

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

**STEVEN D'BRAUNSTEIN, *Applicant***

**vs.**

**PACIFIC ATTORNEY GROUP;  
STATE COMPENSATION INSURANCE FUND, et. al., *Defendants***

**Adjudication Numbers: ADJ16267092; ADJ16267075  
Anaheim District Office**

**OPINION AND ORDER  
GRANTING PETITION  
FOR RECONSIDERATION**

Applicant seeks reconsideration of the “Joint Findings of Fact” (F&A) issued on November 20, 2025, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant was not an employee of defendant Pacific Attorney Group (PAG), but an independent contractor.

Applicant contends that he was an employee and that defendant failed to establish its affirmative defense.

We have received an Answer from defendant. We received a request to file a supplemental petition from applicant, which we accept. (Cal. Code Regs., tit. 8, § 10964.) The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, the supplemental petition, and the contents of the WCJ’s Report. Based on our review of the record and for the reasons discussed below, we will grant applicant’s Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory

and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.<sup>1</sup>

## FACTS

Per the WCJ's Report:

This matter proceeded to Trial and was submitted on September 8, 2025 on the sole issue of employment, with the Applicant asserting employment and the Defendants asserting that the Applicant was an independent contractor.

The Applicant is alleged to have suffered a stroke alleged as a result of a specific injury on June 1, 2018 or, in the alternative, as a result of a cumulative trauma from June 1, 2017 through June 2018.

The work performed by the Applicant, beginning in 2017, on behalf of PAG and took the form of attending depositions set by various Defendants in Workers Compensation cases. According to the testimony of the owner of the PAG, Payam Shayani, Esq., the Applicant was offered work as an independent contractor deposition attorney at \$50.00 per hour [MINUTES OF HEARING/SUMMARY OF EVIDENCE, hereafter MOH/SOE, December 17, 2024 page 6, lines 10-13]. The witness, Mr. Shayani, testified that the Applicant has his own law corporation and a valid State Bar number and that the Applicant did not arrange or schedule the depositions as that was done by Defense Attorneys and that the Applicant was then contacted by PAG to determine if he was available to handle the deposition [MOH/SOE page 8, lines 8-15].

Mr. Shayani further testified that the Applicant did not have independent settlement authority and that the Applicant would call the handling attorney at PAG regarding settlement or put a recommendation in his notes back to the handling attorney [MOH/SOE page 9, lines 1-6]. Mr. Shayani testified that he utilized more than one contract attorney and, if there was a scheduling conflict for a PAG attorney, these contract attorneys would be contacted to determine if anyone was available to handle the assignment [MOH/SOE page 9, lines 19-23]. Mr. Shayani further testified that he instructed the Applicant to disclose to the injured worker at the deposition that the Applicant was making a special appearance [MOH/SOE page 12, lines 22-25]. Mr. Shayani testified that the Applicant would send an invoice to the office and a check would be prepared for his signature. The Applicant could say no to availability for a deposition and that the Applicant did not have a PAG Email account or phone extension or PAG computer nor did he have office space at PAG [MOH/SOE page 16, lines 11-25]. Mr. Shayani also testified that PAG did not dictate to the Applicant how the depositions were to be conducted and that the Applicant was not instructed by PAG as to which questions the Applicant was to object [MOH/SOE page 17, lines 2-4]. Mr. Shayani testified that the Applicant

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<sup>1</sup> All further references are to the Labor Code, unless otherwise stated.

practiced in other areas of law. Mr. Shayani re-iterated that the Applicant was an independent contractor and not an employee [MOH /SOE page 17, line 3-8].

Witness Michael Becerra testified that his title at PAG was senior hearing representative in the workers compensation department and that the supervising attorney for the workers' compensation section was Demetrius Martin. [MOH/SOE March 18, 2025 page 2, lines 19-24]. Witness Becerra testified that it was his goal to use in-house people for depositions to save money but, when that wasn't possible, they hired the Applicant and others to help with the deposition calendar [MOH/SOE page 4, lines 3-5]. At Trial on September 8, 2025, witness Becerra affirmed that the Applicant had his own separate law office apart from PAG and had his own separate clients. Mr. Becerra testified that the Applicant was considered to be an independent contractor by PAG and that the Applicant was free to accept or decline work offered by PAG [MOH/SOE March 18, 2025 page 3]. Mr. Becerra testified that the Applicant told Mr. Becerra that he was working on the side and handling his own cases [MOH/SOE March 18, 2025 page 5, line 4-6] To Mr. Becerra's knowledge, the Applicant was always considered an independent contractor by PAG [MOH/SOE September 8, 2025 page 3, lines 3-19]. Mr. Becerra testified in his deposition on June 7, 2024 [Joint Exhibit 11- Deposition Transcript Volume II/EAMS DOC ID# 55268341] at pages 98-99 that the "independent contractor" representatives were expected to relay any settlement offers to himself or Demetrius (page 316, line 3-6). The Applicant told Mr. Becerra that, while the Applicant thought he should be making more money, he was pretty happy he was getting business (page 323, line 3-9).

The witness, Mr. Becerra, testified that the Applicant had his own law firm and had his own clients but did not have a staff. The Applicant was considered by PAG to be an independent contractor and the Applicant was able to choose the work he did for PAG based upon his schedule and availability (pages 326-327). Mr. Becerra testified that the Applicant had his own firm and was doing civil work, not work comp and that it could have been rentals or real estate (page 332, line 20-25). Mr. Becerra gathered that there wasn't a lot of appearance work for the Applicant's private practice but a lot of pleadings and things like that. (page 334, line 21-25). Mr. Becerra testified that the Applicant was handling a deposition for PAG on May 31, 2018 and Mr. Becerra learned later that the Applicant suffered a stroke on June 1, 2018 (page 275).

The numerous invoices and deposition reports appended to the deposition transcript of Mr. Becerra [Joint Exhibit 11] reveal that the Law Offices of Steven A. D'Braunstein located at 207 North Broadway, Suite F Santa Ana, Ca 92701 invoiced the Pacific Attorney Group at 856 S. Robertson Blvd. Los Angeles, Ca 90035 for each appearance made on behalf of PAG. The invoices recite an hourly compensation rate of \$50.00 for services rendered. The invoices state "Thank you for the opportunity to serve you! It is our intent to always provide you outstanding service and results!" The appearing attorney was not to initiate settlement. The Applicant had to get approval from the firm in every instance (page 316, line 3-6).

The invoice dated December 7, 2017 [marked as deposition exhibit 25 as contained in Joint Exhibit 11] notes an hourly rate of \$425.00 for PAG billing to the Defendants and reflects the Applicant's hourly rate for the same services billed to PAG of \$50.00 per hour.

(WCJ's Report, pp. 2-4.)

## **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.

(§ 5909.)

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 December 23, 2025, and 60 days from the date of transmission is Saturday, February 21, 2026, which by operation of law means this decision is due by Monday, February 23, 2026. (Cal. Code Regs., tit.

8, § 10600.)<sup>2</sup>. This decision is issued by or on February 23, 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 and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on December 23, 2025, and the case was transmitted to the Appeals Board on December 23, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by 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 December 23, 2025.

## II.

We highlight several legal principles that may be relevant to our review of this matter.

Labor Code<sup>3</sup> section 3357 provides that, “Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.” Section 3353 defines an “independent contractor” as “any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.” “[T]he fact that one is performing work and labor for another is prima facie evidence of employment and such person is presumed to be a servant in the absence of evidence to the contrary.” (*Narayan v. EGL, Inc.* (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724] (*Narayan*) quoting *Robinson v. George* (1940) 105 P.2d 914, 916 [5 Cal.Comp.Cases 233].) A worker must establish a prima facie case

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<sup>2</sup> 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.

<sup>3</sup> All future references are to the Labor Code unless noted.

of “employee” status, but then the burden shifts to the employer 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, supra*, 616 F.3d at p. 900.)

Upon establishment of employment, defendant may raise an affirmative defense that applicant is an independent contractor. Ordinarily this would be resolved by application of the ABC test of employment within sections 2750 et. seq. and 2775 et. seq.; however, here, the profession is licensed attorney, which is exempted from the ABC test and requires application of the *Borello* standard. (§ 2783(c); *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, (1989) 48 Cal.3d 341.) As noted by the Supreme Court in *Borello*:

**[[S]trong] evidence in support of an employment relationship is the right to discharge at will, without cause.** (Citation.) *Additional factors* have been derived principally from the Restatement Second of Agency. These include (a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee. (Citation.) Generally, . . . the individual factors cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations. (Citation.)

(*Id.* at 350-351, (internal citations and quotations omitted, emphasis added).)

Per the WCJ’s Opinion on Decision:

Did the employer have the right to terminate the relationship at will without fear of a breach of contract lawsuit? Yes. Both parties in this relationship had the right to end their relationship. PAG could, and did, use others for their deposition work and the Applicant had, at all times, the ability to decline on offer to cover a deposition for PAG.

(Opinion on Decision, p. 7.)

The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753,

755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and 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].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

Pursuant to Evidence Code section 952:

As used in this article, “confidential communication between client and lawyer” means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

“The lawyer who received or made a communication subject to the privilege under this article **shall claim the privilege** whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 954.” (Evid. Code, § 955, (emphasis added).)

It appears that Joint Exhibit 11 is a deposition transcript, which contains various attachments, which appear to contain documentation of attorney-client discussions with multiple parties that are not part of these proceedings. The holder of the attorney-client privilege is generally the client, not the attorney. (Evid. Code, § 953.) It is not clear on the record that any of the clients referenced in these documents have waived privilege to have their attorney-client communications be entered as evidence in these proceedings.

### III.

Under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal.724, 729 [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. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364.) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 14 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Section 5901 states in relevant part that:

No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets

aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...

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

Accordingly, we grant applicant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to [WCABmediation@dir.ca.gov](mailto:WCABmediation@dir.ca.gov).

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Joint Findings of Fact issued on November 20, 2025, by the workers' compensation administrative law judge is **GRANTED**.

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**FEBRUARY 23, 2026**

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

**STEVEN D'BRAUNSTEIN  
THOMAS F. MARTIN, PLC  
LAKEESHA JEMERSON  
STATE COMPENSATION INSURANCE FUND**

**mt**

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