

COMPENSATION NEWS

MONTHLY REPORT

Residential employee is not considered an employee by court of appeal

This is a published decision

The applicant filed a claim alleging an injury on the first day on the job. The applicant was an experienced house painter. He did not have a contractors license. He was hired by a homeowner. He fell off a ladder and had serious injuries.

He filed a civil suit against the homeowner and a workers' compensation claim. The homeowner had insurance. The

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California State Automobile Association Inter-Insurance Bureau v. WCAB (Hestenhauge)

homeowner denied employment pursuant to Labor Code section 3351, subdivision (d), and section 3352, subdivision (h). They were contending the applicant did not work enough hours to qualify to be an employee.

The case was tried by a Workers' Compensation Judge (WCJ). The WCJ ruled that the applicant was an employee. A petition for reconsideration was filed by the defendant. The Workers' Compensation Appeals Board (WCAB) took two years to make a decision. It upheld the WCJ.

The Court of Appeal overruled the WCAB. Section 3351, Subdivision (d) states you must work at least 52 hours and earn at least \$100. During the 90 days preceding the injury. The applicant did not do so. The WCAB agreed that the applicant

did not have the requisite number of hours or wages in this case.

The Court of Appeal indicated that the inquiry should have ended at that point. However, the WCAB looked at an alternative definition of an employee under Labor Code section 3715. This section only deals with uninsured employees. It is undisputed in this case that the homeowner had insurance.

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Editor: Harvey Brown
Firm: Samuelson, Gonzalez, Valenzuela and Brown
Address: 18500 Von Karman #470, Irvine
Phone: 949 252-1300