WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JAVIER HERNANDEZ, ***Applicant***

vs.

CEJA REYES, INC.;
ZENITH INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ16567838
Redding District Office

NOTICE OF INTENTION TO ISSUE OPINION AND DECISION AFTER REMITTITUR

Pursuant to the remittitur to the Workers' Compensation Appeals Board, issued on July 10, 2025, by the Third District Court of Appeal (Court), the Court certified that its decision of May 1, 2025, has become final. The Court of Appeal annulled the opinion of the Workers' Compensation Appeals Board, provided the parties with guidance as to the applicability of the going and coming rule and its exceptions, and remanded the matter to the Workers' Compensation Appeals Board for further proceedings.

We have considered the allegations of the Petition for Reconsideration and the Answer, the transcripts of the hearings on March 4 and March 5, 2024, the contents of the Report of the workers' compensation administrative law judge (WCJ), and the Opinion of the Court of Appeal, and we have reviewed the record.

Based on our review, we will issue a Notice of Intent to issue a Decision After Remittitur vacating the March 25, 2024 Findings of Fact, Orders, and Opinion on Decision and substituting a new Findings of Fact and Order, which finds, in pertinent part, that defendant failed to meet its burden of proof as to the going and coming rule, but otherwise defers any additional findings to the WCJ.

BACKGROUND

Applicant was injured on May 26, 2022, when the van in which he was a passenger on the way home from work for defendant Ceja Reyes, was involved in a catastrophic, single-vehicle, rollover crash. The crash resulted in the death of the driver and three passengers, and injuries to the remaining seven passengers; applicant experienced serious injuries, a month-long hospitalization, and amputation of his right leg. (Applicant's Exh. 2, at pp. 3-4; Defendant's Exh. AA, Applicant's deposition, at p. 37; Defense Exh. E, at p. 24.)

Pursuant to the Court's May 1, 2025 Opinion, the case facts are as follows:

> Zenith does not dispute the underlying facts found in this case, but rather the legal conclusions the Board drew from the factual findings that were made.
>
> At the time of the accident, Hernandez was employed as a farm laborer by Ceja Reyes, Inc., a farm labor contractor located in Woodland. Ceja Reyes provides agricultural workers to businesses that need them. During his employment with Ceja Reyes, Hernandez was only assigned to work at one site in Winters, which was approximately 60 miles from his home in Yuba City.
>
> Ceja Reyes does not provide transportation to its employees. Its employment contract with Hernandez specified that it did not make transportation arrangements, did not recommend any type of transportation, and Hernandez was solely responsible for his transportation.
>
> Hernandez testified that he does not have a driver's license, does not own a car, and does not drive. He said there was no "reasonable public transportation" that would have taken him from his home to the jobsite.
>
> Another Ceja Reyes employee arranged the vanpool that Hernandez used to travel to and from work as a personal side business independent of their employer. To motivate workers to use the vanpool, the vanpool operator held himself out as a supervisor for Ceja Reyes, even though he was not one. Hernandez paid $10 per day to use the van. The ride from the work site in Winters to his home in Yuba City took about an hour. Hernandez's actual supervisor at the work site told workers that the van owner was in charge of them when they were "using the van." The supervisor also observed the workers being delivered to the job site, and once he saw they arrived, he assigned each worker his duties.
>
> In May 2022, during Hernandez's commute home, the van crashed in Yolo County. At the time, the van was being driven by the son of the organizer of the vanpool. This driver did not have a California driver's license, and the van was not certified to be used as a farm labor vehicle. There were 10 or 11 other people in the van with Hernandez.

> At the time of the injury, Ceja Reyes was insured for workers' compensation by Zenith.
>
> Hernandez filed a workers' compensation claim with the Board. He alleged that he sustained catastrophic injuries during the accident, including a right leg amputation.
>
> Zenith denied the claim on the ground the injuries were not sustained in the course and scope of his employment under the going and coming rule.
>
> A workers' compensation judge heard the issue of whether the claim was barred by the going and coming rule, and that issue was tried in March 2024. Hernandez argued his claim was not barred by the going and coming rule because the "employer-controlled transportation" or "benefit to the employer" exceptions applied. In contrast to the arguments advanced by Hernandez, the judge concluded Hernandez's claims came within the special risk and dual purpose exceptions to the going and coming rule.
>
> Zenith filed a petition for reconsideration.
>
> The workers' compensation judge issued a report and recommendation to deny the petition.
>
> The Board denied the petition and adopted the workers' compensation judge's report.
>
> Zenith filed a timely petition for writ of review in this court. (Lab. Code, § 5950.) Hernandez filed an answer, and Zenith filed a reply. We issued a writ of review.

(*Zenith Ins. Co. v. Workers' Comp. Appeals Bd. (Hernandez)* (2025) 110 Cal.App.5th 1164, 1169-1170 [90 Cal.Comp.Cases 382], footnotes omitted.)

Oral argument was heard on April 22, 2025. On May 1, 2025, the Court of Appeal issued its decision, in which it annulled the May 29, 2024 WCAB Opinion and Order Denying Petition for Reconsideration, and remanded the matter to the Board for further proceedings consistent with the Opinion. (*Id.* at p. 1176.) The Court found that neither the special risk exception nor the dual purpose exception to the going and coming rule are applicable. (*Id*. at pp. 1172-1176.)

The remittitur issued on July 10, 2025.

DISCUSSION

I.

Labor Code section 3600[1] imposes liability on an employer for workers' compensation benefits only if its employee sustains an injury "arising out of and in the course of employment" (AOE/COE). (Lab. Code, § 3600(a).) 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].)

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].) 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 pp. 155-156; *Parks v. Workers' Comp. Appeals Bd*. (1983) 33 Cal.3d 585, 593 [48 Cal.Comp.Cases 208]. In *Hinojosa,* the California Supreme Court explained the going and coming rule as follows:

> In substance the courts have held non-compensable the injury that occurs during a local commute enroute to a fixed place of business at fixed hours in the absence of special or extraordinary circumstances. The decisions have thereby excluded the ordinary, local commute that marks the daily transit of the mass of workers to and from their jobs; the employment, there, plays no special role in the requisites of portage except the normal need of the presence of the person for the performance of the work.
>
> On the other hand, many situations do not involve local commutes enroute to fixed places of business at fixed hours. These are the extraordinary transits that vary from the norm because the employer requires a special, different transit, means of transit, or use of a car, for some particular reason of his own. When the employer gains that kind of a particular advantage, the job does more than call for routine transport to it; it plays a different role, bestowing a special benefit upon the employer by reason of the extraordinary circumstances. The employer's special request, his imposition of an unusual condition, removes the transit from the employee's choice or convenience and places it within the ambit of the employer's choice or convenience, restoring the employer-employee relationship.

[1] All section references are to the Labor Code, unless otherwise indicated.

(*Hinojosa*, *supra*, 8 Cal.3d at p. 157.)

In *Hinojosa* and the opinions that followed it, the rule was established that the going and coming rule "provides that an injury suffered 'during a local commute en route to a fixed place of business at fixed hours in the absence of special or extraordinary circumstances is not within the course of employment.'" (*Price v. Workers' Comp. Appeals Bd.* (1984) 37 Cal.3d 559, 564-565 [49 Cal.Comp.Cases 772] quoting *Hinojosa*, *supra*, 8 Cal.3d at p. 157; *Schultz v. Workers' Comp. Appeals Bd.* (2015) 232 Cal.App.4th 1126, 1128 [80 Cal.Comp.Cases 16].)

The sole issue at trial in the present matter was the applicability of the going and coming rule to applicant's claim of injury. (3/4/24 Minutes of Hearing, at p. 2.) The burden of proof rests upon the party holding the affirmative of the issue, and all parties must meet the evidentiary burden of proof on all issues by a preponderance of the evidence. (Lab. Code, § 5705; *Lantz v. Workers' Comp. Appeals Bd.* (2014) 226 Cal.App.4th 298, 313 [79 Cal.Comp.Cases 488]; *Hand Rehabilitation Center v. Workers' Comp. Appeals Bd*. (*Obernier*) (1995) 34 Cal.App.4th 1204 [60 Cal.Comp.Cases 289].) Here, defendant is challenging the legal conclusions reached by the WCJ regarding the applicability of the going and coming rule. Thus, the burden of proof was on the defendant to establish, by a preponderance of the evidence, that the going and coming rule bars compensability. (Lab. Code, §§ 5705, 3202.5*; Jones v. Workers' Comp. Appeals Bd*. (1971) 20 Cal.App.3d 124, 128 [36 Cal.Comp.Cases 563] ["the burden of proof [is] on the one for whom the service was rendered"].)

Here, the evidence demonstrates that the going and coming rule was inapplicable because Mr. Hernandez did not participate in a "local commute to a fixed place of business at fixed hours," as required for the rule to apply. First, his commute does not fit within the definition of "local"[2] since applicant testified that he traveled in the van for an hour or more in each direction, from Yuba City, California, located in Sutter County, to Winters, California, located in Yolo County. (3/4/24 Transcript of Record, at pp. 27-28.) As the Court noted, the distance from the work site to applicant's home in Yuba City "was approximately 60 miles" and thus outside the definition of "local." (*Hernandez*, *supra*, 110 Cal.App.5th at p. 1169.)

In addition, Mr. Hernandez did not work "fixed hours," since his starting time, ending time, and hours worked varied each day. (Applicant's Exh. 2, at p. 61.) His timecard for the week of the

[2] The term "local" is defined by Black's Law Dictionary, 2nd Ed., as "Relating to place; expressive of place; belonging or confined to a particular place." (See https://thelawdisctionary.org/?s=local.)

accident indicates that on Monday, May 23, 2022, he worked from 6:57 am to 3:40 pm, on Tuesday he worked from 6:55 am until 1:09 pm, on Wednesday he arrived at 5:27 am and worked until 3:22 pm, while on Thursday (the day of the accident) he clocked in at 5:57 am and left work at 2:33 pm, and he did not work on Friday. (*Ibid*.) Thus, on the days he worked during the week of the accident, Mr. Hernandez's arrival times varied by up to 1.5 hours, while his departure times varied by over 2.5 hours, and his total time at work was between 6 hours 14 minutes on Tuesday, and 9 hours 35 minutes on Wednesday. In short, his commute was not a local commute nor did it have fixed hours. Without these elements, the going and coming rule does not apply. (*Hinojosa, supra*, 8 Cal.3d at p. 157; *Price*, *supra*, 37 Cal.3d at pp. 564-565; *Schultz*, *supra*, 232 Cal.App.4th at pp. 1128.)

The variable nature of applicant's arrival and departure times, as well as his hours worked per day, is further highlighted by the contrast between defendant's March 30, 2023 employment verification letter, which claims that applicant worked "an average of 40 +- hours per week" (Applicant's Exh. 2, at p. 98), and applicant's ten payroll statements, which show that, in fact, applicant worked between 26.5 and 42.5 hours per week, and his hours worked per week followed no particular pattern. (Defendant's Exh. G, at pp. 2-11.) The going and coming rule is only applicable to "an injury suffered 'during a local commute en route to a fixed place of business *at fixed hours*…" (*Price*, *supra*, 37 Cal.3d at pp. 564-565, italics added.) Here, the evidence demonstrates that applicant worked no "fixed hours" and had no routine, local commute. Thus, defendant has failed to meet its burden of proof that the going and coming rule applies. (*Ibid*.)

We find it necessary to note that defendant relied on questionable evidence to support its contention that the going and coming rule applies. Defendant's Exhibit T, which purports to be the timecard for applicant and fourteen of his co-workers, indicates that all fifteen workers worked for eight hours, on Friday, May 27, 2022. (Defendant's Exh. T.) In fact, three of the individuals listed on the timecard had been killed the day before in the May 26, 2022 rollover crash.[3] (Applicant's Exh. 2, at p. 3.) Many of the remaining workers were injured in the same accident. (*Id*. at pp. 3-4.) Mr. Hernandez and the other workers involved in the crash did not return to work the next day.

[3] The police report indicates that the four people who died in the crash were: Noella Esperanza Cuevas, Artemia Vera Campos, Antonio Sosa Yanez and Ruth Hernandez Lopez. The first two names are included on the May 27, 2022 timecard, while Mr. Sosa Yanez is included on the timecard using another name that he was known by, Juan de la Rosa Sevilla. (Applicant's Exh. 2, at pp. 3-4; Defendant's Exh. T; Defense Exh. M ["Timecard of Antonio Sosa Jr. aka Juan de la Rosa Sevilla"].)

(Defendant's Exh. AA, at p. 36.) Pedro Ceja, an employee of defendant who handles payroll, testified that Exhibit T was a timesheet kept in the regular course of business, where the time is entered by cross-referencing the timecards provided by each employee. (3/4/24 Transcript, at pp. 105-107.) When asked why the time sheet was completed for May 27, 2022 (the day after the accident) when none of the workers actually worked that day, Pedro Ceja answered, "I was told by the Westside manager to pay everyone that day even if he didn't work." (*Id*. at p. 107.) He admitted, however, that the workers did not work that day. (*Id*. at p. 109.) Roberto Ceja, owner of Ceja Reyes, testified on behalf of the defense that May 26, 2022 was the end of the season, and "nobody that was doing that particular job came back" to work after May 26th. (3/5/24 transcript, at p. 68.) Since two defense witnesses stated clearly that no one worked on May 27th, defendant has conceded that Exhibit T is not an accurate reflection of applicant's hours worked during the week of the accident.

The payroll statements defendant relied on are similarly suspect: although applicant's timecard for the week of the accident clearly indicates that applicant worked a different number of hours each day, the payroll statements show that applicant worked precisely 8 hours per day, nearly every day, with an occasional overtime in precisely half-hour, hour, or 2 hours increments. (Applicant's Exh. 2, at p. 61; Defendant's Exh. G, at pp. 2-11.) We conclude that Defendant's Exhibits T and G do not constitute reliable evidence upon which defendant can base its contention that the going and coming rule applies. Without reliable evidence of applicant's hours worked, defendant has not demonstrated that applicant worked fixed hours and thus did not meet its burden to establish that the going and coming rule applies in this matter. When, as here, the rule is inapplicable, an applicant's travel arose out of and in the course of employment. (*Hinojosa*, *supra,* 8 Cal.3d at p. 162.)[4]

II.

Despite the Court of Appeal's May 1, 2025 order remanding the matter to the Appeals Board to issue a new decision, our recent review of the record reveals that the parties and the WCJ have continued proceedings while the matter is pending at the Appeals Board and without waiting for a decision after remittitur to issue. This is incorrect.

[4] If we were not deciding the case on defendant's failure to prove the going and coming rule, we would otherwise return this to the trial level for consideration of the special mission exception. (See *Lantz v. Workers' Comp. Appeals Bd., supra*, 226 Cal.App.4th at p. 309.)

In the Court of Appeal's decision, the Court annulled our decision of May 29, 2024. This means that we have not yet issued a decision in response to the Petition for Reconsideration of April 19, 2024, and the WCJ's Findings and Award of March 25, 2024 are still in effect and are the only law of the case. Any final orders issued by the WCJ between March 25, 2024 and when this decision after remittitur is issued are invalid and unenforceable.

Thus, in order to prevent bifurcation of the proceedings, we will issue an order rescinding the order setting the matter for trial on March 17, 2026 and taking the matter off calendar. Upon return of the matter to trial level after the decision after remittitur issues, the WCJ shall set a new mandatory settlement conference, and the parties shall be given the opportunity to complete a new pre-trial conference statement. Discovery shall remain open until the new mandatory settlement conference.

Accordingly, we issue a notice of intent to issue a Decision After Remittitur rescinding the Findings of Fact and Opinion on Decision issued by the workers' compensation administrative law judge on March 25, 2024, and substituting a new Findings of Fact and Order which finds, in pertinent part, that defendant failed to meet its burden of proof as to the going and coming rule, but otherwise defers any additional findings to the WCJ.

For the foregoing reasons,

IT IS ORDERED that the order setting the matter for trial on March 17, 2026 is **RESCINDED** and the matter is taken off calendar.

NOTICE IS HEREBY GIVEN that absent written objection in which good cause to the contrary is demonstrated, within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Notice that the Workers' Compensation Appeals Board will issue the following orders:

> ***IT IS ORDERED*** *as the Decision After Remittitur of the Workers' Compensation Appeals Board that the Findings of Fact and Orders issued on March 25, 2024, is* ***RESCINDED*** *with the following* ***SUBSTITUTED*** *therefor:*
>
> ***FINDINGS OF FACT***
>
> 1. *Javier Hernandez Ramirez, born [DOB], while employed on May 26, 2022 as a laborer by Ceja Reyes, Inc., at Woodland, California, sustained injury arising out of and in the course of employment to multiple body parts.*
>
> 2. *At the time of injury, the employer was insured for workers' compensation by Zenith Insurance Company.*
>
> 3. *Defendant failed to meet its burden of proof to establish that the going and coming rule is a bar to applicant's recovery.*
>
> 4. *All other issues are deferred.*
>
> ***ORDERS***
>
> 1. *The objection to the admission of Applicant's proposed exhibits 1 and 2 is overruled, and they are hereby ordered into evidence.*
>
> 2. *The objection to the admission of Defendant's proposed exhibit V is overruled, and this exhibit is hereby ordered into evidence.*

IT IS FURTHER ORDERED that all responses to this Notice *by any party* must be filed within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Notice and shall be electronically filed in the Electronic Adjudication Management System (EAMS). To be timely, any written response ***must be*** electronically filed in EAMS within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Notice.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 13, 2026

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

JAVIER HERNANDEZ
THE LAW OFFICE OF ARASH KHORSANDI, PC
CHERNOW, PINE & WILLIAMS
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN
CEJA REYES, INC.
HORVITZ & LEVY, LLP

MB/*ara*

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