WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CIEL SANTOS, *Applicant*

vs.

AVELLINO LABS US and PROPERTY AND CASUALTY INSURANCE COMPANY OF HARTFORD, administered by THE HARTFORD; GAVA TALENT SOLUTIONS LLC AND EVEREST DENALI INSURANCE COMPANY, administered by GALLAGHER BASSETT SERVICES, *Defendants*

Adjudication Number: ADJ19191631
San Francisco District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant employer, Avellino Labs USA (Avellino), and its insurer, Property and Casualty Insurance Company of Hartford (Hartford), seek reconsideration of the Findings of Fact and Award (F&A) issued on December 22, 2025, by the workers' compensation administrative law judge (WCJ). As relevant herein, the WCJ found that at the time of the injury, applicant was employed by Avellino and Avellino's workers' compensation carrier was Hartford.

Avellino contends that the WCJ erred by ruling on the issue of employment, including failing to address the employment status of Gava Talent Solutions LLC (Gava), insured by Everest Denali Insurance Company (Everest).

Applicant filed an opposition to Avellino's Petition for Reconsideration, which we treat as an Answer. We also received an Answer from defendant Gava.

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

We have considered the allegations of the Petition for Reconsideration and the Answers and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, for the reasons stated in the WCJ's Report which we adopt and incorporate as quoted below, and

for the reasons discussed below, we will grant the Petition and, as our Decision after Reconsideration, we will affirm the F&A, except that we will amend the F&A to clarify Finding 1 so that it includes the language that applicant's injury "arose out of and in the course of employment" as set forth under Labor Code section 3600 and to add Finding 4 that explicitly defers the issue of whether defendant Gava was applicant's employer at the time of injury.

FACTUAL BACKGROUND

On April 29, 2024, applicant filed an Application for Adjudication (Application) alleging injury to the head, neck, back, and knee on August 19, 2021, while employed as an executive assistant. In the Application, applicant named Avellino as her employer and Hartford as their insurer.

In a Petition for Joinder on December 4, 2024, Avellino claimed Gava was applicant's general employer on the date of the alleged injury and their insurer was Everest. Avellino also sought to be dismissed as a defendant from the case. Avellino's Petition for Joinder was granted, and Gava and Everest were joined as party defendants by an Order Joining Party Defendant on December 23, 2024. Avellino was not dismissed as a party defendant.

On June 11, 2025, Gava filed a Petition for Dismissal alleging a lack of employment relationship. Following a mandatory settlement conference on September 22, 2025, the matter was scheduled for trial on December 8, 2025.

On December 3, 2025, Avellino filed a petition to continue the trial, which the WCJ denied on December 4, 2025.

On December 8, 2025, the parties stipulated in pertinent part that: "At the time of injury, the alleged employer's workers' compensation carriers were Property and Casualty Insurance Company of Hartford for Avellino Labs USA and Everest Denali Insurance Company for Gava Talent Solutions LLC." The issues were stated as follows:

1. Employment by Avellino Labs USA.
2. Injury arising out of and in the course of employment.
3. Avellino Labs USA contends that Gava Talent Solutions LLC was the general employer at the time of the alleged injury.
4. The general special employment relationship issues are deferred.
5. All other issues, including penalties, are deferred.

The WCJ's Report summarized the following additional facts:

1. Procedural background.

This is a denied case. Defendants paid no indemnity and provided no medical benefits. Applicant alleged that she worked for Avellino Labs, USA and that she sustained an injury while performing an errand for her supervisor. Avellino alleged that it was the special employer and defendant Gava Talent Solutions LLC was the [general] employer.

On December 8, 2025, the case proceeded to trial on the issues of whether applicant was employed by Avellino Labs, USA and whether applicant sustained an injury within the course and scope of that employment. I deferred the general/special employment issue.

On December 22, 2025 I issued a Findings of Fact and Award (F&A). I found that Avellino Labs, USA employed applicant and that applicant sustained an injury AOE/COE. On January 9, 2026, defendants Avellino Labs, USA and its insurer Hartford filed a timely verified petition for reconsideration from the F&A. Defendants do not contest my finding of AOE/COE. Applicant filed an Opposition to the petition on January 14, 2026.

2. Evidence at trial and decision.

Applicant testified and the parties submitted documentary evidence at trial. I summarized the evidence in detail in my December 22, 2025 Opinion on decision. Applicant testified that she believed she was employed by Avellino Labs, USA. She worked at Avellino's office as the right-hand executive assistant to the CEO James Mazzo. She worked under the direction of Mazzo and another Avellino employee Peggy Bridgford. Applicant performed services for Avellino using Avellino's equipment. Applicant acknowledged that she received payments from defendant Gava Talent Solutions. Applicant testified that she got fired by Avellino Labs, USA, after reporting her work injury.

Defendants called no witnesses. On the issue of employment, defendants offered the claim denials (Exhibits A and B), applicant's W-4 from Avellino Labs (Exhibit C), and a Gava Talent Solutions Staffing Services Agreement (Exhibit E). Avellino and Gava Talent Solutions both denied the claim on the basis that applicant was not an employee. The staffing services agreement was a general/special employment agreement between Avellino, USA and Gava Talent Solutions. The agreement applies to services described in attached agreements. There is one attachment which refers to Accessioner and Material Handler Roles. Exhibit D states that Gava Talent Solutions is solely responsible for terminating the assigned employees.

(Report, January 21, 2026, p. 1, ¶ 2-p. 2, ¶ 4.)

DISCUSSION

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 January 21, 2026 and 60 days from the date of transmission is Sunday, March 22, 2026. The next business day that is 60 days from the date of transmission is Monday, March 23, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on March 23, 2026, 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

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

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

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 January 21, 2026, and the case was transmitted to the Appeals Board on January 21, 2026. 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 January 21, 2026.

II.

In this case, the crux of Avellino's argument is that the WCJ should not have found that applicant was Avellino's employee. Upon review of the record, for the reasons stated in the Report and for the reasons discussed below, we conclude that the WCJ did not err in finding Avellino was applicant's employer at the time of injury.

Preliminarily we observe that Avellino's claim that applicant's records from the Social Security Administration would have been critical evidence to the determination of employment is at best misguided, and borders on frivolous. The relevant issue at trial was whether applicant was an employee of Avellino, and the relevant inquiry was whether applicant rendered a service to Avellino. The evidence presented at trial was sufficient to support finding that Avellino was applicant's employer. As discussed subsequently, the standard for rebutting the presumption that a worker is an employee is based on the actual conduct between the worker and the alleged employer, and whether the alleged employer had the right to control the worker.

It is not at all clear that the tax records sought by Avellino would be admissible as evidence based on applicant's right to financial privacy, but to the extent that the records might be relevant to proceedings between Avellino and Gava as they decide liability between them, they are not relevant to the issue of whether applicant is an employee of Avellino.

First, Avellino claims the WCJ exceeded his authority by deciding on the issue of employment relationship despite agreeing to defer the issue to a later trial date. However, the issue

of whether Avellino employed applicant was specifically set for trial, and there is no evidence that Avellino objected to proceeding on that issue. Further, as noted by the WCJ in the Report:

> Defendant Hartford filed a pre-trial brief. In the brief, it stated, "if this Court is inclined to move forward with trial, Defendant Avellino Labs would request that only the threshold issue of employment move forward." (Defendants' December 4, 2025 Pre-Trial Brief at page 8 lines 23-24). Defendants' statement in their petition that I explicitly agreed to defer the employment issue is erroneous. The record reflects that employment by Avellino was listed as an issue for trial and that Defendants explicitly agreed.

(Report, January 21, 2026, p. 3, ¶ 4-p. 4, ¶ 1.)

Accordingly, the record supports finding the issue of applicant's employment by Avellino at the time of the alleged injury was properly before the WCJ, and there is no evidence to support Avellino's assertion that the WCJ agreed to defer the issue.

Second, Avellino claims they were denied due process because the WCJ ruled on the employment relationship issue without allowing Avellino to present material evidence. Avellino claims that the WCJ should not have decided the issue of whether it employed applicant because it was waiting for evidence which would demonstrate the relationship between it and Gava. Since the WCJ did not decide the issue of the relationship between Avellino and Gava, we cannot see how Avellino can demonstrate that it is prejudiced.

Parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "one of 'the rudiments of fair play' assured to every litigant...." (*Id*. at p. 158.) As stated by the Supreme Court of California in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission...must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id*. at p. 577.) A fair hearing includes, but is not limited to, the opportunity to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

As addressed by the WCJ in the Report:

> 2. <u>*Defendants were not denied due process.*</u>
>
> Applicant filed an application for adjudication on April 29, 2024 alleging an injury while employed by Avellino Labs, USA insured by Hartford. These defendants

> filed an answer on June 24, 2024. Hartford denied the claim on July 25, 2024. Defendants had ample time to conduct discovery and obtain records. There was no denial of due process.
>
> Defendants seek applicant's social security records, presumably to show general employment by Gava Talent Solutions. At trial, applicant admitted getting paid by Gava. Whether or not Gava Talent Solutions is the general employer, applicant has a right to receive workers compensation benefits from either the general or special employer.

(Report, January 21, 2026, p. 4, ¶ 5-p. 5, ¶ 1.)

Third, Avellino argues the WCJ made findings regarding Avellino's status as employer without the benefit of "critical" documentary evidence. Again, we disagree.

California has a no-fault workers' compensation system. With few exceptions, all California employers are liable for the compensation provided by the system to employees injured or disabled in the course of and arising out of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no-fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms of 'service to an employer' and by including a general presumption that any person 'in service to another' is a covered 'employee.'" (Lab. Code, §§ 3351, 5705(a); *S. G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].)

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 to the hirer to affirmatively prove that the worker is an independent contractor. (*Cristler v. Express Messenger Sys., Inc.* (2009) 171 Cal.App.4th 72, 84 [74 Cal.Comp.Cases 167]; *Narayan v. EGL, Inc*. (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724].) An "independent contractor" is defined 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.) Consequently, unless the hirer can demonstrate that the worker meets specific criteria to be

considered an independent contractor, or one is excluded under Labor Code section 3352, all workers are presumed to be employees.

California law 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]); *Caso v. Nimrod Productions, Inc.* (2008) 163 Cal.App.4th 881; *Riley v. Southwest Marine* (1988) 203 Cal.App.3d 1242, 1247–1248.) In *Kowalski*, the California Supreme Court described the concept of "general" and "special" employment as follows:

> The possibility of dual employment is well recognized in the case law. "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.]"

(*Kowalski*, *supra*, at pp. 174-175.)

In this case, the evidence supports finding Avellino was applicant's employer. No determination was made that Avellino was applicant's only employer. As explained by the WCJ in the Report:

> Applicant's unrebutted credible testimony established that she worked for Avellino Labs USA. Avellino Labs USA was her employer at the time of injury. Defendants failed to rebut the Labor Code section 3357 presumption of employment. Defendants presented no evidence or witnesses on the issue. Whether or not applicant had a general and special employer at the time of injury is deferred. Applicant acknowledged being paid by Gava Talent Solutions.
>
> There is a dispute between Avellino Labs USA and Gava Talent Solutions about whether or not Gava Talent Solutions was the general employer. Applicant should not have to wait until that dispute is resolved to obtain workers compensation benefits. I chose to move forward to trial because applicant was not receiving benefits.

(Report, January 21, 2026, p. 4, ¶ 2-3.)

Specifically, applicant testified she believed she worked for Avellino; she was the right-hand assistant for Avellino's CEO, James Mazzo; she was injured after Mr. Mazzo instructed her to take a package to FedEx; and she was terminated by email from Mr. Mazzo. (MOH/SOE, December 8, 2025, p. 4, lines 32-38, 46-47.) Applicant also testified all the work she did was specific to Avellino and she worked on a computer and other equipment supplied by Avellino. (MOH/SOE, December 8, 2025, p. 6, lines 1-6.) Lastly, applicant's W-4 dated August 3, 2021 lists Avellino as her employer. (Def. Exh. C.) Avellino did not rebut applicant's testimony. Applicant was clearly in the service of Avellino, and Avellino failed to affirmatively prove applicant was not its employee. Thus, whether Gava is also found to be applicant's employer, Avellino was an employer of applicant and applicant is entitled to seek workers' compensation benefits from Avellino.

The WCJ found applicant's testimony was credible. (Report, January 21, 2026, p. 4, ¶ 2.) We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Moreover, following our independent review of the record, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations (*Id*.)

Lastly, Avellino claims the WCJ's failure to address Gava's employment status created an incomplete determination of the employment relationship issue. We disagree on the grounds that finding Avellino applicant's employer at trial would not preclude also finding Gava applicant's employer at a later date. (*See*, *Kowalski*, *supra*, at p. 174.) Avellino claims general and special employment exists, and, as such, applicant may seek workers' compensation benefits from either or both employers. (*Kowalski*, *supra*, at pp. 174-175.)

The MOH/SOE clearly state that (a) Avellino contends that Gava was the general employer at the time of injury and (b) that the general special employment relationship issues were deferred. Typically, where an F&A is silent on an issue, the issue remains undecided. Yet, we recognize that given the facts of this case where there are multiple possible employers, failing to explicitly defer the issue of applicant's employment by Gava in the F&A could create the impression that Avellino is applicant's sole employer. Accordingly, we will grant defendant Avellino's Petition for Reconsideration, and affirm the F&A, except that we amend it to reflect that all other issues are deferred, including determination of whether Gava was applicant's employer at the time of injury.

Finally, we amend Finding 1 of the F&A to accurately reflect that applicant sustained injury "arising out of and occurring in the course of employment" as set forth under Labor Code section 3600. The phrase "within the course and *scope* of employment" is not the term of art as defined by Labor Code section 3600 and may create confusion.

For the foregoing reasons,

IT IS ORDERED that defendant Avellino's Petition for Reconsideration of the Findings of Fact and Award issued on December 22, 2025 by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 22, 2025 Findings of Fact and Award is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Ciel Santos, [. . .], while employed on August 19, 2021, as an executive assistant, Occupational Group Number 112, at Menlo Park, California, by Avellino Labs USA, sustained injury arising out of and occurring in the course of employment to her right knee, cervical spine, and low back.

* * *

4. All other issues are deferred, including determination of whether defendant, Gava Talent Solutions LLC, insured by Everest Denali Insurance Company, was an employer of applicant at the time of injury.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 19, 2026

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

CIEL SANTOS
LAW OFFICE OF DAVID L. HART
LLARENA, MURDOCK, LOPEZ AND AZIZAD, APC
McCLELLAN & CORREN, A LAW CORPORATION

DC/*cs*

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