WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PEDRO MACIAS, *Applicant*

vs.

BRUCE LEE aka HEE KYUNG LEE;
UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants*

Adjudication Number: ADJ11656997
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of Findings of Fact (Findings) dated July 3, 2026. The workers' compensation administrative law judge (WCJ) found, in relevant part, that defendant Bruce Lee aka Hee Kyung Lee was not properly served with the Application for Adjudication; that defendant's failure to file an Answer does not preclude evidence from being offered by defendant; and that applicant was not the employee of Bruce Lee aka Hee Kyung Lee on June 29, 2018.

Applicant contends that the WCJ erred in finding that applicant was not an employee of defendant. He contends that despite the expiration of defendant's contractor license, he rendered services to defendant as an individual and that the absence of evidence should not have been a basis to find that applicant was not an employee. Further, he contends that he met his burden of proof sufficient to trigger the presumption of employment pursuant to Labor Code section 3357[1] and that the burden of proof switched to defendant to rebut the presumption of employment.

Defendant did not file an answer. The WCJ issued a Report and Recommendation (Report) recommending denial of the Petition.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and as discussed below, we will grant the Petition

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

for Reconsideration, rescind the Findings, and return the matter for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

FACTS

Applicant alleged injury to various body parts while working as a laborer on June 29, 2018 at a private residence when he was bitten by a dog.

In the initial Application for Adjudication (Application), DS Construction was identified as the alleged employer.

On February 16, 2021, applicant filed a Petition to Join Uninsured Employers Trust Fund (UEBTF) on behalf of Dae Sung Construction, & Eng., Inc. The WCJ denied the petition because Dae Sung Construction had dissolved on September 15, 2017. The WCJ recommended that the sole shareholder, Bruce Lee (Lee), be named personally on the application and re-served.

Applicant filed a second petition to join UEBTF which noted that "Hee Kyung" [AKA Lee] had been served with the Special Notice of Lawsuit and Application for Adjudication of Claim. An amended Application listing Lee as the employer was attached to the petition, though it does not appear to have been filed separately.

At a status conference on August 19, 2021, the Minutes state, "Identification of homeowner, applicability of Labor Code Section 3715 and possible joinder of homeowner insurance or personal jurisdiction over homeowner needed."

At the continued Mandatory Settlement Conference (MSC) on October 7, 2021, the matter was taken off calendar with instruction to join the homeowner.

Applicant filed a Declaration of Readiness to Proceed (DOR). On December 15, 2022, the matter again went off calendar with instruction for additional defendants to be joined.

On March 29, 2023, applicant filed an amended Application adding Taewong Kim (Kim) and Nationwide Des Moines (Nationwide) as an additional employer and insurance carrier, respectively.

On May 18, 2023, Nationwide filed an Answer to Application for Adjudication of Claim, apparently filed on behalf of employer "Moxie Management" and noting an insurance carrier, "AMCO Insurance Company" with Nationwide as the claims administrator. Notably, Moxie Management and AMCO Insurance Company were never joined and have not appeared.

Nationwide filed a DOR on June 12, 2023, requesting an MSC on the issue of "res judicata." The declaration states, "Nationwide has no interest in this matter. Applicant was not an employee of Nationwide's insured and Nationwide, under the same policy used to join us on this matter, settled the third party/civil claim brought by applicant in 2021. The claim is barred by res judicata a lack of employment."

UEBTF filed a Petition for Credit against the liability for compensation in a sum of $66,000.00 from the civil recovery from applicant's civil settlement. The petition alleges that applicant filed a civil action against DYK Management LLC and Kim which settled on July 26, 2021 for $66,000.00. Notably, DYK Management has never been joined and has never appeared.

At an MSC on October 5, 2023, the WCJ ordered applicant to submit an amended proof of personal service and obtain an amended order joining UEBTF. Nationwide was also instructed to circulate a stipulation to dismiss itself as a party defendant. A stipulation dated October 5, 2023 was filed. The stipulation states:

> The below noted parties hereby agree and request that an Order Dismissing Nationwide Des Moines and employer Taewong Kim issue without prejudice.
>
> In support of the agreement, the Applicant was not employed by Taewong Kim, did not work 52 hours per Labor Code § 3352, and previously settled any and all claims against Mr. Kim via release on or around July 26, 2021.

The stipulation was only signed by representatives for UEBTF, Nationwide, and applicant, and no other persons signed the stipulation.

On December 8, 2023, Kim and Nationwide were ordered dismissed.

The matter proceeded to trial on August 5, 2025. The issues for decision were employment, whether defendant was properly served with the Application, whether any failure to answer the Application precludes evidence from being offered by the defendant pursuant to WCAB Rule 10465. (Cal. Code Regs., tit. 8, § 10465.) Still, all of defendant's exhibits were admitted.

Trial continued on September 9, 2025. Applicant offered two checks into evidence. The first, dated July 14, 2018, was paid to applicant from defendant in the amount of $1,000.00. (Applicant's Exhibit 1.) The second, dated January 27, 2019, was paid to applicant by defendant in the amount of $1,000.00. (Applicant's Exhibit 2.) Defendant objected to the relevancy of both checks.

Defendant Lee testified that he owned a company called Dae Sung Construction and Engineering, Inc. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 09/09/2025, at 3:2.) He maintained a contractor's license until 2018. (*Id.* at 3:2-3.) He did not have employees, including applicant, and denied contract work once the license expired. (*Id.* at 3:4-8.) He did recall being contacted by DYK Management in 2018 for work on a home, but did not accept the job, and referred another person. (*Id.* at 3:7-8.)

Defendant testified that the check dated July 14, 2018 was payment for installation of a wooden floor at his private residence. (*Id*. at 3:9-11.) He testified that the second check was for repair work on the floor and bathroom at his café. (*Id*. at 3:12-14.)

On cross examination by UEBTF, he testified that he did not know Kim and was never asked to work on the house. He also denied sending applicant to work at Kim's property or any property owned by DYK Management. (*Id*. at 3:24-4:3.) However, he then stated that he had spoken with an individual named "TJ" who was a friend of Kim. He gave TJ the referral for someone to work on the house. (*Id*. at 4:5-7.)

Applicant then testified that he had worked for Lee since 2013 and that the last time he worked for Lee was in January of 2019. (*Id*. at 4:12-14.) At the time of the dog bite on the date of injury, Lee was his employer. Lee texted him the address of the job, met him at the job site, directed him, and paid him. (*Id*. at 4:15-18.) He also saw TJ with Lee several times, including at the job site where he was injured. (*Id*. at 4:19-20.)

He worked at the residence for about eight to ten days before the dog bite occurred. (*Id*. at 4:21.) The dog bite occurred on June 29, 2018. (*Id*. at 5:11.) After the dog bite, the homeowner's daughter took him to the hospital. (*Id*. at 4:21-22.)

He was paid $1,000.00 in July of 2018 for the work he did in the home. (*Id*. at 4:24.) He does not have the alleged text messages from defendant as his wife sold the cell phone. (*Id*. at 5:2-3.) Defendant provided the tools to do the work at the house. He kept a regular schedule Monday through Friday 7:00 a.m. to 4:00 p.m. throughout the time he worked for defendant between 2013 and 2019. He was paid $200 per day. (*Id*. at 5:4-8.) He did not know why he was only paid $1,000.00 for the job when he was there for eight to ten days. He was not able to obtain copies of all the checks paid to him. (*Id*. at 5:16-20.) He paid taxes on the money that he was paid from defendant, but did not have copies of those records. (*Id*. at 5:25.)

Applicant's testimony continued on April 7, 2026. He testified that he worked at multiple projects. He also confirmed that he was unable to obtain copies of checks from his bank that were over five years old. (MOH/SOE, 04/07/2026, at 2:16-18.) (At this point the WCJ admitted both checks into evidence. (*Id*. at 2:19-22.)) He clarified that he was paid only $1,000.00 because he missed one day of work following the dog bite incident. (*Id*. at 3:7-8.) He was able to find another check from 2010. However, at that point, both defendants objected and the court denied admission of the check into evidence. (3:4.)

Applicant clarified that he was working on the garage roof along with another of defendant's employees, Mr. Wong. (*Id*. at 3:10-12.) During the project, he demolished and installed a roof using drywall sheets which he taped and painted inside the garage. (*Id*. at 3:13-15.)

Between 2013 and 2019, he performed work for other people as a handyman, including in 2018 after the dog bite. (*Id*. at 3.18-21.)

On July 3, 2026, the WCJ issued the Findings. In the Opinion on Decision (Opinion), the WCJ stated that: "Mr. Macias has the burden of proving that he was an employee of Bruce Lee before the burden of proof shifts to the Defendant." (Opinion, p. 2.) The WCJ reasoned that:

> Even if Mr. Macias worked as an employee for Mr. Lee from time to time between 2013 and 2019, Mr Lee dissolved his business on or about September 17, 2017, and after his contractor's license expired January 28, 2018 Mr. Lee refused to accept further construction projects. Mr. Lee testified that he had paid Mr. Macias in July 2018 to repair wooden flooring in his personal residence and that he paid Mr. Macias $1,000 to perform work on the bathroom floor of Mr. Lee's coffee shop in 2019 (MOH SOE 9/9/2025, 3:9-14). *Such payments alone do not indicate an employment relationship, particularly when the services were not performed in furtherance of the Defendant's prior general contracting business.* Therefore, based on the *Applicant's lack of convincing oral evidence and the Applicant's lack of documentary evidence that Mr. Macias was an employee of Mr. Bruce Lee at the time of the injury on June 29, 2018*, it is found that Macias was not an employee of Bruce Lee on June 29, 2018.

(Opinion, p. 3, italics added.)

The Opinion did not include any citation to or any discussion of the relevant statutes or case law with respect to the issue of employment.

In the Petition, applicant contends that he met his burden that he was rendering services for defendant and thus the burden shifts to defendant to rebut the presumption of employment.

In the Report, the WCJ inserted the following boilerplate:

> The seminal case in determining whether a worker is an independent contractor or an employee for the purposes of workers' compensation is *S.G. Borello & Sons, Inc. v. DIR* (1989) 54 CCC 80. In the *Borello* case, the California Supreme Court explained that the common law emphasis on the employer's control over the work details is still the most important consideration in whether a person was an independent contractor. Under that test, it is not the actual exercise of control that is important in determining whether an employer-employee relationship exists, but rather the right or potential power of control that is important. So the right to control and direct the activities of the alleged employee, whether exercised or not, gives rise to the employment relationship.
>
> The *Borello* court referenced the standards for contractors established in Labor Code Section 2750.5 as a helpful means of identifying the employee/contractor distinction, even though the relevant considerations often might overlap those pertinent under the common law. Under Labor Code Section 2750. Proving independent contractor status includes proof of these factors: (a) the individual has the right to control and discretion as to the manner of the performance of the contract for services in that the result of the work and not the means by which it is accomplished is the primary factor bargained for; (b) the individual is customarily engaged in an independently established business; and (c) the individual's independent contractor status is bona fide and not a subterfuge to avoid employee status. Furthermore, Labor Code Section 2750.5 (c) adds that the independent contractor status can be evidenced by the following factors: (1) substantial investment other than personal services in the business; (2) holding out to be in business for oneself; (3) bargaining for a contract to complete a specific project for compensation by project rather than by time; (4) control over the time and place the work is performed; (5) supplying the tools or instrumentalities used in the work other than tools and instrumentalities normally and customarily provided by employees; (6) hiring employees; (7) performing work that is not ordinarily in the course of the principal's work; (8) performing work that requires a particular skill; (9) holding a license pursuant to the Business and Professions Code; and (10) the intent by the parties that the work relationship is of an independent contractor status, or that the relationship is not severable or terminable at will by the principal but gives rise to an action for breach of contract.

(Report, pp. 3-4.)

The WCJ then states:

> In the instant case, Mr. Lee stated that he referred the applicant for services to a friend. However, Mr. Lee no longer was accepting contractor work after the dissolution of his company. There was no compelling evidence that Mr. Lee supervised the applicant at the subject location where he was injured. Applicant's testimony did not cover all of the factors to determine whether or not he would be an independent contractor versus an employee.

> *Mr. Macias has the burden of proving that he was an employee of Bruce Lee before the burden of proof shifts to the Defendant.*

(Report, p. 4, italics added.)

After a brief discussion of the lack of documentary evidence submitted by applicant and applicant's work for other individuals, the WCJ repeated the same conclusion as in the Opinion as follows:

> Even if Mr. Macias worked as an employee for Mr. Lee from time to time between 2013 and 2019, Mr Lee dissolved his business on or about September 17, 2017, and after his contractor's license expired January 28, 2018 Mr. Lee refused to accept further construction projects. Mr. Lee testified that he had paid Mr. Macias in July 2018 to repair wooden flooring in his personal residence and that he paid Mr. Macias $1,000 to perform work on the bathroom floor of Mr. Lee's coffee shop in 2019 (MOH SOE 9/9/2025, 3:9-14). *Such payments alone do not indicate an employment relationship, particularly when the services were not performed in furtherance of the Defendant's prior general contracting business.* Therefore, *based on the Applicant's lack of convincing oral evidence and the Applicant's lack of documentary evidence that Mr. Macias was an employee of Mr. Bruce Lee at the time of the injury on June 29, 2018*, it is found that Macias was not an employee of Bruce Lee on June 29, 2018.

(Report, p. 4, italics added.)

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, which states 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 August 12, 2026 and 60 days from the date of transmission is Sunday, October 11, 2026. The next business day that is 60 days from the date of transmission is Monday, October 12, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, October 12, 2026, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 12, 2026, and the case was transmitted to the Appeals Board on August 12, 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 August 12, 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

[2] 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.

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. (*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].)

While the WCJ refers to *Borello*, *supra*, in the Report, the WCJ fails to correctly apply it. *Once an applicant establishes that a service was rendered, they are a presumptive employee*. It is at that point that defendant can use the *Borello* factors to prove that applicant was not an employee but an independent contractor.

Here, defendant Lee appears to be arguing that he was not the employer as he did not hire applicant to perform the services at issue here. Further, the WCJ appears to find it significant that the services were not performed in furtherance of defendant's general contracting business, which is likewise irrelevant as defendant Lee is joined as an individual.

It is undisputed that the dog who bit applicant was not applicant's dog, and that the location of the work was not at applicant's residence. Applicant was clearly rendering a service at the time of the dog bite and is therefore a presumed employee. ***The appropriate question here is who is the proper employer or employers?***

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (§§ 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].) The law has long recognized that where the WCAB cannot reach a just and reasoned decision on the existing record because the evidence is insufficient, unclear or conflicting, the WCAB has the power and even the duty to further develop the record under sections 5701 and 5906. When the record is inadequate to address the issues framed by the parties, "the WCJ has a duty to develop an *adequate* record." (*Kuykendall v Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal. Comp. Cases 264], italics added; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) The duty arises out of the Board's obligation to completely adjudicate the issues submitted for decision by the parties, consistent with principles of due process. (*Telles Transport v. Workers' Comp. Appeals Bd.* (*Zuniga*) (2001) 92 Cal.App.4th 1159, 1165 [66 Cal.Comp.Cases 1290].)

Here, the record is replete with inconsistencies and missing information, and it is inadequate to address the issue of employment. Though the record is very thin, it is shown that at various points the applicant was, in fact, an employee of defendant Lee, as demonstrated by payment to applicant by check in July of 2018 and January of 2019, as well as defendant's own ledger showing payment to applicant in 2015. Applicant testified that he was unable to work following the incident until September of 2018 (MOH/SOE, 04/10/2026, 3:18-19), yet defendant Lee testified that the July 2018 check was for a job he completed just one month after the injury. Though there are no medical records, applicant's testimony that he did not work for several months after the dog bite is reasonable and therefore the payment in July is plausibly for the job at issue here. Ultimately there are conspicuous gaps in the record that cannot sustain the current findings.

Further, the record is vague, at best, as to whether defendant Lee was hired by the homeowner. However, there was testimony that defendant Lee knew of the job through "TJ" and referred the job out though the record never clarifies either TJ's role or to whom defendant Lee referred the job. There was undeveloped and disregarded testimony that defendant Lee was more involved in this particular job than he testified to. If, for example, applicant was working with another of defendant Lee's employees, Mr. Wong, there is some indication that defendant Lee obtained some kind of benefit from the commission of this job. Frankly, it is farfetched that an alleged former employee would end up at a jobsite where defendant Lee had the only established, though unclear, connection to anyone connected to the homeowner. Either way, the record must be developed to clarify the relationship, if any, between defendant Lee and the homeowner.

In *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (*McKernan*) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]), the court granted the Board the ability to, "act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee."

Here, the evidence available does indicate that there were potentially other witnesses that were not called, including TJ, Mr. Wong, the homeowner, a representative from the management company, and the homeowner's daughter. There appears to be available evidence and witnesses that warrant development of the record.

III.

Further, the courts have consistently held that an owner or general contractor is not liable under workers' compensation for injury to the employee of an independent contractor hired by the general contractor. (*State Comp. Ins. Fund v. I.A.C.* (1941) 46 Cal.App.2d 526, 528-530 (*Grashel*); *Western Ind. Co. v. I.A.C.* (1916) 172 Cal. 766 [158 P. 1033] (*Turner*); *Sturdivant v. Pillsbury* (1916) 172 Cal. 581 (*Silva*); *Carstens v. Pillsbury* (1916) 172 Cal. 572; *S. A. Gerrard Co. v. I.A.C*. (1941) 17 Cal. 2d 411 (*Valdez*).) Likewise, it has been held that where a person hired by a primary employer is an employee rather than an independent contractor, the primary employer may be liable for workers' compensation injuries to person hired by the employee on the theory that they are also the primary employer's employees. (*Blew v. Horner* (1986) 187 Cal.App.3d 1380 [51 Cal.Comp.Cases 615]; *Valdez*, *supra*, 17 Cal. 2d 411; *Brietigam v. I.A.C.* (1951) 37 Cal. 2d 849).)

Workers' compensation insurance coverage is required for all those who employ one or more employees. (Bus. & Prof. Code, § 7125.2; *Wright v. Issak* (2007) 149 Cal.App.4th 1116 [72 Cal.Comp.Cases 438].) With respect to contractors on construction projects, section 2750.5 applies to workers' compensation, and section 3351, subdivision (d) is read together with section 2750.5. (*Cedillo v. Workers' Comp. Appeals Bd.* (2003) 106 Cal.App.4th 227 [68 Cal.Comp.Cases 140]; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Meier*) (1985) 40 Cal.3d 5 [50 Cal.Comp.Cases 562].) Section 2750.5 provides that when a worker is "performing services for which a license is required" or is "performing such services for a person who is required to obtain such a license" that worker is presumed to be an employee rather than an independent contractor. In order to successfully prove independent contractor status, a person must satisfy certain factors

set forth within section 2750.5, and, additionally, must "hold a valid contractors' license as a condition of having independent contractor status." (Lab. Code, § 2705.5, italics added; *Cedillo*, *supra,* 106 Cal.App.4th 227; *Blew, supra*, 187 Cal.App.3d 1380.)

Once the person hired by an owner or general contractor is shown to be an employee rather than an independent contractor, "the general contractor may be liable under workers' compensation for injuries to persons hired by the employee, on the theory that such persons are also the general contractor's employees." (*Blew, supra*, 187 Cal.App.3d at p. 1387; *Rinaldi v. Workers' Comp. Appeals Bd.* (1987) 196 Cal.App.3d 571 [52 Cal.Comp.Cases 366].) "For workers' compensation purposes, under section 2750.5, the hirer of a contractor for a job requiring a license is the statutory employer of the unlicensed contractor. In addition, the hirer is the statutory employer of those workers employed by the unlicensed contractor. . . Accordingly, the presumption that the person who employs the unlicensed contractor is the employer is conclusive." (*Cedillo, supra,* 106 Cal.App.4th at p. 233; see *Rinaldi*, *supra*, 196 Cal.App.3d 571; *Meier*, *supra*, 40 Cal.3d 5.) Thus, when status as an independent contractor is lost for lack of a license, the unlicensed contractor becomes both the employee and the employer, and when the unlicensed contractor lacks workers' compensation insurance coverage, the "ultimate hirer" who does have workers' compensation insurance coverage becomes liable. (*Cedillo*, *supra*, 106 Cal.App.4th 227; *Hernandez v. Chavez Roofing, Inc*. (1991) 235 Cal.App.3d 1092 [56 Cal.Comp.Cases 650]; *Rinaldi*, *supra*.)

Regardless of whether the homeowner hired defendant Lee or applicant, neither defendant Lee nor applicant had valid contractors' licenses at the time of the injury. Therefore, whether applicant was rendering services directly to the homeowner or through defendant Lee, the homeowner may still be the presumptive employer because neither were licensed at the time of the injury.

IV.

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. I.A.C.* (*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. I.A.C.* (*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.

Subject to the limitations of section 5804, "The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4]. . . . At any time, upon notice and after the 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." (Lab. Code, § 5803.)

Here, the alleged homeowner was dismissed by order of the WCJ on December 8, 2023 based on a stipulation of the parties with the exception of defendant Lee. The stipulation states that: "In support of the agreement, the Applicant was not employed by Taewong Kim, did not work 52 hours per Labor Code § 3352, and previously settled any and all claims against Mr. Kim via release on or around July 26, 2021." That is, the stipulation merely contends that the alleged homeowner was not the employer, a legal conclusion, that applicant was not an employee based on section 3352, which is inapplicable here, and because of a civil settlement that has never been reviewed by or presented to the WCAB.

Pursuant to section 5001, no release of liability or compromise agreement is valid unless it is approved by the WCJ. (Lab. Code, § 5001.) Where the parties seek to settle both a civil action and a related worker's compensation claim at a superior court settlement conference, the civil settlement must be conditional upon WCAB approval. (*Steller v. Sears, Roebuck & Co*. (2010) 189 Cal. App. 4th 175, 181 [75 Cal.Comp.Cases 1146].)

There is a "significant difference in legal effect between a release of tort liability and a release of [workers'] compensation liability. A tort release is effective upon execution, but a compromise and release of [workers'] compensation liability is invalid until approved by the [] Appeals Board. [Citations.] … These safeguards against improvident releases place a [workers'] compensation release upon a higher plane than a private contractual release … ." (*Steller, supra*, at 181, quoting *Johnson v. Workmen's Comp. App. Bd*. (1970) 2 Cal.3d 964, 973 [35 Cal.Comp.Cases 362].)

Additionally, section 5702 states that:

> The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for

> hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

(§ 5702.)

As we recently outlined in our en banc decision *Gaines, et.al. v. ABME Aviation, Inc*. (2026) 91 Cal. Comp. Case _:

> The WCAB's jurisdiction is over claims for benefits provided in the Labor Code, and the WCAB has jurisdiction to approve settlement of claims for benefits that are provided by the Labor Code. The injured worker must have knowledge of each of the benefits that they may be entitled to, and they must intend to release those claims for benefits. Mere execution of the form is not sufficient. (citation omitted) The preprinted form does not release claims that are outside of workers' compensation, and even if a separate document is executed by the parties, the WCAB cannot approve a settlement of claims that are outside of the Labor Code…
>
> Thus, where the terms of the agreement are unclear or contradictory, or include provisions that are outside the Labor Code, the issue is whether a true contract has been formed.

First, at no point did the homeowner or the homeowner's carrier submit the civil release for approval at the WCAB. The release of liability for workers' compensation benefits is only enforceable once approved by the WCAB.

Second, the stipulation dismissing a potential homeowner based on erroneous reading of the Labor Code, without a hearing and without an explanation to the applicant of the potential forfeiture of rights and benefits, and based on a settlement from an outside jurisdiction without any information is invalid. The "facts" of the stipulation are contradictory and unclear. A record was not created in support of the contentions made in the stipulation.

As such, there is good cause to set aside the Order Dismissing Party Defendant Taewong Kim and Nationwide Mutual Insurance Company. We further observe that the record contains no information about Moxie Management, AMCO Insurance Company, and DYK Management.

Accordingly, we will grant the Petition for Reconsideration and, as our Decision for Reconsideration, we will rescind the Findings and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration issued on July 28, 2026 is **GRANTED.**

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact and Opinion issued on July 3, 2026 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,



/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 12, 2026

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

PEDRO MACIAS
EQUITABLE LAW
BRUCE LEE AKA HEE KYNG LEE
OFFICE OF THE DIRECTOR – LEGAL UNIT (LOS ANGELES)
SCHNEIDER, HOLTZ, & HUTCHISON

TF/md

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