WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

OMAR LUNA, *Applicant*

vs.

LONG BEACH TOWING AND STORAGE, INC., uninsured; BABAK HONARKAR, individually and as a substantial shareholder of LONG BEACH TOWING AND STORAGE, INC.; BARRETT BUSINESS SERVICES, INC., permissibly self-insured, administered by CORVEL CORPORATION; UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants*

Adjudication Number: ADJ8887862
Marina Del Rey District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant, defendants Long Beach Towing and Storage, Inc. (Long Beach) and substantial shareholder, Babak Honarkar, and the Director of Industrial Relations as administrator for Uninsured Employers Benefits Trust Fund (UEBTF) have each sought reconsideration of the Findings and Order issued on December 30, 2025. The workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant, while employed as a tow truck driver, sustained an injury arising out of and in the course of employment (AOE/COE) to the cervical spine and lumbar spine on March 25, 2013; that applicant was employed by Long Beach; that Barrett Business Services, Inc. (BBSI) was not applicant's employer; that Long Beach violated Labor Code[1] sections 3550 and 3551, and that applicant is entitled to treatment by his personal physician.

Applicant contends that the WCJ erred by finding that BBSI was not an employer because the evidence shows that BBSI was a joint employer and did not overcome the presumption of employment outlined in section 3357.

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

Applicant argues that when BBSI advised applicant that they were a "co-employer" and litigated the claim initially, they were estopped from then asserting that they were not an employer. They also assert that BBSI was a joint employer based on a general/special employment relationship.

Long Beach also alleges that the WCJ erred by finding that BBSI was not an employer.

Finally, UEBTF contends that BBSI is a joint employer with Long Beach as BBSI served as the general employer through a typical Professional Employer Organization (PEO) contract with Long Beach as the special employer.

BBSI filed an Answer to the Petitions for Reconsideration alleging that applicant did not fall into an employment contract between Long Beach and BBSI because they either never paid applicant pursuant to the contract between Long Beach and BBSI or because he was never onboarded with BBSI.

The WCJ issued three Reports and Recommendations (Reports) recommending granting the Petitions and finding that BBSI was a general employer of applicant and therefore jointly and severally liable.

We have considered the allegations of all three Petitions for Reconsideration, the Answer, and the contents of all three Reports of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration of all three petitions, rescind the December 30, 2025 Findings and substitute new Findings that finds that applicant was an employee of both Long Beach and BBSI, and defer all other issues.

FACTS

Applicant alleged an injury while employed on March 25, 2013 as a tow truck driver. He claims to have sustained injury to the cervical spine and lumbar spine. The Application for Adjudication of Claim filed April 25, 2013 alleged that the employer at the time of injury was Long Beach Towing and Storage. On May 7, 2013 a Notice of Representation is filed by Kegel, Tobin, & Truce, entering an appearance for Barrett Business Services, Inc. Permissibly Self Insured.

On March 13, 2014, BBSI filed a Declaration of Readiness to Proceed (DOR) requesting that applicant respond to defendant to clarify employment. Subsequently, at a Mandatory Settlement Conference (MSC) on June 19, 2014, a Stipulation and Order is signed by a WCJ

agreeing that applicant would dismiss BBSI without prejudice. The stipulation is only signed by counsels for applicant and BBSI. Prior to the MSC, applicant amended the application to include Corvel as an insurance carrier on June 12, 2013.

Then on August 12, 2016, applicant filed a Petition to Join Director of Industrial Relations as Administrator of Uninsured Employers Fund. On August 15, 2016, UEBTF was joined. The application was amended again on March 28, 2017 to correct the name and address of Long Beach Towing and Storage, Inc.

On November 13, 2017, UEBTF filed a Petition to Join Party Defendant joining Babak Honarkar as an individual and substantial shareholder of Long Beach Towing, Inc. The joinder was ordered on November 14, 2017.

On May 23, 2018, counsel for Long Beach Towing and Mr. Honarkar filed a Petition to Join BBSI and to Dismiss Long Beach Towing and Babak Honarkar. The petition alleged that Long Beach had entered an agreement for employment services from BBSI and that applicant was an employee of BBSI. On June 20, 2018, BBSI was ordered re-joined as a party defendant as well as their third-party administrator Corvel Corporation.

Finally, the matter was set for trial on October 19, 2023 on the following issues:

1. Employment in dispute between Long Beach Towing and BBSI.
2. Injury arising out of and in the course of employment.
3. Parts of body injured.
4. Attorney fees.
5. Applicant attorney contends the following: Labor Code section 4650(d) and 5814, which are deferred.
6. Applicant asserts Labor Code section 5402, improper denial.
7. Applicant asserts Labor Code sections 3550 and 3551, failure to post notices of rights at work.

(Minutes of Hearing, 10/19/2023, 2:10-19.)

On the second day of trial, February 22, 2024 applicant testified. He testified that he worked for Long Beach from 2012 to 2014 as a tow truck driver. (MOH, 02/22/2024, 2:9 and 2:12-13.) When he began working he filled out the application for employment with Long Beach Towing. (*Id.* at 2:25.) He confirmed that it was his signature on all the pre-employment paperwork (Defendant's A-I) which contained the BBSI heading on most pages. Applicant was shown a

document which was an exhibit from his deposition which stated that BBSI is "your co-employer and self-insured workers compensation coverage provider along with Long Beach Towing." (MOH, 02/222024, 3:24-25).

He testified that he recalled being hired at Long Beach Towing. (MOH, 02/2/2024, 4:5-6.) During work hours he wore a Long Beach Towing uniform, drove a Long Beach Towing vehicle, and used tools provided by Long Beach Towing. (*Id.* at 4:7-8.) He initially testified that his paychecks contained BBSI's information not Long Beach towing. (*Id.* at 4:9-10.) Later, he testified that the name on his paychecks were Long Beach Towing not BBSI and that he was paid every week. (*Id.* at 4:9-13.)

On April 24, 2024, the trial continued at which point Babak Honarkar, CEO of Long Beach Towing, was called. He testified that he spoke with a representative for BBSI regarding applicant and his injury several times. (MOH, 04/24/2024, 2:20-22.) Applicant filled out BBSI forms when he began his employment with Long Beach Towing. (*Id*. at 2:25.) He confirmed that Exhibit M was an email with a payroll specialist at BBSI confirming receipt of applicant's information and that he had been added to payroll. (*Id.* at 3:2-4.)

On May 30, 2024, trial continued and Babak Honarkar testified again. He contends that he had insurance for his employees through BBSI through a contract he had with them for payroll and workers' compensation insurance. (MOH, 05/30/2024, 2:19-20.)

He was shown Defendant's Exhibit J which is an email between Mr. Honarkar and a representative of BBSI which shows new hire paperwork for applicant being sent to BBSI on February 1, 2013 and confirmation of receipt by BBSI noting an error on the I-9. (*Id.* at 2:21-23.) He is shown Defendant's Exhibit K which is a fax transmission of what appears to be a corrected portion of an I-9 signed by Melissa Phillips the office manager of Long Beach Towing. Apart from confirming this as a business record, no other testimony regarding this document was elicited. (*Id*. at 2:24.)

Mr. Honarkar discussed Defendant's Exhibit N which was a payroll ledger along with a daily call log for the date of injury. He testified that these were emailed to BBSI to issue paychecks every two weeks. (*Id*. at 3:3-7.) He indicated that the individuals identified as drivers on page two of Exhibit N were employees of Long Beach Towing through BBSI. (*Id*. at 3:12-13.) The applicant is listed as one of the employees to which this relationship would apply. (*Id*. at 3:13.)

The trial was continued to September 12, 2024 for continued testimony from Mr. Honarkar. Mr. Honarkar testified as to the procedures for Long Beach's relationship with BBSI. As CEO, he retained BBSI to do their payroll and workers compensation. (MOH, 09/12/2024, 3:16-17.) He testified that before a person is hired, they are given an application. (*Id.*at 3:20-21.) Long Beach does its own background check and then sends the paperwork to BBSI. (*Id.* 3:21.) All payroll is sent to BBSI who issues paychecks to each employee. (*Id*. at 3:22-23.) He testified that with regard to applicant, he complied with BBSI's onboarding process and payroll process. (*Id*. at 3:25-4:1.)

He is shown Defense Exhibit Q, which included a document at page 18[2] which indicated a start date for applicant on October 1, 2012 and another document at page 29[3] which showed a form 1099 for the year 2012 with earnings of $5872.70 from Long Beach Towing. (*Id*, at 4:14-18.) He testified that, to his knowledge, he submitted applicant's documents on January 31, 2013, though they were completed December 17, 2012. (*Id*. at 4:4:9-10.) The witness was unable to independently verify the documents contained in Exhibit Q.

Mr. Honarkar could not confirm that Exhibit N contained the payroll sheet for March 5, 2013. (*Id*. at 5:9-12.) He did testify that on several occasions BBSI failed to issue payroll to applicant. (*Id*. at 5:14-15.) BBSI indicated that they had received all the paperwork for applicant, so when they did not pay him, Long Beach had to pay applicant wages for the missing paychecks. (*Id*. at 5:15-18.)

On November 7, 2024, Mr. Honarkar's testimony continued. He testified that it was his understanding that all employees had to be reported to BBSI as a term of the contract agreed to. (MOH, 11/7/2024, 3:11-12.) He confirmed that Exhibit M was an email in which BBSI confirmed it had received applicant's documentation and it was his understanding that this confirmed that applicant was also covered. (*Id*. at 4:1-5.) He only paid applicant payroll when BBSI failed to, so that he could mitigate damages and ensure applicant got paid for his work. (*Id*. at 4:6-9.)

He testified that applicant was an employee of BBSI. (*Id*. at 4:19.) Long Beach Towing paid BBSI a percentage of the payroll as premiums to guarantee workers compensation insurance coverage. He indicated that they obtained coverage through BBSI. (*Id.* at 4:21-24.)

[2] This document is titled Injured Employee Modified Work Offer and was page 6 of the exhibit package which totals 17 pages.
[3] This document was page 17 of the exhibit package.

The matter was continued again for additional testimony from Mr. Honarkar on April 9, 2025. He was shown Exhibit S which is payroll generated by BBSI. He confirmed that the documents do not show that applicant was paid by BBSI. (MOH, 04/09/2025, 3:10-12.) Despite earlier testimony that Long Beach paid the applicant when BBSI failed to, at this trial he stated that "Long Beach Towing never paid Luna who paid by BBSI." (*Id.* at 3:12.)

David Marais, area manager for BBSI, was called as a witness. He was hired January 5, 2015 and became the area manager in 2017. (*Id.* 3:18 and 3:21.) He was assigned to Long Beach Towing on January 6, 2015. (*Id.* at 3:22.) He was responsible for processing payroll. (*Id*. at 3:23.) He reviewed payroll for 2012, 2013, and 2014 and noticed that applicant was not listed on any of the reports. (*Id*. at 3:25-4:1.)

He was shown Exhibit N page 1 which is a list of employees, but was undated. He indicated that this document could not have been sent in March 2013 because the new system was not implemented until June 2013. (*Id.* at 4:14-15.) He testified that the process for new hires is that the employer set up a payroll system which would have required Long Beach to send hours worked by the employees. (*Id*. at 4:17-18.)

On May 22, 2025 the trial continued. Additional exhibits were added and Mr. Marais was called again. The primary focus was Exhibit 4 which is titled "Barrett Business Services, Inc. Loss Run Report generated on October 8, 2017. He testified that the "9 series" number is a number created for the injury but that a 9 series would not have existed at the time of injury because they used a different program at that time. (MOH, 05/22/2025, 3:21-24.) Applicant's name is listed on the loss run report.

On June 23, 2025, the matter was submitted. (MOH, 06/23/2025, 3:3.) Then on September 16, 2025, the WCJ issued an Order Rescinding Order of Submission noting that Exhibit T, the contract between Long Beach Towing and BBSI was not signed. Because it is substantial and relevant to the decision, the WCJ ordered that the parties submit a signed and dated copy of Exhibit T.

On October 2, 2025, trial was set again to admit Court's A, "Agreement for Employer and Staffing Services signed by BBSI, Inc. and Long Beach Towing & Storage, Inc." Applicant's counsel and both defense counsels objected to the admissibility of the document based on Labor Code section 5502(d) and Evidence Code section 1401(a).

Included as evidence was reporting from a primary treating physician and Qualified Medical Evaluator (QME) Dr. Sheffels dated January 17, 2014. (Applicant's Exhibit 9.) The QME diagnosed the applicant with lumbosacral sprain/strain, with L5-S1 herniated disc and mild muscular cervical trapezius pain. He found that the mechanism of injury was consistent with his findings and found the injury industrial.

On December 30, 2025, the WCJ issued an F&O finding that applicant sustained an injury arising out of and in the course of employment to the cervical spine and lumbar spine, and that applicant was employed by Long Beach Towing, but not employed by BBSI. The WCJ also found that Long Beach violated sections 3550 and 3551 and therefore applicant is entitled to treat with his personal physician because no notices were posted.

DISCUSSION

I.

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 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 February 27, 2026 and 60 days from the date of transmission is April 28, 2026. This decision is issued by or on April 28, 2026, so that we have timely acted on the petition as required by section 5909(a).

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on February 27, 2026, and the case was transmitted to the Appeals Board on February 27, 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 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 February 27, 2026.

II.

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 4 or disabled in the course of and arising out of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no-fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms of 'service to an employer' and by including a general presumption that any person 'in service to another' is a covered 'employee.'" (Lab. Code, §§ 3351, 5705(a)1; *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].)

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 or other excluded classification. (*Cristler v. Express Messenger Sys., Inc.* (*Cristler*) (2009) 171 Cal.App.4th 72, 84 [74 Cal.Comp.Cases 167]; *Narayan v. EGL, Inc*. (*Narayan*) (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724].)

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).). In the seminal case of *Kowalski v. Shell Oil Company* (1979) 23 Cal.3d 168 [44 Cal.Comp.Cases 134], the California Supreme Court explained 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.]" [Emphasis added] If general and special employment exist, "the injured workman can look to both employers for [workers'] compensation benefits. [Citations.]"

(*Id.* at pp. 174-175.)

The paramount consideration in determining whether a special employment relationship exists "is whether the special employer has 'the right to control and direct the activities of the alleged employee or the manner and method in which the work is performed, whether exercised or not. [Citation.]" (*Kowalski,* 23 Cal.3d at p. 175.) Although the *Kowalski* case and a number of cases following it reiterate that the issue of 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.)

The concept of general/special employment is further clarified for PEOs, such as BBSI, by Section 3602(d)(1) which provides, in relevant part:

> For the purposes of this division, including Sections 3700 and 3706, **an employer may secure the payment of compensation on employees provided to it by agreement by another employer by entering into a valid and enforceable agreement with that other employer under which the other employer agrees to obtain, and has, in fact, obtained workers' compensation coverage for those employees.** In those cases, both employers shall be considered to have secured the payment of compensation within the meaning of this section and Sections 3700 and 3706 if there is a valid and enforceable agreement between the employers to obtain that coverage, and that coverage, as specified in subdivision (a) or (b) of Section 3700, has been in fact obtained, and the coverage remains in effect for the duration

> of the employment providing legally sufficient coverage to the employee or employees who form the subject matter of the coverage.

(Lab. Code §3602(d)(1)).

A Professional Employer Organization (PEO) acts as a general employer and typically is an entity that leases back employees to another employer, provides payroll services, and agrees to obtain workers' compensation coverage for joint employees. Pursuant to section 3602(d), the PEO must be an employer to obtain workers' compensation coverage for joint employees.

In this case, Court Exhibit A, is an Agreement for Employer and Staffing Services executed between BBSI and Long Beach on June 8, 2012. In this agreement BBSI explicitly agrees to employ "those persons whose job classifications are set forth on Fee Schedule "1." Fee Schedule 1 includes, "towing." There was no dispute that the applicant was working as a tow truck driver, so he would fall into this category of covered employee. Likewise, in the contract BBSI retained the right to hire, discipline, and terminate Employees. BBSI agreed to be compliant with payroll, employment insurance and compliance, as well as provide workers compensation insurance. Thus, it is clear that BBSI and Long Beach had an enforceable agreement pursuant to section 3602(d)(1).

Here, BBSI argues that applicant was not properly added to the ledger of employees and was never paid by BBSI and is therefore not an employee of BBSI. Yet, BBSI provides no evidence of an exclusion to rebut the presumption of employment. The test outlined in *Riley*, *supra* supports the finding that there is general employment on the part of BBSI. First, there is clearly a mutual agreement that BBSI was to be a co-employer with Long Beach for their employees and that BBSI retained the right to control, to some degree, the employees of Long Beach. Second, several of the documents authenticated and signed by the applicant were on BBSI letterhead, including the payroll election form, and "Employee Acknowledgement of Medical Provider Network." Thus, applicant had an understanding that BBSI was also his employer. These documents were dated December 17, 2012, prior to the date of injury. Perhaps most important, the email dated February 21, 2013 (Exhibit M) from Mr. Medina confirms receipt of the employment documents for applicant *and* that applicant had been added to payroll. BBSI was obligated to pay applicant at that point. When they did not, applicant did not cease to be an employee. There is no provision in the agreement that any person not paid by BBSI but otherwise onboarded by BBSI is not an employee during the period they are not paid. As such, at the time of injury, applicant was an employee of both BBSI and Long Beach.

Moreover, BBSI's arguments are issues of coverage or breach of contract subject to arbitration pursuant to section 5275 and not arguments to support a finding that applicant was not employed by BBSI.

Finally, 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].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id*.) Thus, we will find Long Beach and Mr. Honarkar's testimony regarding the documents and emails challenged by BBSI as credible.

II.

We observe that 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 [10 I.A.C. 322]) 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.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must 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].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, former § 10566, now § 10787 (eff. Jan. 1, 2020).) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made

on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id*. at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

In the F&O, the WCJ found that there were violations of sections 3550 and 3551 based on applicant's testimony that there were no notices posted at Long Beach. However, on our review of the record, we did not see that applicant testified to the provision of notices. We also note that Exhibit M is a signed acknowledgement by the applicant of the Medical Provider Network. Further, in *Knight v. United Parcel Service* (2006) 71 Cal.Comp.Cases 1423 (Appeals Board en banc), an employer's failure to provide required notice to an employee of rights under the MPN resulted in a neglect or refusal to provide reasonable medical treatment that rendered the employer liable for the reasonable medical treatment self-procured by the employee. The legislature later codified the holding in *Knight* in section 4616.3(b), which provides that an "employer's failure to provide notice as required by this subdivision or failure to post the [MPN] notice as required by Section 3550 shall not be a basis for the employee to treat outside the network unless it is shown that the failure to provide notice resulted in a denial of medical care." The statute reflects the formulation in *Knight* that an applicant wishing to self-procure medical treatment outside the MPN at employer expense must establish *both* a failure of required notice and a corresponding neglect or refusal of medical treatment. As such, without an appropriate record we will rescind this finding, and defer this and all other issues.

For the foregoing reasons,

IT IS ORDERED that Applicant's, UEBTF's, and Long Beach's Petitions for Reconsideration are all **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued on December 30, 2025 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Omar Luna, while employed on March 25, 2013, as a tow truck driver, at Long Beach, California, sustained injury arising out of and in the course of employment to cervical spine and lumbar spine.
2. Applicant was employed by Long Beach Towing and Storage, Inc.
3. Applicant was also employed by Barrett Business Services, Inc.
4. All other issues, including whether there was a violation by the employer of labor Code Sections 3550 and 3551 are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 28, 2026

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

OMAR LUNA
HINDEN & BRESLAVSKY, APC
LAW OFFICE OF CYRUS KHAVARIAN
COOPER BROWN APC
UEBTF/OD LEGAL
BABAK HONARKAR

TF/md

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