WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

OLIVIA RAMIREZ, *Applicant*

vs.

ISIDRO A. MEJIA, an individual, and ZINDER JANITORIAL CO.; UNINSURED EMPLOYERS BENEFITS TRUST FUND; BOURBON PUB/PARADIES LAGARDERE; SENTRY INSURANCE, *Defendants*

Adjudication Number: ADJ13090134
San Francisco District Office

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION

Defendant Paradies Lagardere ("Paradies") seeks reconsideration of the Findings of Fact issued on May 15, 2025, wherein the workers' compensation administrative law judge ("WCJ") found in relevant part that Paradies was a joint employer of applicant, along with Isidro Mejia ("Mejia") and Zinder Janitorial Company ("Zinder"), uninsured employers of applicant. Paradies contends the WCJ erred in finding it was a joint employer, instead contending that the evidence shows that only Mejia and Zinder employed applicant. Alternatively, the Petition also contests the finding of injury arising out of and in the course of employment ("AOE/COE").

We received an Answer from the Uninsured Employers Benefits Trust Fund ("UEBTF"). We also received a Report and Recommendation on Petition for Reconsideration from the WCJ, recommending that reconsideration be denied.

We have reviewed the Petition, the Answer and the Report, as well as the record. For the reasons discussed below, we will grant reconsideration. Our order granting the Petition is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

Former Labor Code 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, Labor Code 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 Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on June 16, 2025, and 60 days from the date of transmission is August 15, 2025. This decision is issued by or on August 15, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on June 16, 2025, and the case was transmitted to the Appeals Board on June 16, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 16, 2025.

II.

Applicant filed an Application for Adjudication, later amended, alleging an injury to her knee and ankle sustained on November 17, 2019. Applicant initially listed Zinder as her employer, then amended the application to list her employer as "Isidro Mejia, individually and dba as Zinder Janitorial Co." UEBTF was added as a defendant based on the fact that Mejia and Zinder lacked workers' compensation insurance. UEBTF filed a petition seeking to join Paradies as a joint employer of applicant, and Paradies was subsequently joined to the claim.

The matter went to trial over multiple dates, beginning on August 23, 2023. The parties stipulated to employment by Zinder and Mejia. (Minutes of Hearing / Summary of Evidence ("MOH/SOE"), 8/23/2023, at p. 2.) The issues were listed as: (1) employment; (2) injury AOE/COE; and (3) parts of body injured, with all other issues reserved. (*Ibid.*) Exhibits were admitted without objection. (*Id.* at pp. 5-8.)

Applicant began working for Mejia in November 2019. (*Id.* at p. 9.) She did janitorial work, mostly but not exclusively at the Bourbon Pub, a restaurant operated by Paradies – sweeping, mopping, general cleaning. (*Ibid.*) The cleaning supplies were kept at the restaurant; she thought they were owned by Mejia. (*Id.* at pp. 9–10.) She was paid a monthly salary by Mejia, working both in the restaurant and in other areas. (*Ibid*.) She did not clean in the restaurant while it was open to the public. (*Id.* at p. 10.)

Applicant generally worked alone, or with Mejia. (*Id.* at pp. 9–10.) Nobody from the restaurant was present when she was cleaning, and nobody from the restaurant ever checked her work or told her what to do. (*Id.* at pp. 10–11.) She did not fill out timesheets. (*Ibid.*) If she needed something, she would call Mejia or Zavier, his son. (*Id.* at p. 11.)

Mejia testified that he was the owner of Zinder, which provides janitorial services. (*Id.* at p. 11.) He entered into a contract with Paradies in August 2019. (*Id.* at p. 12.) Jesus Trevino, the restaurant manager, gave him the cleaning contract. (*Ibid.*) He would communicate with Trevino by text message; Trevino also communicated with his son Zavier. (*Ibid.*) There were occasional

complaints about the work, about once a month. (*Ibid.*) Trevino would sometimes send videos. (*Ibid.*)

Mejia was paid monthly to clean the restaurant; he understood he needed to make sure the restaurant was clean to get paid. (*Ibid.*) He was never asked to do something outside of the contract agreement. (*Ibid.*) Paradies provided the cleaning supplies. (*Ibid.*)

Mejia acknowledged the clause in the contract requiring proof of workers' compensation coverage, but testified that he was never asked to provide such proof. (*Id.* at pp. 12–13.) The contract was written by Paradies; Mejia is not able to read much English or prepare English documents. (*Ibid.*)

Mejia believed that he operated with all necessary business licenses and permits, and paid all appropriate business taxes. (MOH/SOE, 3/6/2024, at p. 2.) Working at SFO required TSA clearance, which he helped get for applicant. (*Id.* at p. 3.)

At the time Mejia was contracting with Paradies, he was also contracting with CVS and American Express. (*Ibid.*) CVS provided the supplies for cleaning because they wanted to use organic products, whereas he had chemical ones. (*Ibid.*)

Mejia's understanding was that he only needed to provide the services to Paradies indicated in the contract. (*Ibid.*) However, if someone from Paradies told him to provide additional services, he felt like he would have to do so, because they were like his bosses, and he was afraid they would cancel the contract if he didn't. (*Ibid.*)

Besides applicant, Mejia and his brother worked as cleaners at Paradies; it would be applicant and either himself or his brother, depending on availability. (*Id.* at p. 4.) Nobody from Paradies supervised them or monitored how many hours they worked. (*Ibid.*)

Applicant was paid a flat rate; Mejia didn't remember how much or how often she was paid. (*Ibid.*) Applicant also worked at another business about three minutes from the restaurant, where she would work for about 30 minutes each day. (*Ibid.*) Applicant would talk to Mejia if she needed a day off. (*Ibid.*)

If Paradies had issues with their services, they would talk to Mejia, who would speak to applicant if needed. (*Ibid.*) Paradies didn't tell him how many people to use as cleaners, how much to pay his employees, require him to turn in timecards, or get authority for meal or bathroom breaks. (*Ibid.*) He could finish the job however he felt like, within reason. (*Ibid.*)

Paradies required Mejia to use certain cleaning products; he didn't remember who exactly told him to. (*Ibid.*) Paradies would bring in more products when they were about to run out. (*Ibid.*) Most of his clients provided their own cleaning products. (*Ibid.*) Mejia has a business license, but not a general contractor's license. (*Ibid.*)

Trevino testified that he was general manager at the restaurant at the time of applicant's injury. (MOH/SOE, 12/19/2024, at p. 3.) Paradies does not provide janitorial services as a core element of its business and Trevino has always contracted for outside janitorial services while working for Paradies. (*Ibid.*)

The contract with Zinder was for cleaning services; he contracted with Zinder to provide a service, not to provide him with staff to direct. (*Ibid.*) Zinder was free to contract with other businesses. (*Ibid.*) The negotiations were with Zavier Mejia; he had never seen Isidro until the trial. (*Ibid.*) He was looking for results, not how the results were accomplished. (*Ibid.*) He did not know who did the cleaning, or how many people did the cleaning; all he cared about was that the work was completed. (*Id.* at p. 4.)

All janitorial services were done while the restaurant was closed and after all Paradies employees had left. (*Ibid.*) He did not monitor Zinder employees during their work, and had no knowledge of when they were coming and going or if they were taking days off. (*Ibid.*)

Trevino never met applicant and could not contact her directly; he was not aware of who she was until he was informed of the injury. (*Ibid.*) All payments were made to Zinder and he didn't know how applicant was paid. (*Ibid.*)

There are no janitors on the Paradies staff and the Paradies union agreement prohibits other employees from doing janitorial services. (*Id.* at pp. 4–5.) Paradies also contracts with other companies for other services. (*Id.* at p. 5.)

Employees of Zinder would need a badge to work in the secured area of the airport; Trevino signed the letter to support the badging process, but he sponsored Zinder as a company, not individual employees. (*Ibid.*) He did not pay for the badges, but he may have made an appointment to have Zinder's employees get the badges. (*Ibid.*)

Trevino didn't recall whether he was frequently unhappy with Zinder's services, but he would text Zavier about any issues that did come up. (*Id.* at p. 6.) He believed he once asked Zinder to use cold water to wash the floor, because he felt it did a better job. (*Ibid.*) He provided

cleaning supplies, but occasionally Zinder would use a power washer, which Trevino assumed they brought themselves as he did not provide it. (*Ibid.*)

The closing staff at the restaurant would spot sweep, break down the line, clean equipment and take care of their own stations, but they would not clean the floors. (*Id.* at p. 8.) Two other companies would do preventative maintenance; one once a quarter to clean the hoods, and then a plumber who would come in as needed. (*Ibid.)*

Zavier Mejia testified that his father relies on him to do anything in English. (MOH/SOE, 1/23/25, at p. 3.) He was involved in the negotiations about setting up the Paradies contract, but he does not make any decisions without his father's approval. (*Ibid.*) He and his father together set up the contract with Trevino. (*Ibid.*) Paradies' corporate office asked for insurance, but not a specific type of insurance. (*Id.* at p. 4.) He didn't consult a lawyer over the contract, and he does not know what an LLC is. (*Ibid.*) He believes Zinder is a sole proprietorship. (*Ibid.*) He did not tell Trevino that they were forming a new company for the contract, which was their first. (*Ibid.*) He provided a certificate of liability insurance; the workers' compensation box was not checked on the insurance form. (*Ibid.*) Paradies told him they were good to go once the insurance certificate had been sent, and they started cleaning about a month later, after a delay due to the badging requirement. (*Ibid.*)

Finally, Isidro Mejia was called to provide further testimony. Mejia stated that he never brought a power washer to the restaurant. (*Id.* at p. 6.) Zinder is a sole proprietorship, "doing business as" for himself. (*Ibid.*) Mejia never spoke with Trevino; his son would tell him about anything regarding additional services or complaints. (*Id.* at p. 7.) This happened several times, and he never charged Paradies more for providing these services. (*Ibid.*) He was concerned that if he had tried to charge, he might have lost the contract. (*Ibid.*) Zavier did tell him that Trevino had asked that the floors be cleaned with cold water. (*Ibid.*)

The Findings of Fact issued on May 15, 2025, finding, in relevant part, that applicant was a joint employee of Paradies. (Finding of Fact, at p. 1, ¶ 2.) The concurrently issued Opinion on Decision explains that the issue of joint employment was relevant because Zinder were uninsured for workers' compensation coverage at the time of the injury. (Opinion on Decision, at p. 26.) Focusing on the extent to which Paradies had the right to control applicant's behavior, the WCJ found that although Paradies had no direct communication with applicant, it exerted control over her through Zinder. (*Id.* at pp. 27–28.) The WCJ also found that the cleaning services provided

by Zinder were not distinct and outside the scope of Paradies' normal business of running a restaurant. (*Id.* at p. 29.) Although the WCJ acknowledged that some factors militated against a finding of joint employment, on balance, the WCJ believed that the evidence favored a finding of joint employment. (*Id.* at p. 30.) The WCJ also rejected Paradies' argument that the business-to-business exception found in Labor Code section 2776 applied to the facts of the claim. (*Id.* at pp. 30–31.)

This Petition for Reconsideration followed.

III.

In our initial review, we note that the parties do not dispute that applicant was employed by Zinder, nor did any party other than Paradies contest the WCJ's finding of injury AOE/COE to applicant's right knee and ankle. We also note that the WCJ relied upon a wide range of legal analysis to support his conclusions, including the *Borello* factors as enumerated in *Borello v. Department of Industrial Relations (Borello)* (1989) 48 Cal.3d 341, 349, the *Dynamex* test of *Dynamex Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903 as codified in Labor Code sections 2775 and 2776, and the principle of joint employment, as outlined in *National Automobile and Casualty Insurance Co. v. IAC* (1947) 80 Cal. App. 2d 769.

IV.

California law broadly defines the presumption of employment as follows: "Any 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.) Labor Code section 3351 further defines employee, in pertinent part, as follows:

> "Employee" means 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, and includes: . . .
> (i) Beginning on July 1, 2020, any individual who is an employee pursuant to Section 2775. This subdivision shall not apply retroactively.

(Lab. Code, § 3351.) Labor Code section 3353 defines an "independent contractor" as "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.)

Traditionally, the determination of whether an injured worker is an employee or independent contractor is determined by consideration of the *Borello* factors, as enumerated in *Borello v. Department of Industrial Relations (Borello)* (1989) 48 Cal.3d 341, 349 [54 Cal.Comp.Cases 80].

Under *Borello*, the "principal test" of an employment relationship is "[w]hether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." (*Id.* at p. 350.) What matters is whether the hirer "retains all *necessary* control" over its operations. (*Id.* at p. 357, italics in original.) 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 and employee. (*Borello, supra,* 48 Cal.3d at pp. 351, 355.)

Labor Code Section 2775, subdivision (b) states in pertinent part:

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

(Lab. Code, § 2775(b)(1).) Labor Code section 2776, meanwhile, provides an exception for business-to-business contracting, mandating that if certain conditions are met, the test for employment reverts to the *Borello* factors mentioned above. (Lab. Code, § 2776.)

California law also recognizes the possibility that 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] *(Kowalski)*.); *Caso v. Nimrod Productions, Inc.* (2008) 163 Cal.App.4th 881; *Riley v. Southwest Marine* (1988) 203 Cal. App. 3d 1242, 1247–1248.) Joint employment exists where services are performed for the mutual benefit of two or more employers. (*National Automobile and Casualty Insurance Co. v. IAC* (1947) 80 Cal. App. 2d 769.)

Here, the WCJ appears to have relied in part upon each of these different legal standards in reaching his decision.[1] Given the complex relationship between these various tests, and given the admission of the parties that Zinder employed applicant, we believe great care must be taken to properly unravel the proper legal standard to govern this claim, and to apply it to the facts presented here.

V.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal. 724, 729) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal. 2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

[1] Preliminarily, we note that the date of injury in this matter was November 17, 2019. Labor Code sections 2775 and 2776, meanwhile, have an effective date of July 1, 2020 for purposes of determining whether an applicant was an employee at the time of their injury. (Labor Code, § 3351(i).) Thus, Labor Code sections 2775 and 2776 do not apply to this claim of injury.

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd.* (1967) 67 Cal.2d 483, 491; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra,* at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> "No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …"

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

VI.

Accordingly, we will grant the Petition, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the May 15, 2025 Findings of Fact is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petitions and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA
August 14, 2025

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

OLIVIA RAMIREZ
LAW OFFICES OF DAVID L. HART
OFFICE OF THE DIRECTOR- LEGAL UNIT (OAKLAND)
LAW OFFICES OF CHARLES J. SMITH
BOBER PETERSON & KOBY

AW/*kl*

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