

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

RANULFO ZUNIGA, *Applicant*

vs.

UNINSURED EMPLOYERS BENEFITS TRUST FUND; SANTA CRUZ MOUNTAIN TRUST; CATHY MANN, individually; RODNEY MANN, individually; MID CENTURY INSURANCE; and UNIVERSITY INVESTMENTS, *Defendants*

**Adjudication Number: ADJ10508158
San Jose District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration of the “Order Setting Aside and First Amended Findings and Award” (F&A) issued on August 11, 2022, by the workers’ compensation administrative law judge (WCJ), in order to further study the factual and legal issues.¹ This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that applicant was employed on May 25, 2016, by Catherine Mann, in her individual capacity, (Cathy Mann) who was jointly insured with her spouse, Rodney Mann through their homeowner’s policy by Farmers Insurance / Mid Century Insurance, when applicant sustained industrial injury to his right hand and fingers, with additional claimed body parts deferred. The WCJ found that no other entity employed applicant on the date of injury.

We have received three petitions for reconsideration.

Applicant argues that although the WCJ correctly found that Cathy Mann employed applicant on the date of injury, applicant was also employed by the Santa Cruz Mountain Trust, LLC, (SCMT), Rodney Mann, and University Investments. Applicant further argues that the

¹ Commissioner Dodd was on the panel that issued the order granting reconsideration. Commissioner Dodd was unavailable to participate further, and a new panel member was substituted in her place.

respective insurers for each of these employers should have been found liable, including the Uninsured Employers Benefits Trust Fund (UEBTF) in the case of SCMT, which failed to carry workers' compensation insurance.

Defendant, Cathy Mann, argues that employment should have been excluded pursuant to Labor Code sections 3351(d) and 3352(a)(8)(A) because applicant was injured while maintaining the Mann's private residence and because they employed applicant in their home for only 14 hours. Ms. Mann further argues that the Findings of Fact incorrectly states that the location of employment was at "various locations in the State of California" as applicant was injured in their home. Ms. Mann further argues that her spouse, Ronald Mann, should also be included as an employer.

Defendant, Mid-Century Insurance Company, argues that the WCJ erred in finding coverage because coverage was not listed as an issue for trial and because Mid-Century's policy would only cover claims against Ms. Mann as a homeowner and that applicant's employment with Ms. Mann was not in the context of home ownership. Mid-Century next argues that the WCJ erred in finding employment because the evidence produced at trial did not establish employment.

We have received answers from applicant and University Investment. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petitions for Reconsideration, the Answers, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration, we will rescind the August 11, 2022 F&A, and substitute a new Findings and Award, which finds that applicant was employed by Cathy Mann on May 25, 2016 and sustained injury arising out of and in the course of employment (AOE/COE) to his right hand and fingers, but defers the issue of whether any other persons employed applicant on the date of his injury and defers the issue of insurance coverage on the date of injury. We will return this matter to the trial level for further proceedings consistent with this decision.

FACTS

Per the WCJ's Report:

The record, while extensive, is not overly complex, and the facts of what happened and when are largely agreed to, although the legal consequences of these facts are hotly contested.

The Applicant, Ranulfo Zuniga, and his brother, Oton Zuniga, had performed work for Defendant, Kathy Mann on an infrequent and intermittent basis for a number of years prior to 2015. In 2015, Ms. Mann was retained to design and execute a remodeling project on behalf of Santa Cruz Mountain Trust, (SCMT), and entity wholly owned by Mr. and Mrs. Jim Healy for the purpose of owning the Healy family home, referred hereafter as the Burke property. As part of this project, Ms. Mann approached Oton Zuniga about doing some of the demo work and carpentry on the project, and an agreement was reached. A deal was struck specifying that both Oton and his brother Ranulfo would do the work, and their hourly rate was agreed to. SCMT ratified the deal, and the Zuniga brothers went to work. The work was to be carried out at the Burke location.

For the next several months, the Zuniga brothers worked as agree to. There were no complaints about the speed or quality of their work during that time. The work was steady, but by no means continuous. They were supervised on a daily basis by Kathy Mann, who was onsite. Mr. Healy on behalf of SCMT conducted occasional, but rare, inspections. Ms. Mann provided their assignments and inspected their work. She collected their timesheets and wrote checks for their pay drawn upon an SCMT account, delivering those checks to them personally.

Shortly after the Zunigas had completed (or nearly completed, the evidence is conflicting) their portion of the work at the Burke site, Oton Zuniga was invited by Kathy Mann to carry out some gate repairs at her personal home, hereafter known as the Rutherford job. It was agreed that both brothers would be employed to do the work, at the same hourly rate as at Burke.

Ms. Mann and her husband, Rodney Mann, owned the Rutherford home. Mr. Mann was the proprietor of a loan business, University Investments. The business of University Investments was primarily conducted at another site, but Mr. Mann occasionally performed some work from the family home.

It was agreed that the Manns had homeowner's insurance through Farmer's Insurance/Mid Century Insurance. That carrier has denied that this incident is covered under that policy.

During the second and final day of the project, Applicant injured himself while using a table saw. It is agreed by all parties that the injury did take place, but liability was denied on the basis of Labor Code section [3352(a)(8)]. Informal talks failed to produce a resolution, and the matter came to trial before me over the course of

four days. An initial F&A was issued which contained important typographical errors, and so the F&A was rescinded and a First Amended Findings and Award was issued on 8/11/2022. From this Award three parties requested Reconsideration.

(WCJ's Report, pp. 2-7.)

DISCUSSION

Pursuant to Labor Code² section 3300, an “employer” includes, in relevant part, every “person ... which has any natural person in service.” (§ 3300(c).) An “employee” is any 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 ...” (§ 3351.) Moreover, it is presumed that a person rendering service for another is an employee unless the alleged employer affirmatively proves otherwise. (§ 3357; *Yellow Cab v. Workers' Comp. Appeals Bd. (Edwinson)* (1991) 226 Cal.App.3d 1288 [56 Cal.Comp.Cases 34].)

An employee may have more than one employer. The characteristics of such dual employment are: 1) that the employee is sent by one employer (the general employer) to perform labor for another employer (the special employer); 2) rendition of the work yields a benefit to each employer; and 3) each employer has some direction and control over the details of the work. (See *Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168 [44 Cal.Comp.Cases 134]; *Meloy v. Texas Co.* (1953) 121 Cal.App.2d 691 [18 Cal.Comp.Cases 313]; *Ridgeway v. I.A.C.* (1955) 130 Cal.App.2d 841 [20 Cal.Comp.Cases 32]; *Doty v. Lacey* (1952) 114 Cal.App.2d 73 [17 Cal.Comp.Cases 316]; *Caso v. Nimrod Prods.* (2008) 163 Cal.App.4th 881.) The determination of whether a dual employment relationship exists is a question of fact. (*Kowalski, supra*, 23 Cal.3d at p. 176.)

“A ‘special employment’ relationship arises when an employer lends an employee to another employer and relinquishes to the borrowing employer all right of control over the employee’s activities. [Citation.] The borrowed employee is ‘held to have two employers-his original or ‘general’ employer and a second, the ‘special’ employer.’ [Citation.] In this dual employer situation, the employee is generally limited to a statutory workers’ compensation remedy for injuries he receives in the course of his employment with the special employer; he may not bring a separate tort action against either employer. [Citations.]”

(*Riley v. Southwest Marine, Inc.* (1988) 203 Cal.App.3d 1242, 1247–1248.)

² All future references are to the Labor Code unless noted.

The terms of workers' compensation policies issued in California are governed by statute, and each policy is conclusively presumed to contain all the provisions required by law. (Ins. Code, § 11650.) Workers' compensation insurance policies are regulated by the Department of Insurance. (Ins. Code, §§ 11651, 11657, 11658.) All workers' compensation policies must "contain a clause to the effect that the insurer will be directly and primarily liable to any proper claimant for payment of compensation." (Ins. Code, § 11651.)

Endorsements that limit or restrict coverage of workers' compensation policies *are subject to prior approval by the Insurance Commissioner*. (Ins. Code, § 11657.) Workers' compensation policies may only be limited and restricted in accordance with regulations adopted by the Insurance Commissioner and failure to follow the regulations renders the policy unlimited. (Ins. Code, §§ 11659, 11660.)

We would first note that Mid-Century Insurance Company, which insured Ms. Mann on her homeowner's policy, correctly points out that the issue of coverage was not listed as an issue for trial and it was not stipulated. Mid-Century argues that this incident is excluded from their policy coverage. We agree that it was error for the WCJ to have found coverage because that issue was not raised. Accordingly, we will amend the Findings of Fact to defer the issue of coverage. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284.) We would further note that if there is an issue of coverage, that issue is subject to arbitration. (§ 5275.) In arbitration proceedings, Mid-Century may assert its lack of coverage, or its approved endorsement restricting coverage.

Next, Ms. Mann does not dispute that she employed applicant in this case. Instead, she argues that her employment of applicant is excluded because she employed applicant solely in her capacity as a homeowner and that the employment was intended for less than 52 hours. (§ 3351(d), 3352(a)(8).) However, applicant's employment by Ms. Mann was not excluded because Ms. Mann employed applicant beyond 52 hours during the 90 days prior to injury. Ms. Mann attempts to isolate applicant's employment at her personal residence as a separate and distinct period of employment, however the evidence and testimony clearly demonstrates that applicant's employment during this time was continuous and that applicant was instructed by Ms. Mann to report to her personal residence as part of his overall employment.

The WCJ was correct to find employment with Ms. Mann. However, and as a precaution we will defer the issue as to other potential employers. Applicant was employed by Ms. Mann on

each of the sites that he worked. It appears that Ms. Mann may have been the general employer on each site. While it appears true that applicant had joint employment with the Santa Cruz Mountain Trust, LLC, (SCMT) while he was employed at the location owned by SCMT, it is unclear whether SCMT yielded a benefit in applicant's employment at the Rutherford property. As the WCJ did not conduct any analysis as to general / special employment and whether applicant was at the Rutherford location as a borrowed / lent employee, the prudent course would be to return this matter to the trial level for further proceedings.

We will further correct the findings to indicate that the injury occurred in Redwood City. Ms. Mann objected that the findings listed the injury as occurring in "various locations in the State of California." The location of the injury establishes both jurisdiction of the Appeals Board and venue. Applicant's injury was a specific injury, which occurred in Redwood City. The fact that applicant was also employed by Ms. Mann at other locations does not change the analysis as to jurisdiction and venue.

Accordingly, as our Decision After Reconsideration, we rescind the August 11, 2022 F&A, and substitute a new Findings and Award, which finds that applicant was employed by Cathy Mann on May 25, 2016 and sustained injury AOE/COE to his right hand and fingers, but defers the issue of insurance coverage and other employers and returns this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Setting Aside and First Amended Findings and Award issued on August 11, 2022, is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Ranulfo Zuniga, while employed as a construction laborer / carpenter on May 25, 2016, at Redwood City, California, by Catherine Mann, sustained a specific injury arising out of and in the course of this employment to his right hand, fingers, and claims to have sustained injuries to additional body parts which are deferred. The issue of whether any other person employed applicant on May 25, 2016 is deferred. The issue of workers' compensation insurance coverage on May 25, 2016 is deferred.
2. The injury caused a need for further medical treatment.
3. All other issues are deferred.
4. The July 11, 2022 Findings and Award is set aside.

AWARD

AWARD IS MADE in favor of Ranulfo Zuniga and against Cathy Mann;

1. Further medical care to cure or relieve from the effects of the industrial injury.
2. All other issues are deferred.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 16, 2026

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

**RANULFO ZUNIGA
LAW OFFICE OF MANUEL REYNOSO
SCHER & BASSETT
MANNING & KASS
STRATMAN & WILLIAMS-ABREGO
PURINTON, JIMENEZ, LABO & WU
GOLDMAN, MAGDALIN & KRIKES
OFFICE OF THE DIRECTOR – LEGAL UNIT (OAKLAND)
UNINSURED EMPLOYERS BENEFITS TRUST FUND**

EDL/mt

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