment from defendant "does not negate an employment relationship." (Petition for Reconsideration (Petition), p. 2.) Applicant further contends that she is not bound by the independent contractor agreement between defendant and JC Cleaning (Exhibit E) since she was not a party to the agreement. (*Ibid*.)

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition,

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

rescind the F&O, and return the matter to the trial level for further proceedings consistent with this opinion. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

FACTS

Applicant claims she was employed by defendant as a cleaner during the period from November 1, 2021 through September 13, 2024, and sustained an injury arising out of and in the course of employment (AOE/COE) to the head, neck, back, shoulders, arms, wrists, hands, hips, bilateral upper and lower extremities, psyche, and nervous system.

On February 4, 2025, defendant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on the issue of employment.

Thereafter, a hearing was set for March 12, 2025, and continued to an April 15, 2025 trial date. The parties stipulated that applicant was allegedly employed by defendant, Knight-Calabasas LLC, and the workers' compensation carrier was Insurance Company of the West. There is no information in the record as to whether JC Cleaning carried workers' compensation insurance coverage. The only issue listed for trial was whether applicant was an independent contractor or an employee of defendant. (Minutes of Hearing and Summary of Evidence (MOH/SOE), April 15, 2025, p. 2.)

Applicant submitted as evidence, a copy of a check stub showing payment to JC Cleaning Services for $6,000.00, dated June 26, 2024 (Exhibit 1), as well as text communications in Spanish (Exhibit 2).

As relevant here, defendant submitted as evidence, 1099C wage forms prepared by Knight-Calabasas, LLC DBA Calabasas Country Club for JC Cleaning for the 2022 and 2023 years (Exhibit C), as well as text communications in Spanish (Exhibit D). Defendant also submitted an independent contractor agreement (Exhibit E), which stated the following:

> This agreement is between JC Cleaning and Calabasas Country Club, effective January 1, 2021 and will go month to month. Either party may cancel at any time.
>
> Calabasas Country Club will be using the cleaning services of JC Cleaning every night for 4 hours and/or as needed to clean the areas specified by "The Club."
>
> Calabasas Country Club will pay JC Cleaning the sum of $4800.00 per month on the 5th of every month.

The matter was then continued to a further trial, on May 27, 2025, at which time the matter stood submitted.

On August 12, 2025, the WCJ issued an F&O which held, in relevant part, that applicant was not an employee of defendant Knight-Calabasas during the period November 1, 2021, through September 13, 2024, and thus ordered a take nothing. It is from this F&O that applicant seeks reconsideration.

DISCUSSION

I.

Preliminarily, former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected under the Events tab 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 12, 2025, and 60 days from the date of transmission is November 10, 2025. This decision was issued by or on November 10, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are

notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on September 12, 2025, and the case was transmitted to the Appeals Board on September 12, 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 12, 2025.

II.

Turning now to the merits of the Petition, it is well established that 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, 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. Dept. of Ind. Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].)

An “employer” is defined, in relevant part, as “every person including any public service corporation, which has any natural person in service.” (Lab. Code, § 3300(c).) 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.) Once the person rendering service establishes a prima facie case of “employee” status, the burden shifts on the hiring entity 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 hiring entity can demonstrate that the worker meets specific criteria to be considered an independent contractor, all workers are presumed to be employees.

The current evidentiary record suggests, at a minimum, that applicant was employed by JC Cleaning. The record, however, contains no evidence that applicant was an owner of JC Cleaning. The record also contains no evidence as to whether JC Cleaning had workers' compensation insurance coverage. Unless JC Cleaning was a sole proprietorship with no employees, it was required to carry workers' compensation insurance. (Bus. & Prof. Code, § 7125.2; *Wright v. Issak* (2007) 149 Cal.App.4th 1116 [72 Cal.Comp.Cases 438].) Additional discovery on these issues is necessary. As such, the issue of whether applicant was an employee or independent contractor for defendant, Knight-Calabasas, LLC, is premature.

III.

Preliminarily, however, we note that applicant established a prima facie case of employee status under sections 3351 and 3357. The burden thus shifted to defendant to affirmatively prove that applicant was an independent contractor.

In the case of *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. The ABC test allows a hiring entity to rebut the presumption that a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor. Pursuant to section 3351(i), beginning on July 1, 2020, a failure to rebut the presumption by satisfying all the factors outlined under section 2775 renders the worker an employee absent certain exceptions. (Lab. Code, § 3351(i).) Section 2775(b) states, in pertinent part, that:

> (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.

(Lab. Code, § 2775(b)(1).)

As outlined above, all elements of the ABC test must be met for a worker to be found an independent contractor. Further, it is well established that decisions by the Appeals Board must also be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "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].)

In the present case, with respect to section A, which pertains to defendant's control and discretion in the performance of applicant's work, applicant contends that defendant "directed what part of the club and when and how applicant was to clean[.]" (Petition, p. 3.) On page 3 of his Report, the WCJ argued that "[w]ith no direct supervision, no performance reviews, and communication consisting of roughly one or two messages per month, it cannot be argued that the Defendant exercised any substantial control over how [applicant] performed work."

In the case of *Dynamex,* the court remarked that "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; *G. Borello*, *supra*, 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.* at 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.)

In the instant matter, based upon our review of the evidentiary record, including text communications between applicant and defendant (Exhibit 2 & Exhibit D) and testimony by applicant as well as defense witness, Veronica Parong, it appears that there is substantial evidence of right to control by defendant. As demonstrated by the text messages and testimony, Mrs. Parong provided applicant with instructions on what areas to clean and requested additional work and ultimately made the decision to "part ways" with applicant. (MOH/SOE, May 27, 2025, p. 2:8-9.)

With respect to section B of the ABC test, which pertains to whether applicant performed work outside the usual course of the hiring entity's business, applicant contends that "she did not clean for anybody but Knight Calabasas." (Petition, p. 4.) Further, despite the WCJ's argument that defendant is "running a golf range and dinner club, not a cleaning service[,]" Mrs. Parong testified at trial that cleaning is part of the usual course of defendant's business. (F&O and OOD, p. 4.) She stated, in relevant part, that:

> "The Calabasas Country Club is a private membership club. Its primary business is golf with some amenities. The members dine and attend special events at the club like weddings or bar mitzvahs. There is a dining area and fitness center. Members expect the club to be clean and to enjoy a first class experience. Dirtiness would impact the reputation of the club. Cleanliness is a core part of the experience for members. The work done by the cleaning staff is part of the everyday business operations of the club."
>
> (MOH/SOE, May 27, 2025, p. 2:14-19.)

Notwithstanding the above, Mrs. Parong alleged that "the work performed by Ms. Garcia and her husband [were] not part of the core business operation." (*Ibid*.)

With respect to section C of the ABC test, whether applicant is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed, applicant alleges that she "was not part of JC Cleaning and did not clean for anybody but [defendant.]" (Petition, p. 4.) Applicant further contends that JC Cleaning was "established by the applicant's husband" and "applicant did not own any part of the company[.]" (MOH/SOE, April 15, 2025, p. 5:11-12.) Unfortunately, applicant's husband did not testify at trial

and the current record contains no evidence which establishes that applicant was an owner or part owner of JC Cleaning. As noted above, further discovery is necessary.

IV.

Lastly, on page 4 of the Petition, applicant raised the issue of a potential "general" and "special" employment relationship. As noted above, it is unclear whether applicant worked for JC Cleaning and whether JC Cleaning was required to have workers' compensation coverage. As such, the issue of whether there exists a general and special employment relationship is premature.

We note, however, that it is well established that California law recognizes a worker may have two employers for workers' compensation purposes. (*Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168, 174 [44 Cal.Comp.Cases 134].) The characteristics of dual employment include: an employee sent by one employer (the general employer) to perform work for another (the special employer); the work yields a benefit to each employer; and each employer has direction and control over the details of the work. (*Ibid.*; see also *Meloy v. Texas Co.* (1953) 121 Cal.App.2d 691 [18 Cal.Comp.Cases 313]; *Ridgeway v. Industrial Acc. Com.* (1955) 130 Cal.App.2d 841 [20 Cal.Comp.Cases 32]; *Doty v. Lacy* (1952) 114 Cal.App.2d 73 [17 Cal.Comp.Cases 316]; *Caso v. Nimrod Prods.* (2008) 163 Cal.App.4th 881.)

In the case of *Kowalski*, the Supreme Court explained the concept of "general" and "special" employment as follows:

> "Where an employer sends an employee to do work for another person, and both have the right to exercise certain powers of control over the employee, that employee may be held to have two employers -- his original or 'general' employer and a second, the 'special' employer." [Citation.] In *Industrial Ind. Exch. v. Ind. Acc. Com.* (1945) 26 Cal.2d 130, 134-135 [156 P.2d 926], this court stated that "an employee may at the same time be under a general and a special employer, and where, either by the terms of a contract or during the course of its performance, the employee of an independent contractor comes under the control and direction of the other party to the contract, a dual employment relation is held to exist. [Citations.]" If general and special employment exist, "the injured workman can look to both employers for [workers'] compensation benefits. [Citations.]"
>
> (*Id*. at pp. 174-175.)

Thus, when the general employer retains some right of control over the employee, a "dual employment" arises, with the result that the general employer remains concurrently and simultaneously, jointly and severally liable with the special employer for any injuries to the

employee and an award may be made against both employers, jointly, or jointly and severally, for the full amount of compensation benefits. (*Ibid*.; See also *Caso*, *supra*, at pp. 893-894; *Marsh v. Tilley Steel Co.* (1980) 26 Cal.3d 486, 494-495 [45 Cal.Comp.Cases 193].)

Although the *Kowalski* case indicates that control is the primary criterion in the determination of the existence of a special employment relationship, the following other relevant factors have also been enumerated: (1) whether the borrowing employer's control over the employee and the work he is performing extends beyond mere suggestion of details or cooperation; (2) whether the employee is performing the special employer's work; (3) whether there was an agreement, understanding, or meeting of the minds between the original and special employer; (4) whether the employee acquiesced in the new work situation; (5) whether the original employer terminated his relationship with the employee; (6) whether the special employer furnished the tools and place for performance; (7) whether the new employment was over a considerable length of time; (8) whether the borrowing employer had the right to fire the employee and (9) whether the borrowing employer had the obligation to pay the employee. (*Riley v. Southwest Marine, Inc.* (1988) 203 Cal.App.3d 1242, 1250.) A special employment relationship may be negated, however, by evidence that "[t]he employee [was] (1) not paid by and [could not] be discharged by the borrower, (2) a skilled worker with substantial control over operational details, (3) not engaged in the borrower's usual business, (4) employed for only a brief period of time, and (5) using tools and equipment furnished by the lending employer." (*Marsh*, *supra*, at p. 492.)

Given that the record is lacking on the issues of whether applicant was an employee of JC Cleaning and whether JC Cleaning was required to have workers' compensation insurance under section 7125.2 of the Business and Professions Code and in fact carried workers' compensation coverage, we believe that a determination on the issues of whether applicant is an independent contractor and whether there exists a general and special employment relationship is premature. Accordingly, we grant the Petition, rescind the F&O, and return the matter to the trial level for further proceedings consistent with this opinion. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the August 12, 2025 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 12, 2025 Findings and Order is **RESCINDED** and the matter **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, 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.

CAROLINA CERAS GARCIA
LAW OFFICES OF TELLERIA, TELLERIA & LEVY, LLP
ALBERT AND MACKENZIE

RL/*cs*

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