WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

LAURA CASTILLO, *Applicant*

vs.

LUCIA MAR UNIFIED SCHOOL DISTRICT;
ATHENS ADMINISTRATORS, *Defendants*

Adjudication Number: ADJ17704323
San Luis Obispo District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on March 27, 2024, wherein the WCJ found in pertinent part that the activities leading to applicant's injury did not constitute personal comfort activities, that they were not subject to the parking lot exception, that applicant's injury did not arise out of and in the course of her employment (AOE/COE), and that applicant take nothing.

Applicant contends that her injuries are compensable because she was injured on defendant's premises shortly after the end of her shift and she did not materially deviate from the course of her employment.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the answer, and the contents of the Report with respect thereto.

Based on our review of the record, and for the reasons discussed below, we will grant applicant's Petition, rescind the WCJ's March 27, 2024 Findings and Order, substitute a new Findings and Order, and return the matter to the trial level.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to her cervical spine, left upper extremities, and ear while employed by defendant as a bus driver on June 2, 2022.

On February 14, 2024, the matter proceeded to trial on the following issues:

> 1. Whether or not applicant was subject to the Going and Coming Rule with respect to her allegations of injury. Defendant asserts material deviation taking this out of AOE/COE. The basis of the Going and Coming Rule is material deviation from her original course that she was taking.
>
> There is an allegation that the parts of body injured are not correct. All body parts are disputed at this time, and that should there be a finding of injury, that the body parts will later be identified and examined by an appropriate QME physician.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), February 14, 2024 trial, p. 2.)

At trial, the parties stipulated as follows:

> 1. Laura Castillo, born [], while employed on June 2, 2022, as a bus driver, Occupational Group Number 250, at Arroyo Grande, California, by Lucia Mar School District, claims to have sustained injury arising out of and in the course of her employment to her cervical spine, left upper extremity, and left ear.
>
> 2. At the time of injury, the employer's workers' compensation carrier was Athens Administrators.
>
> 3. The employer was permissibly self-insured.
>
> 4. No stipulation regarding earnings at this time.
>
> 5. No stipulations regarding treatment.
>
> 6. The injury has been denied AOE/COE based upon the Going and Coming Rule.

(MOH/SOE, p. 2.)

Applicant was the only witness at trial. The WCJ summarized applicant's testimony as follows:

> She was performing the school work waiting for another bus driver who had a truck also. The truck was parked in front of her. She wanted to talk with her co-worker about moving a sectional. She was going to help her co-worker move

the sectional. It was difficult because of the size and it was in the truck. She talked for about 10 minutes at most.

She was asked how often she would talk to co-workers in the parking lot and she said once or twice a week. She said it would maybe take 10 minutes or so. She was asked whether the employer was aware of her talking with co-workers in the parking lot and she said yes.

The keys to her bus were in the break room, and once she put her keys in the break room, they would talk about various items of work, mostly venting.

She was asked what happened after she talked to her co-worker. She was told that she had been instructed to walk on the white lines and so she was walking on the white lines. While walking on the white lines, she ran into a cement block and tripped over her right leg, falling in the parking lot. The parking block was on the white line. She tripped because she couldn't stabilize herself.

She was asked whether she called for help and she said she did not remember. She said she didn't even remember really falling, she just remembers the pain. She remembers hearing a worker yell to her. The fall occurred around 5:00 o'clock p.m.

(MOH/SOE, p. 4.)

She was asked whether she had ever moved her car out of the parking lot and she replied in the negative. She was asked who owns the parking lot and she believes it's Lucia Mar School District. She, again, reaffirmed that she had never moved her car whatsoever.

(MOH/SOE, pp. 4-5.)

She admitted that she was never fully informed as to who owned the parking lot and had no facts in her possession or under her knowledge regarding that issue.

The injury occurred on June 2, 2022. She was asked whether she had any independent recollection of the incident and she replied in the negative.

She did state that prior to the injury on that same date of June 2, she had made plans and arrangements earlier to move the couch with her friend. The plans were made earlier that day. She claims she went to the car first before seeing her friend.

She admitted that she got to her car before her friend arrived. About 10 to 15 minutes before her friend arrived, she had been in her car. She had been

> conducting business in her car. She believes that the fall occurred about 5:05 p.m. She had left work at 4:30 when she hung up her keys.
>
> She stated if not for her employment, she would never have been in the parking lot.
>
> She testified that it was for her own convenience that they met in the parking lot to discuss moving the sectional. She stated that all the employees of Lucia Mar were often in the parking lot.

(MOH/SOE, p. 5.)

The parties were provided an opportunity to file post-trial briefs and the matter stood submitted thereafter. The WCJ issued the following findings:

> 1. Applicant did not suffer injury in the course and scope of her employment.
>
> 2. Applicant substantially and materially deviated from the duties of her employment such that her injuries are not compensable.
>
> 3. Applicant's activities leading to her injury did not constitute personal comfort activities such that her injuries were in the course and scope of her employment. Her activities at the time of injury were outside the course and scope of her employment. They were not subject to the parking lot exception.
>
> 4. Applicant shall take nothing.

(Findings and Order, issued March 27, 2024, pp. 1-2.)

DISCUSSION

Where an employee is injured in the course and scope of his or her employment, workers' compensation is generally the exclusive remedy of the employee and his or her dependents against the employer. (Lab. Code, §§ 3600(a), 3602.[1]) The 'exclusivity rule' is based upon a presumed compensation bargain: "[T]he employer assumes liability for industrial personal injury or death without regard to fault in exchange for limitations on the amount of that liability. The employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of industrial injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort. [Citations.]" (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 16 [55

[1] All statutory references are to the Labor Code unless otherwise stated.

Cal.Comp.Cases 494]; see *LeFiell Manufacturing Co. v. Superior Court* (2012) 55 Cal.4th 275, 279 [77 Cal.Comp.Cases 700].)

The determination of whether an injury arises out of and in the course of employment requires a two-prong analysis. (*LaTourette v. Workers' Comp. Appeals Bd*. (1998) 17 Cal.4th 644 [63 Cal.Comp.Cases 253].) First, the injury must occur "in the course of employment," which ordinarily "refers to the time, place, and circumstances under which the injury occurs." (*LaTourette, supra*, at 645.) The ordinary course of employment is deemed to commence when an employee enters the employer's premises (the premises line rule), and at that point, the going and coming rule generally does not bar workers' compensation liability. (*Schultz v. Workers' Comp. Appeals Bd*. (2015) 232 Cal.App.4th 1126, 1135 [80 Cal.Comp.Cases 16] (the employment relationship begins when "an employee enters the employer's premises," which "include [the employer's] parking lot.").) The liability of an employer for injuries sustained by their employees on the employment premises is exceedingly broad. Extending the employer's liability to the total premises "is somewhat arbitrary but as a practical measure is well established." (*Schultz v. Workers' Comp. Appeals Bd*. (2015) 232 Cal.App.4th 1126, 1136 [80 Cal.Comp.Cases 16]; *North American Rockwell Corp. v. Workmen's Comp. App. Bd.* (*Saska*) (1970) 9 Cal.App.3d 154, 159 [35 Cal.Comp.Cases 300].)

Second, the injury must "arise out of" the employment, "that is, occur by reason of a condition or incident of employment, [however], the injury need not be of a kind anticipated by the employer nor peculiar to the employment in the sense that it would not have occurred elsewhere." (*Employers Mut. Liability Ins. Co. v. Industrial Acci. Com*. (*Gideon*) (1953) 41 Cal.2d 676, 679-680.) If we look for a causal connection between the employment and the injury, such connection need not be the sole cause; it is sufficient if it is a contributory cause. (*Gideon, supra*, at 680; *Maher v. Workers' Comp. Appeals Bd*. (1983) 33 Cal.3d 729, 736 [48 Cal.Comp.Cases 326]; *Madin v. Industrial Acc. Com*. (1956) 46 Cal.2d 90, 92-93 [21 Cal.Comp.Cases 49].) "All that is required is that the employment be one of the contributing causes without which the injury would not have occurred." (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298 [80 Cal.Comp.Cases 489], quoting *LaTourette, supra*, at 651, fn. 1; *Maher, supra*, at 734, fn. 3.) Moreover, "where the injury occurs on the employer's premises while the employee is in the course of his employment, the injury also arises out of the employment unless the connection is so remote from the employment that it is not an incident thereof...."

(*California Compensation & Fire Co. v. Workers' Comp. Appeals Bd. (Schick)* (1968) 68 Cal.2d 157, 160 [33 Cal.Comp.Cases 38].)

We note that California's "going and coming" rule is not legislatively mandated or enacted, but judicially conceived and created. (*Hinojosa v. Workmen's Comp. Appeals Bd*. (1972) 8 Cal.3d 150, 153 [37 Cal.Comp.Cases 734].) Whether an employee's injury arose out of and in the course of employment is generally a question of fact to be determined in light of the particular circumstances of the case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346 [67 Cal.Comp.Cases 51].) In resolving this issue, we are mindful that workers' compensation laws must be "liberally construed" in order to extend "their benefits for the protection of persons injured in the course of their employment." (Lab. Code, §3202.) It is well settled that "any reasonable doubt as to the applicability of the going and coming doctrine must be resolved in the employee's favor." (*Hinojosa, supra*, at 155-156; *Parks v. Workers' Comp. Appeals Bd*. (1983) 33 Cal.3d 585, 593 [48 Cal.Comp.Cases 208].)

In *Jones v. Regents of Univ. of Cal*. (2023) 97 Cal.App.5th 502, the Court of Appeal recently provided an overview of the premises line rule in Workers' Compensation cases:

> In an effort to create a 'sharp line of demarcation' as to when the employee's commute terminates and the course of employment commences, courts adopted the premises line rule, which provides that the employment relationship generally commences once the employee enters the employer's premises. [Citations.] Prior to entry[,] the going and coming rule ordinarily precludes recovery [of workers' compensation benefits]; after entry, injury is generally presumed compensable as arising in the course of employment. [Citation.] The same rule applies to determine the end of the course of employment: generally, once employment has begun, it continues, and injury is presumed to be compensable, until the employee leaves the employer's premises.

(*Jones v. Regents of Univ. of C*al. (2023) 97 Cal.App.5th 502, 508 [88 Cal.Comp.Cases 1053].)

While some cases broadly state that the course of employment includes "a reasonable margin of time and space" used in passing to and from the employee's workstation, the California Supreme Court has clarified that this language refers simply to the employee's travel between their workstation and the point of entry of the employer's premises. (*General Ins. Co. v. Workers' Comp. Appeals Bd. (Chairez)* (1976) 16 Cal.3d 595, 599-600 [41 Cal.Comp.Cases 162]; *Jones, supra*, at 508-509.)

Highlighting the merits of the premises line rule, our Supreme Court explained:

> The "premises line" has the advantage of enabling courts to ascertain the point at which employment begins -- objectively and fairly. This outweighs the disadvantages incurred by attempting to formulate and apply a subjective rule justly. As Professor Larson has so clearly pointed out, "[it] is a familiar problem in law when a sharp, objective, and perhaps somewhat arbitrary line has been drawn . . . to encounter demands that the line be blurred a little to take care of the closest cases. For example, one writer says that there is no reason in principle why states should not protect employees 'for a reasonable distance' before reaching or after leaving the employer's premises. This, however, only raises a new problem . . . because it provides no standard by which the reasonableness of the distance can be judged. It substitutes the widely-varying subjective interpretation of 'reasonable distance' by different administrators and judges for the physical fact of a boundary line. At the same time, it does not solve the original problem, because each time the premises are extended a 'reasonable distance,' there will inevitably arise new cases only slightly beyond that point -- and the cry of unfairness of drawing distinctions based on only a few feet of distance will once more be heard." [Citation.]

(*Chairez, supra*, at 599; *Jones, supra*, at 508-509.)

Here, it is undisputed that applicant was injured on defendant's premises, e.g., in a parking lot for the use of employees.[2] (MOH/SOE, p. 5.) Because the issue was raised, we also note that the evidence shows that applicant was also within a reasonable margin of time and space. Applicant remained in the parking lot from the time her shift ended at 4:30 p.m. until she tripped and fell at around 5:05 p.m.[3] Applicant testified that she would never have been in the parking lot if not for her employment. (MOH/SOE, p. 5.) Based on the record before us, applicant was within a reasonable margin of time and space from performing work. After her shift, she sat in the parking lot waiting to speak with a co-worker whose truck was parked near applicant's. (MOH/SOE, p. 4.) While she waited the 10 to 15 minutes for her co-worker to arrive, applicant performed employment-related work while sitting in her vehicle. (MOH/SOE, pp. 4-5.) Once her co-worker arrived, they spoke about non-work related matters for about ten minutes. After they were done speaking, applicant tripped and fell walking between the vehicles.

We now turn to the issue of whether applicant's conversation with a co-worker at the end of her shift was a material deviation from applicant's duties. While a substantial or material deviation may take an employee out of the employment relationship, a slight deviation will not

[2] The parking lot was used and run by her employer. (Ex. B: applicant's deposition testimony, taken September 13, 2023, p. 52.)

[3] .At trial, applicant was not asked what time her shift ended. Based on her deposition testimony, applicant completed work at 4:30 on the day of the injury. (Ex. B: applicant's deposition testimony, taken September 13, 2023, p. 19.)

take the employee out of employment. (*Rankin v. Workers' Comp. Appeals Bd*. (1971) 17 Cal.App.3d 857, 860 [36 Cal.Comp.Cases 286]; *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd*. (1967) 67 Cal.2d 925, 928 [32 Cal.Comp.Cases 525]; *Western Pipe & Steel Co. v. Industrial Acci. Com*. (*Henderson*) (1942) 49 Cal.App.2d 108.) "Mere deviation by an employee from a strict course of duty does not release the [employer] from liability. In order to have such an effect the deviation must be shown substantially to amount to an entire departure." (*De Mirjian v. Ideal Heating Corp*. (1954) 129 Cal.App.2d 758, 766.) Here, having a personal conversation in the parking lot after her shift ended was not a deviation, much less a substantial or material deviation. Particularly where, as here, she spoke with co-workers in the parking lot once or twice a week and her employer was aware of this. (MOH/SOE, p. 4.)

Acts of the employee for personal comfort and convenience while at work are within the course of employment if they are "reasonably contemplated by the employment." (*Price v. Workers' Comp. Appeals Bd*. (1984) 37 Cal.3d 559, 568 [49 Cal.Comp.Cases 772]; *Pacific Indem. Co. v. Ind. Acc. Com*. (1945) 26 Cal.2d 509, 514; *California Casualty Indem. Exchange v. Industrial Acci. Com. (Cooper)* (1943) 21 Cal.2d 751, 758; *Saska, supra,* at 158.) Under the personal comfort and convenience doctrine, activities necessary for the life, comfort, and convenience of the employee at work, even if strictly personal to the employee and not in service of the employer, are incidental to that service, and injury sustained in such activities are deemed to arise out of and occur in the course of employment. (See *Price, supra*, at 567-568.)

Personal conversations with co-workers after a shift are reasonably contemplated, especially here, where the employer was aware that applicant spoke with co-workers once or twice a week while in the parking lot after her shift. Based on the record, applicant was in the course of employment at the time of her injury. She was on the premises, i.e., an employer-designated parking lot (*Jones, supra*, at 508-509) when she had a personal conversation with a co-worker at the end of her shift.

Accordingly, we grant applicant's Petition, rescind the Findings and Order issued by the WCJ on March 27, 2024, substitute a new Findings and Order, and return the matter to the trial level.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued by the WCJ on March 27, 2024 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant LAURA CASTILLO, while employed on June 2, 2022, as a bus driver, Occupational Group Number 250, at Arroyo Grande, California, by Lucia Mar School District, claims to have sustained injury arising out of and in the course of her employment to her cervical spine, left upper extremity, and left ear.

2. At the time of injury, the employer's workers' compensation carrier was Athens Administrators.

3. The employer was permissibly self-insured.

4. Applicant's claimed injury is not subject to the going and coming rule.

5. Applicant did not substantially and materially deviate from the duties of her employment.

6. Applicant's claimed injury arose out of and in the course of employment.

7. The issue of which body parts, if any, sustained industrial injury is deferred.

ORDER

All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 10, 2024

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

LAURA CASTILLO
CANLAS LAW GROUP
ROSENBERG YUDIN
GOLDMAN, MAGDALIN & KRIKES

JB/*pm*

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