WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MIGUEL ENRIQUE MARTINEZ CASTILLO, ***Applicant***

vs.

AROSA HOME CARE;
NORTH RIVER INSURANCE COMPANY, administered by CRUM AND FORSTER,
Defendants

Adjudication Number: ADJ19575926
Pomona District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact (Findings) issued by a worker's compensation appeals board judge (WCJ) on March 25, 2025, wherein the WCJ found that while employed by defendant as a caregiver on June 14, 2024, applicant sustained an industrial injury to his right leg, ribs, right knee, back, and right hip.

Defendant contends in the "Petition to Reopen Record or Alternatively Petition for Reconsideration" (Petition) that the record must be re-opened for additional testimony to rebut applicant's unexpected testimony at trial and in the alternative, defendant contends that applicant's employment ended the moment he "clocked out" and that applicant was not credible.

We received an Answer from applicant. We received a Report and Recommendation (Report) from the WCJ, which recommends denial of defendant's Petition.

We have considered the allegations of the Petition and the Answer and the contents of the Report. Based on our review of the record, and for the reasons stated in the Report and for the reasons discussed below, we will deny the Petition for Reconsideration.

FACTS

The basic summary of facts described by the WCJ are as follows:

> Arosa LivHome assigned the applicant to his patient "Larry's" home as a caregiver where he has worked for the past for 10 years. The applicant's shift ended at 8:00 p.m. and he injured himself about 1 to 2 minutes after clocking out. His patient had lost his balance while the applicant was taking his patient to his bedroom and landed on the applicant causing injury to his right leg, ribs, right knee, back and right hip. (MOH/SOE pg. 4:6-10.5) The applicant sometimes would stay at the patient's home to avoid traffic and had done so on about 10 occasions previously but on the day of the injury he was going home. (MOH/SOE pg.5:1-2)

(Report, p. 2.)

The parties proceeded to trial on March 25, 2025 on the sole issue of "injury arising out of and in the course of employment." (Minutes of Hearing and Summary of Evidence (MOH), p. 2:19.) In relevant part, they stipulated that "applicant clocked out of work at 7:58 p.m." and "applicant was not injured at the time of clock out." No documentary evidence was presented.

Applicant testified in relevant part that his general work duties included checking on the patient, meal preparation, medication management, driving the patient for general errands, and walking the patient. (MOH/SOE, 3:22-25.)

> [His injury] happened around 8:01 p.m. He had clocked out when the injury happened. He was asked how long after he had clocked out did the injury happen, and he said it was one to two minutes later. He did report the injury to his manager, Christian Hooks, who took him to the emergency room at Cedars-Sinai in Marina del Rey.

(MOH/SOE 4:11-13.)

He was in the hall going towards Larry's bedroom when Larry fell on top of him. (MOH/SOE 5:21-23.) He has symptoms in his right ankle, knee, ribs, back, and foot. (MOH/SOE, 4:14-16.)

Defendant's witness, Carl McKinnon, is the Regional Director for defendant. He testified in pertinent part that: "He was not involved with the claim on the date of the injury." (MOH/SOE, 7:1-2.) Subsequently, he met with applicant, and applicant told him "that over the past eight years, he had developed a friendship with Larry Cordova and had an arrangement that on weekends the Applicant would stay and help out rather than drive home, as his commute was two hours." (MOH/SOE, 7:4-7.) "Applicant stated that after he had clocked out, he did meal prep and then

heard Mr. Cordova get up in the hallway. That is when the Applicant went to provide aid and Larry fell on top of him." (MOH/SOE, 7:15-17.)

The matter was submitted, and neither party requested the opportunity to present additional evidence.

DISCUSSION

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.
>
> (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 April 29, 2025 and 60 days from the date of transmission is Saturday June 28, 2025. The next business day that is 60 days from the date of transmission is June 30, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on June 30, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

[1] 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.

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 April 29, 2025 and the case was transmitted to the Appeals Board on April 29, 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 April 29, 2025.

II.

We begin with defendant's request to "re-open" the record.

Labor Code section 5903(d) includes as a basis for a petition for reconsideration "[t]hat the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing." Here, we treat the request to "re-open" as a request under subdivision (d).

With respect to the presentation of evidence at trial, Labor Code section 5502(d) outlines the expectations for a mandatory settlement conference (MSC).

> If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. *Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.*

(Lab. Code, § 5502(d), emphasis added.)

The purpose of this mandate is to minimize delays by ensuring that parties are prepared for hearing to guarantee a productive dialogue either leading to the resolution of the dispute or thoroughly and accurately framing the stipulations and issues for hearing (*County of Sacramento*

v. Workers' Comp. Appeals Bd. (*Estrada*) (1999) 68 Cal.App.4th 1429; [64 Cal.Comp.Cases 26]; *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (*Welcher*) (1995) 37 Cal.App.4th 675, 685 [60 Cal.Comp.Cases 717].) Particularly, failure to identify a witness on the pretrial conference statement will prevent the witness from testifying at trial unless the proponent can establish the witness was unavailable or could not have been discovered through due diligence before the MSC. (*Id.* at p. 685.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Appeals Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

While the Appeals Board has the power to develop the record pursuant to Labor Code sections 5701 and 5906 to provide for an adequate record and to ensure substantial justice, this must be balanced against the clear intent and language of Labor Code section 5502 (d)(3) that the parties disclose all relevant evidence at the MSC. (See *Telles Transport, Inc. v. Workers' Compensation Appeals Board* (*Zuniga*) (2001) 92 Cal.App.4th 1159 [66 Cal.Comp.Cases 1290]; *San Bernardino County Hosp. v. Workers' Comp. Appeals Bd*. (1999) (*McKernan*) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986].) Thus, in keeping with Labor Code section 5502, the proponent for the admission of additional evidence must prove that the evidence was either not available or could not have been discovered prior to the conference.

Here, defendant provides no basis in his Petition as to why the evidence he seeks to admit or the witness he would like to depose could not have been discovered or produced prior to the MSC. According to defendant's Petition, the unverified letter from the patient's cousin appears to have been sought and obtained by the employer following the trial on March 25, 2025. While it is true that the letter itself did not exist until after the trial and therefore could not have been offered into evidence, the content was certainly discoverable sooner. The particularities of the arrangement between applicant and his patient appear to have been at the center of defendant's argument which

should have triggered some discovery. In that the record is devoid of any exhibits or substantive testimony regarding the arrangement, it is clear that little to no discovery was done prior to the mandatory settlement conference or even trial. More importantly, we do not see that the arrangement between applicant and his client is actually relevant to the determination of the issue of whether applicant sustained an industrial injury. The matter was submitted without any objection from either party; defendant had the opportunity to question applicant at trial, and defendant only presented one witness and no other evidence. We agree with the WCJ that sufficient diligence is not shown in this case to either admit the unverified letter or to re-open the record.

Defendant cites *Kuykendall*, *supra*, 79 Cal.App.4th 396, to support his position that previously undisclosed evidence obtained after trial and in response to unexpected testimony should be admitted when necessary to accomplish substantial justice. In fact, since applicant stipulated that his injury occurred after he clocked out, the frequency with which applicant slept at his client's house after clocking out is not critical to determining the issue of whether this injury arose out of and in the course of employment. Moreover, defendant took the risk to rely on a witness that was not present at the time of the injury, and defendant's witness Mr. McKinnon's testimony is consistent with applicant's testimony.

Therefore, we do not accept defendant's "newly discovered" evidence, and we do not consider it.

III.

We now turn to the issue of whether applicant sustained industrial injury.

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, section 3600 only imposes liability on an employer for workers' compensation benefits if an employee sustains an injury arising out of and in the course of employment (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*, 63 Cal.Comp.Cases 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].)

This claim is straightforward. Though applicant was no longer "on the clock," he was performing the task for which he was hired by the defendant, caring for the patient, while still on the premises to which he was assigned by the employer. It is certainly anticipated by the employer that applicant should have continued to assist the patient, who struggled with balance, with walking to bed even though he had already clocked out for his shift. In fact, no testimony was elicited as to any policies the employer may have had for caretaking, clocking out, or even staying beyond one's shift. Given the nature of the employment, the employer could not have expected that applicant

would leave the patient to fend for himself simply because he had clocked out for his shift. In fact, applicant testified that he would, "usually put Larry to bed before he left." (MOH/SOE, 5:15-16.) There is no evidence whatsoever that applicant was not still in the course of employment and that the injury arose out of employment.

Defendant argues that clocking out specifically takes applicant out of the employment relationship. Defendant provides no legal support for this position, and for that matter, for any position in his petition for reconsideration. We agree with the WCJ that whether applicant was still being paid or "on the clock" when the injury happened is irrelevant to the analysis. In her Report, the WCJ cites *Herrera v. Ross Stores*, 2024 Cal. Wrk. Comp. P.D. LEXIS 131 and *Rico v. Cardenas Markets*, 2021 Cal. Wrk. Comp. P.D. LEXIS 118, and while not binding, we believe that the reasoning in those decisions is persuasive.[2] In both cases a compensable injury was found when the applicants had clocked out but remained on the premises to avail themselves of personal use of the premises because such use was reasonably contemplated by the employer.

Lastly, in *Barragan v. Workers' Comp. Appeals Bd.* (*Barragan*) (1987) 195 Cal.App.3d 637 [52 Cal.Comp.Cases 467], the Court of Appeal explicitly held that "there is a long line of case law establishing the rule that one need not receive actual payment of money or wages in order to be an employee for purposes of the Workers Compensation Act." (*Id.* at p. 649.) As outlined above, continuing to assist the patient by helping him to bed after boxing up prepared food is certainly a contemplated use of the premises whether or not applicant was "on the clock" at the time. Defendant has provided no evidence that applicant was acting in any way that was inconsistent with his employment, regardless of whether or not he was going to stay on the premises overnight.

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500, 504-505].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations (*Id*.) Here, defendant's arguments regarding the applicant's credibility are simply not persuasive. It is worth noting that defendant relies on a supposed timestamp from

[2] Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers' compensation judges. (See *Gee v. Workers' Comp. Appeals Bd*. (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) While not binding, the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc).)

an emergency room report that was neither offered in a pre-trial conference statement nor admitted into evidence to support an alternate theory of the injury timeline, and defendant did not call Mr. Hooks, applicant's manager, to testify as to the timeline. As a result, we conclude that there are no obvious and impeachable inconsistencies to disturb the WCJ's assessment of credibility.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

CRAIG SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 30, 2025

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

MIGUEL ENRIQUE MARTINEZ CASTILLO
MICHAEL BURGIS & ASSOCIATES
LAW OFFICES OF MCNAMARA & DRASS

TF/abs

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