WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

KEVIN SARIAN, *Applicant*

vs.

CITY OF GLENDALE, permissibly self-insured; administered by ADMINSURE, *Defendants*

Adjudication Number: ADJ13261327
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Orders (F&O) issued by the workers' compensation administrative law judge (WCJ), wherein the WCJ found that applicant's injury arose out of and occurred in the course of employment (AOE/COE).

Defendant contends that the WCJ erred because applicant did not establish that he was providing a benefit to his employer at the time of his injury.

We have not received an answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record,[1] for the reasons stated in the WCJ's Report, and for the reasons discussed below, we will grant the Petition and, as our Decision After Reconsideration, we will affirm the F&O, except that we will amend the F&O to restate Finding 2 to find that applicant was providing a benefit to his employer at the time of his injury under Labor Code section 3600(a)(2).

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[1] We have reviewed the transcripts of the proceedings for May 25, 2023, August 7, 2023, October 2, 2023, January 24, 2024, April 11, 2024, May 29, 2024, August 28, 2024, September 25, 2024, and May 1, 2025, and the testimony in the transcripts is generally consistent with summaries prepared by the WCJ. As appropriate, in our discussion, we refer to the WCJ's summary in the Report and to the transcripts.

I.

Former Labor Code 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, Labor Code 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.
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> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code 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 July 21, 2025, and 60 days from the date of transmission is September 19, 2025. This decision is issued by or on September 19, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on July 21, 2025, and the case was transmitted to the Appeals Board on July 21, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 21, 2025.

II.

On May 26, 2020, applicant filed an application for adjudication alleging an injury to his brain, head, neck, back, shoulders, and hip while employed by defendant on March 12, 2020.

On March 12, 2020, applicant was a senior library supervisor for defendant's Central Branch Library. Applicant drove to meet a colleague, Thomas Eiden, who was also employed by defendant as a library supervisor, for a meal break. He drove to the Casa Verdugo Branch Library where Mr. Eiden worked, and together they walked to the Shimshari Restaurant, which is next door to the Casa Verdugo Branch Library, for their dinner break. (Report, July 21, 2025, p. 1, ¶ 3.) When they left the restaurant, applicant slipped and fell, resulting in the claimed injuries. (Report, July 21, 2025, p. 1, ¶ 4.) Mr. Eiden has since passed away, but his deposition was taken and is in evidence.

As noted by the WCJ in his Report, "It is undisputed that the applicant and the co-worker [Mr. Eiden] were friends and occasionally met outside of work. However, on the date of injury, they met to discuss personnel issues – not just personal issues – involving three employees of defendants [Phoung N., Susan A., and Vaneh H.] that they either currently or formerly supervised." (Report, July 21, 2025, p. 2, ¶ 2.)

The parties proceeded to trial on March 27, 2023 on the sole issue of whether applicant sustained an industrial injury AOE/COE and consideration of Labor Code section 3600(a)(2). (Minutes of Hearing, March 27, 2023, p. 2, lines 13-16.) The matter was continued for applicant's testimony on May 25, 2023, August 7, 2023, October 2, 2023, January 24, 2024, and April 11, 2024. The matter was continued for defense witness testimony of applicant's supervisor at the time of the alleged injury, Hala Shonouda, on May 29, 2024, August 28, 2024, September 25, 2024, and May 1, 2025.

Applicant testified he was a salaried employee. (Transcript of Proceedings, May 25, 2023, p. 6, line 25-p. 7, line 2.) He reported he did not clock in or out as a library supervisor, he did not have a set time each day that he would have to take a rest break, he did not have a set time each

day that he would have to take a lunch break, and he had flexibility as to when he could take rest breaks or lunch breaks. (Transcript of Proceedings, May 25, 2023, p. p. 7, lines 12-24.)

Both applicant and Mr. Eiden consistently testified that they planned to discuss two to three employees during their lunch: just Phuong and Susan or Phuong, Susan, and Vaneh, and they in fact discussed those three employees during their dinner. (See, e.g., Def. Exh. B, Deposition of Thomas Eiden, p. 23, line 10-p. 24, line 6; Transcript of Proceedings, May 25, 2023, p. 24, line 15-p. 28, line 17.) Further, Mr. Eiden and applicant consistently testified that during a phone call on the date of injury, it was Mr. Eiden who asked applicant if they could discuss those employees at their upcoming dinner. (See, e.g., Def. Exh. B, Deposition of Thomas Eiden, p. 35, line 15-p. 36, line, 22, p. 37, lines 7-25, p. 49, lines 9-14; Transcript of Proceedings, May 25, 2023, p. 18, line 3-p. 19, line 3.)

Phuong was an employee who recently transferred to Mr. Eiden's branch and had a performance evaluation due in March 2020. (App. Exh. 2, Email From Mr. Eiden to Applicant, February 14, 2020, p. 1.) It is not disputed that applicant was Phuong's supervisor in the period immediately prior to Mr. Eiden becoming Phuong's supervisor. (Def. Exh. F, Email To/From Nancy Park, pp. 1-2; App. Exh. 2, Email From Mr. Eiden to Applicant, February 14, 2020, p. 1.)

With respect to Phuong, evidence admitted included an email from Mr. Eiden to applicant on February 14, 2020, reflecting Mr. Eiden had only been Phuong's supervisor while she was in the role of library assistant (LA) at the Casa Verdugo Branch Library for a short time, whereas applicant had been Phuong's last supervisor. The email stated:

> I have to write Phuong's 3 month probationary evaluation (12/22/2019 to 3/22/2020). She actually started at Casa on l/20/2020. Could you please give me some comments on her performance for that 1 month she was an LA for you? Also, could you please send me a copy of her P.E. from last year? I'd like to see how she was in that time considering I've only observed her performance for one month. I'd really appreciate it!

(App. Exh. 2, Email From Mr. Eiden to Applicant, February 14, 2020, p. 1.)

At trial, Ms. Shonouda was shown the email (Applicant's Exhibit 2). (Transcript of Proceedings, May 1, 2025, p. 5, line 25-p. 6, lines 1-4.) Ms. Shonouda then testified that based on the email, she agreed that Mr. Eiden was the one who reached out to applicant for feedback. (Transcript of Proceedings, May 1, 2025, p. 7, lines 17-20.) Ms. Shonouda also confirmed that

nothing in the email indicated that Mr. Eiden wanted applicant's feedback for purposes of his own curiosity. (Transcript of Proceedings, May 1, 2025, p. 8, lines 9-12.)

Evidence admitted also included emails from or to Mr. Eiden regarding Phuong's performance evaluation prepared by Mr. Eiden for the period from December 22, 2019 to March 22, 2020. (Def. Exh. E.) In an email on March 1, 2020, Ms. Shonouda wrote to Mr. Eiden:

> This looks great and I am so glad that Phuong is doing such wonderful work at Casa Verdugo. *Can you please hold on to this evaluatlon* [*sic*] *until after the 3 month period ends and then share with her*? Also, in relation to handling donations, *can you please check in with Kevin* because I think that Phuong may have permanent work restrictions in terms of how much she can lift etc, I believe that Jay and Kevin attended a related meeting last year but I don't see the documentation for it.

(Def. Exh. E, Email From Ms. Shonouda to Mr. Eiden, March 1, 2020, p. 1, emphasis added.)

Emails from Mr. Eiden reflect that Mr. Eiden did not serve the performance evaluation on Phuong until April 21, 2020. (Def. Exh. E, Emails from Mr. Eiden, April 21, 2020, pp. 3-4.) Ms. Shonouda testified that Mr. Eiden did not request to amend Phuong's performance evaluation. (Transcript of Proceedings, May 1, 2025, p. 23, lines 23-p. 24, line 6.)

Susan was a part-time employee shared by applicant and Mr. Eiden. Applicant and Mr. Eiden both testified that Mr. Eiden had some work-related concerns about Susan, and although there was some discrepancy in the testimony as between applicant and Mr. Eiden as to what those concerns were, they both testified Mr. Eiden's concerns included Susan's tardiness. (See, e.g., Def. Exh. B, Deposition of Thomas Eiden, p. 35, line 15-p. 36, line 3, p. 49, lines 9-14, p. 55, line 18-p. 56, line 24; Transcript of Proceedings, May 25, 2023, p. 19, lines 1-3, p. 25, lines 14-20.)

Vaneh was also a part-time employee shared by applicant and Mr. Eiden. Though the testimony of applicant and Mr. Eiden differed as to what was discussed about Vaneh, both applicant and Mr. Eiden were consistent in that they testified they discussed Vaneh at their dinner; Vaneh's work was viewed favorably. (See, e.g., Def. Exh. B, Deposition of Thomas Eiden, p. 73, line 16-p. 77, line 10; Transcript of Proceedings, May 25, 2023, p. 25, line 14-p. 26, line 6.)

With respect to the question of decreasing or increasing hours of employees, including Susan and Vaneh, Ms. Shonouda testified at trial that if Mr. Eiden wanted to increase Vaneh's hours he would have to run it by applicant. (Transcript of Proceedings, May 1, 2025, p. 15, lines 11-14.)

Defendant's written library policy states in relevant part:

> Library staff should exercise caution regarding conversations that are held within the hearing of patrons. In particular, there are four types of conversations that patrons should not overhear:
>
> > I. Discussions about Library and City business. Comments on such matters as internal policies, budget, Library directions or personnel are private matters to our staff only.

(Def. Exh. G, Glendale Public Library, Administrative Policy Manual, Chapter 3, Policy 3-E-2, Customer Service Guidelines, July 1995, p. 2, item 1.)

Ms. Shonouda was also shown the policy (Defendant's Exhibit G). (Transcript of Proceedings, September 25, 2024, p. 33, line 4-19.) Ms. Shonouda testified the policy applied to herself and applicant as they were both considered frontline supervisors because they covered the desk if staff are out. (Transcript of Proceedings, September 25, 2024, p. 34, line 1-10.)

Following the close of testimony on May 1, 2025, the matter was submitted. On June 23, 2025, the WCJ issued the F&O that is the subject of the Petition for Reconsideration herein.

On July 9, 2025, defendant sought reconsideration of the F&O.

III.

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 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 covered 'employee.'" (Lab. Code, §§ 3351, 5705(a); *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80.)

Notwithstanding the above, Labor Code section 3600 only imposes liability on an employer for workers' compensation benefits if an employee sustains an injury AOE/COE. An employer is liable for workers' compensation benefits, where, at the time of the injury, an employee is "performing service growing out of and incidental to his or her employment and is acting within the course of employment." (Lab. Code, § 3600(a)(2).) 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 p. 256.) An employee is acting within "the course of employment" when "he does those reasonable things which his contract with his employment expressly or impliedly permits him to do." (*Id.*) In other words, if the employment places an applicant in a location and they were engaged in an activity reasonably attributable to employment or incidental thereto, an applicant will be in the course of employment and the injury may be industrially related. (*Western Greyhound Lines v. Industrial. Acc. Com.* (*Brooks*) (1964) 225 Cal.App.2d 517 [29 Cal.Comp.Cases 43].)

Second, the injury must "arise out of" the employment, "that is, occur by reason of a condition or incident of employment." (*Employers Mutual Liability Ins. Co. of Wisconsin v. Industrial Acc. Com.* (*Gideon*) (1953) 41 Cal.2d 676 [18 Cal.Comp.Cases 286].) "[T]he employment and the injury must be linked in some causal fashion," but such connection need not be the sole cause, it is sufficient if it is a "contributory cause." (*Maher v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 729 [48 Cal.Comp.Cases 326].) In *Argonaut Ins. Co. v. Workmen's Comp. App. Bd.*, the Court of Appeal reasoned that "where an employee is injured on his employer's premises as contemplated by his contract of employment, he is entitled to compensation for injuries received during reasonable and anticipatable use of the premises." (*Argonaut Ins. Co. v. Workmen's Comp. Appeals Bd*. (*Helm*) (1967) 247 Cal.App.2d 669, 677 [32 Cal.Comp.Cases 14].)

Although it is the employee's burden to demonstrate by a preponderance of the evidence that they sustained a compensable injury, the concept of what constitutes a work-related injury is broad. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.) The determination of whether an injury arises out of and in the course of employment is based on "criteria" that are "fluid," and "must therefore be decided on the facts peculiar to each case." (*Westbrooks v. Workers' Comp. Appeals Bd.* (1988) 203 Cal.App.3d 249 [53 Cal.Comp.Cases 157]; see also, *LaTourette*, *supra*, at pp. 651-652.) Reasonable doubts as to whether an injury arose out of and in the course of employment are resolved *in favor of an applicant*. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500], emphasis added.)

The issue before us is whether applicant sustained an industrial injury.[2] It is apparent that applicant was acting in the course of his employment and that his injury arose out of his employment. The issue raised by defendant is whether applicant was providing a benefit to his employer when he discussed personnel issues with a fellow supervisor during a meal break as a salaried employee to satisfy the requirement of Labor Code section 3600(a)(2).

In *McFadden v. Workers' Comp. Appeals Bd.* (1988) 203 Cal.App.3d 279 [53 Cal.Comp.Cases 311], the court found applicant's injury AOE/COE where the salaried employee was injured while returning to work from an off-premises lunch with co-workers at which they discussed company business. In *McFadden*, the court noted the following:

> McFadden lunched with other company employees and he testified (without contradiction) they discussed company business. Master benefitted. (See *County of Los Angeles v. Workers' Comp. Appeals Bd.*, [] 145 Cal.App.3d [418] at p. 421.) Therefore, we need not reach the broader issue as to whether salaried employees are always entitled to workers' compensation benefits for injuries sustained during any break period.

(*Id.* at p. 283, fn. 2.)

A significant portion of defendant's Petition is devoted to arguing why applicant's discussions of each employee provided no benefit to defendant.[3] Yet, a specific breakdown of each

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[2] In this case, the going and coming rule, or its exceptions, are not applicable because the going and coming rule involves injury suffered during the course of a local commute to a fixed place of business at fixed hours in the absence of exceptional circumstances. (*Hinojosa v. Workmen's Comp. Appeals Bd.* (1972) 8 Cal.3d 150, 157 [37 Cal.Comp.Cases 734].) Here, applicant was not engaged in his regular work commute when he went to dinner with Mr. Eiden.

[3] Although we do not find it necessary to thoroughly dissect applicant's discussions about each employee to find there was a benefit to defendant, nonetheless, we highlight that defendant omits or mischaracterizes certain facts.

Defendant claimed there was no benefit to defendant in discussing Phuong because the performance review was already submitted and approved, and applicant shared his own performance evaluation of Phuong for the preceding period prior to lunch. (Petition, p. 7, line 25-p. 8, line 3.) However, this characterization disregards Ms. Shonouda's testimony that she instructed Mr. Eiden to hold onto the evaluation until the period had officially ended, which was March 22nd, 2020, and hypothetically speaking, if Mr. Eiden wanted to make changes or additions to the performance review, he could have done so and resubmitted a modified draft for her approval after he made whatever changes he needed to make; she confirmed if he wanted to make changes, he could. (Transcript of Proceedings, May 1, 2025, p. 12, lines 5-p. 13, line 23.)

Defendant also points out there were no records that Mr. Eiden reduced Susan's hours or subjected her to progressive discipline. (Petition, p. 8, lines 18-20.) Defendant then concludes the fact that no action was ever taken to correct the issues with Susan would be indicative of the severity of the problem or lack thereof. (Petition, p. 9, lines 2-4.) Although it may be true that no action was taken against Susan after Mr. Eiden and applicant's dinner meeting, this ignores the fact that the library ceased normal operations on March 16, 2020, only four days after the date of injury, with two of those days being weekends. As testified by Mr. Eiden:

conversation is unnecessary. As was the case in *McFadden*, we conclude that here there was a benefit to defendant because applicant, at the request of a co-supervisor, Mr. Eiden, traveled to Mr. Eiden's branch location to meet at a restaurant for a discussion of shared personnel. This was a benefit to defendant because applicant was performing a task that could be reasonably expected by his employer – namely collaborating with a co-supervisor about personnel issues. Similar to *McFadden*, where the injured worker was a salaried employee, whether or not the meeting between applicant and Mr. Eiden was during a midday break is inconsequential because applicant and Mr. Eiden consistently testified that they planned to and then did meet to discuss business-related issues.

A finding of a benefit to defendant is also supported by the testimony of Ms. Shonouda who testified that applicant's and Mr. Eiden's discussion of employees was appropriate and would provide a benefit to defendant; however, she claimed there was no actual benefit to defendant because the discussions were made in a public location. (September 25, 2024, p. 38, lines 2-5, emphasis added [Testimony of Ms. Shonouda: "*It was an appropriate discussion for them to have* but not in a public setting...."]; see also, Transcript of Proceedings, May 1, 2025, p. 19, lines 16-25, p. 21, line 5-p. 23, line 17, p. 31, line 15-p. 32, line 6.)

Ms. Shonouda testified she believed it was defendant's policy that work-related discussions should not be done in any public setting, citing to the policy (Defendant's Exhibit G), training she

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> Q. And have you ever -- did you ever cut [Susan's] hours after you had this meeting?
> A. Well, after that meeting was Covid and we lost our part-time people.
> Q. Did Mr. Sarian recommend to you that you cut her hours?
> A. No, I think I did as a -- as a remedy.
> Q. Did you tell him you were going to cut her hours?
> A. No, I hadn't decided at that time yet.

(Def. Exh. B, Deposition of Thomas Eiden, February 24, 2021, p. 57, line 24-p. 58, line 3.)

> Similarly, Ms. Shonouda testified:
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> Q. BY MR. JACOBS… Do you know when COVID broke out in terms of the City of Glendale where it changed your operations?
> A. Yes, March 16th, 2020. Sorry. Yes, around there.
> Q. Approximately March 16 of 2020?
> A. Yes.

Thus, in light of this evidence, it is reasonable to conclude Mr. Eiden did not have the opportunity to take action against Susan after his dinner with applicant, not that he did not plan to.

received when she was first hired, and the fact that she was tasked with training frontline staff and onboarding new employees. (Transcript of Proceedings, p. 31, line 11-p. 32, p. 22).

Despite Ms. Shonouda's personal opinion that defendant had a policy prohibiting work-related discussions in public, she acknowledged defendant had no written policy specifically prohibiting supervisors from scheduling work meetings during lunch or a written policy specifically stating business related matters were not to be discussed amongst supervisors during their lunch hour. (Transcript of Proceedings August 28, 2024, p. 28, lines 13-23.) Following review of the policy itself (Defendant's Exhibit G), Ms. Shonouda acknowledged that the language of the policy did not actually state that comments on matters like personnel matters were private matters, but it said those discussions were to be exercised with caution and between staff members only; she was not aware of an actual policy that said staff were not to have discussions about personnel matters in a public setting, but it was "the practice of [their] operations"; and that the actual policy just states that staff should exercise caution when having such conversations. (Transcript of Proceedings, September 25, 2024, p. 34, line 11-p. 38, line 20.)

Ms. Shonouda's claim that it was the "practice of their operations" to not have work-related discussions in any public setting is not supported by objective evidence. Defendant provided no corroborating evidence such as a formal or written policy, evidence of trainings that would have conveyed that message of such policy, evidence that applicant received initial training on such policy, or evidence that applicant received ongoing training on such policy. Accordingly, the evidence fails to show defendant had in place at the time of injury a policy prohibiting work-related discussions between co-workers in *any* public space *anywhere* and that such a policy was actually conveyed to and/or understood by applicant.

Notably, applicant testified he was not aware of any policies that would prohibit him from taking lunch with co-workers to discuss work related issues. (Reporter's Transcript of Proceedings August 7, 2023, p. 4, lines 13-17.) Applicant also testified he did not recall having to ask anyone permission to take an off-site lunch to discuss work-related issues, and he was never reprimanded by his supervisor or any other person at work for taking these work lunches. (Reporter's Transcript of Proceedings August 7, 2023, p. 4, line 24-p. 5, line 2, p. 7, lines 6-9.)

Here, the fact that applicant was in a public location at the time of his injury does not mean that his injury was not AOE/COE and does not mean that his conduct did not benefit his employer. We have addressed this argument by defendant because it is defendant's central argument.

However, it is undisputed that applicant and Mr. Eiden had the discussions, and whether or not they could have been overheard does not alter the determination that those discussions were a benefit to the employer. Defendant provides scant legal authority for the proposition that this alleged violation of a policy takes applicant out of the course of employment and ignores the provision in Labor Code section 3600(a)(3) that an injury is AOE/COE when it is "proximately caused by employment, either with or without negligence." In other words, even if we accepted defendant's contention that applicant and Mr. Eiden should have exercised better judgment, defendant is unable to demonstrate any actual harm to it as a result of the conversation taking place in public, and we cannot conclude that their conduct was so unreasonable as to even rise to the level of negligence.

For the aforementioned reasons, and based on our review, we conclude that applicant was providing a benefit to his employer and that applicant sustained an industrial injury AOE/COE.

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza, supra*, at pp. 318-319.) Moreover, following our independent review of the record, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations (*Id*.)

Defendant's arguments regarding the applicant's credibility are simply not persuasive. Defendant argues applicant was not credible because applicant originally testified his lunch was compensated. (Petition, July 9, 2025, p. 3, line 25-p. 4, line 18.) As explained by the WCJ in the Report:

> The undersigned did not base the decision on a *compensated* lunch break contrary to defendant's assertion. It was clear to the undersigned that the applicant was salaried and worked a nine or ten hour day with a one hour break that was not paid. The applicant testified to memory issues (Minutes of Hearing/Summary of Evidence, dated 4/11/2024 at 2:24-25) and the medical record supports this (Exhibit Y, p. 65). The applicant's deposition statement was admitted as an inconsistent statement as opposed to impeachment evidence. The gist of applicants' responses are consistent. Moreover, the idea of an uncompensated lunch break with respect to a salaried employee is hard to grasp or the average layperson when the employees do not literally clock in and clock out in the traditional sense. The incident happened at the applicant's mid-day lunch/dinner break when the applicant intended to eat and return to work.

(Report, Jul 21, 2025, p. 2, ¶ 5-p. 3, ¶ 1.)

As a result, we conclude that there are no obvious and impeachable inconsistencies to disturb the WCJ's assessment of credibility.

As detailed above, the preponderance of the evidence supports that there was a benefit to defendant and therefore, that applicant sustained an industrial injury AOE/COE.

Finally, we amend Finding 2 of the F&O to find that applicant's injury satisfies the condition in Labor Code section 3600(a)(2) that there was a benefit to the employer. That is, we clarify that Labor Code section 3600(a)(2) is not an exception that would bar compensation; instead it is a condition of compensation.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact and Orders issued on June 23, 2025 by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Orders issued on June 23, 2025 by the WCJ is **AFFIRMED**, except that Finding of Fact 2 is **AMENDED** as follows:

FINDINGS OF FACT

* * *

2. At the time of his injury, applicant was performing service growing out of and incidental to his employment and was acting within the course of his employment as set forth in Labor Code section 3600(a)(2).

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 19, 2025

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

KEVIN SARIAN
ODJAGHIAN LAW GROUP
ROSENBERG YUDIN LLP

DC/abs

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