

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

RONALD TURNAGE, *Applicant*

vs.

FOYTT, LP; UNEMPLOYED EMPLOYERS BENEFITS TRUST FUND, *Defendants*

**Adjudication Number: ADJ8596440
Long Beach District Office**

**OPINION AND DECISION
AFTER
RECONSIDERATION**

We granted reconsideration in order to further study the factual and legal issues in this case.¹ This is our Opinion and Decision After Reconsideration.

Defendant Foytt, LP seeks reconsideration of the Findings of Fact issued by the workers' compensation administrative law judge (WCJ) on November 4, 2021. By the Findings of Fact, the WCJ determined that while employed by defendant on February 29, 2012 as an Office Manager, applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to his back and hip.

Defendant contends that the WCJ's finding of injury AOE/COE is not supported by substantial, credible evidence.

We received an Answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be granted for the sole purpose of admitting defendant's Exhibit G into evidence.

We have considered the allegations of defendant's Petition for Reconsideration, applicant's Answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and as discussed below, as our Decision After Reconsideration, we will affirm the Findings of Fact, except that we will add a finding that defendant's Exhibit G is admissible and an order admitting defendant's Exhibit G into evidence.

¹ Commissioner Lowe, who was on the panel that issued this decision, no longer serves on the Appeals Board. Another panelist was appointed in her place.

BACKGROUND

Applicant claimed injury AOE/COE to his back and hip while employed by defendant as an Office Manager on February 29, 2012.

The parties proceeded to trial on the issues of employment and injury AOE/COE. The court received testimony from applicant, applicant's wife, the owners of Foytt, LP, Peter and Jane Tate, and an individual named Carlos Maladondo. The parties submitted exhibits which were admitted into the record.

Mr. and Mrs. Tate testified that defendant's business consisted of finding and purchasing vehicles, including cars and motorcycles, for clients in Australia and New Zealand. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 10/19/16, p. 5; MOH/SOE, 2/1/17, pp. 4-6; Further MOH/SOE, 3/7/18, p. 3.) After receiving the vehicles, defendant would transfer the vehicles to a warehouse for storage and shipment by a freight-hauling company called CFR. The warehouse was located across the street from defendant's office on Texaco Avenue in Paramount, California. (MOH/SOE, 10/19/16, p. 5; MOH/SOE, 2/1/17, p. 5; Further MOH/SOE, 3/7/18, p. 4.)

Applicant testified that he began working for defendant on February 20, 2012. (MOH/SOE, 6/7/17, p. 2.) When he arrived at the office on February 20, 2012, Mr. Tate gave him a Foytt email address, a cell phone, a computer, and a digital camera. (MOH/SOE, 6/7/17, pp. 2-3.) Applicant's job duties included answering the phone, checking in vehicles, documenting the vehicles' condition before shipping, moving motorcycles from CFR to Foytt, and doing whatever Mr. Tate asked him to do. (MOH/SOE, 6/7/17, pp. 2, 4-5.)

Applicant testified that on February 29, 2012, Mr. Tate told him to go to the warehouse to obtain information from a vehicle. While he was in the warehouse, he slipped on oil and fell, hurting his back, right leg, and right hip. After he fell, he was unable to walk very well. (MOH/SOE, 6/7/17, p. 3.) A person named Carlos found him on the floor and helped him up. (MOH/SOE, 6/7/17, p. 5; Joint Exh. Z, Diagram, 10/23/13.) Applicant had been to the warehouse once or twice before the slip-and-fall incident. (MOH/SOE, 6/7/17, p. 5.)

Applicant also testified that he reported the incident to Mr. Tate roughly 10 minutes after it happened. Applicant filled out an accident report and was told to go home. On his way home, applicant sought treatment at an Urgent Care, where he was asked whether the incident was work-related. Urgent Care called Mr. Tate, who stated that he would not pay for applicant's doctor's visit because applicant had a prior back injury. (MOH/SOE, 6/7/17, p. 3.)

Applicant's wife also testified that applicant began working for defendant on February 20, 2012. Applicant's wife testified that applicant called her on February 29, 2012 to tell her that he had slipped on oil in a warehouse and that he was going to the doctor. Applicant told his wife that "[t]he lights were out at the warehouse he went to and was at this location because he had to do a job." (MOH/SOE, 10/19/16, p. 4.)

Mr. and Mrs. Tate both denied hiring applicant. (MOH/SOE, 10/19/16, pp. 5-6; MOH/SOE, 2/1/17, pp. 2-3, 5; Further MOH/SOE, 3/7/18, pp. 2-4.) The Tates also denied giving applicant access or keys to the Foytt office, a cell phone, a computer, or a camera. (MOH/SOE, 10/19/16, pp. 5-6; MOH/SOE, 2/1/17, pp. 5-6; Further MOH/SOE, 3/7/18, p. 2.) Mr. Tate testified that he gave applicant a Foytt email address, but that he also did that for other people "to present a larger company than Foytt really was." (MOH/SOE, 2/1/17, p. 5.) Mr. Tate testified that he did not ask applicant to move motorcycles from the warehouse to Foytt; that he did not see applicant on the date of the alleged injury; that applicant never reported an injury to him; and that applicant never filled out an accident report. (MOH/SOE, 2/1/17, p. 6.)

During her testimony, Mrs. Tate reviewed Exhibit Z, a diagram drawn by applicant marking the warehouse as the site of the alleged incident. (Further MOH/SOE, 3/7/18, p. 4; Joint Exh. Z, Diagram, 10/23/13) Mrs. Tate testified that defendant was trying to lease the warehouse where the incident occurred in 2012 but denied having keys or access to the building in February 2012. Mrs. Tate testified that defendant obtained the warehouse on March 4, 2012 and moved there on March 16, 2012. (Further MOH/SOE, 3/7/18, p. 4.) On cross-examination, Mrs. Tate testified that she walked through the warehouse in January and February 2012. (Further MOH/SOE, 3/7/18, p. 5.)

Carlos Maldonado, a CFR employee, testified that he did not know applicant; that he never saw applicant slip and fall; and that he did not work at the warehouse where the alleged incident occurred. (Further MOH/SOE, 3/7/18, p. 6.)²

The matter was submitted for decision on March 7, 2018.

On April 12, 2018, the WCJ issued a Findings of Fact and Order (F&O), finding that "[Applicant] while employed on 02-29-2012 as an Office Manager at Paramount, California, by FOYTT LP, who was illegally uninsured, did not sustain injury arising out of and occurring in the

² On July 1, 2020, we issued an Opinion and Decision After Reconsideration. In that decision, we summarized our review of the transcript of Mr. Maldonado's trial testimony.

course of employment to his back and hip.” (Finding of Fact No. 1.) In the Opinion on Decision, the WCJ explained that applicant was not a credible witness and, on that basis, applicant failed to meet his affirmative burden of establishing injury AOE/COE. (Opinion on Decision, 4/12/18, at p. 14.) The WCJ ordered that applicant take nothing from his claim.

Applicant filed a petition for reconsideration on May 7, 2018.

On May 22, 2018, the WCJ issued a Report and Recommendation recommending that applicant’s petition for reconsideration be denied. In the Report, the WCJ explained his prior determination regarding applicant’s credibility as follows,

Petitioner correctly points out that the applicant, the applicant’s wife, and the owners of Foytt, LP, Pete and Jane Tate, all testified that the applicant claimed an injury. However, Petitioner does not offer any documentary evidence to show this. In particular, the applicant and his wife testified that the applicant sought medical attention on the alleged date of injury but offered no documentary evidence that he went to the clinic on the alleged date of injury. Even if treatment was not authorized by Mr. Tate, there would have been some documentation that the applicant was present at the clinic. Further, based on the applicant’s drawing of the building around the Foytt, LP location (exhibit Z) as well as his email to his wife, the applicant acknowledged that Foytt, LP would not be at its new location for a few weeks (exhibit Y, page 3). This email was utilized in conjunction with that of Mrs. Tate in that Foytt, LP had not moved to the location where the alleged injury occurred. Based on the above, the undersigned did not find the applicant to be a credible witness as to injury arising out of and the in the course of employment and the burden never shifted to the defendant to rebut.

(Report, 5/22/18, pp. 2-3)

On June 11, 2018, applicant filed a petition for leave to supplement the record with medical reports showing that he sought medical treatment for his injury.

On July 1, 2020, we issued an Opinion and Decision After Reconsideration, rescinding the F&O and returning the matter to the trial level for consideration of applicant’s petition to supplement the record.

During a hearing on September 22, 2021, the WCJ admitted two medical reports submitted by applicant. (MOH (Further), 9/22/21; App. Exhs. 5, 6.)

The first medical report, dated February 29, 2012, reflects that applicant sought medical treatment that same day for a lower back injury. (App. Exh. 5, Report of Dr. Jason K. Ho, 2/29/12, p. 1, “Progress Notes.”) During that examination, Dr. Jason K. Ho, M.D., recorded that applicant reported he “was here last night, was in a warehouse today, slipped in oil, fell on back and buttocks,

this afternoon, at work....” (App. Exh. 5, pp. 1-2, “Subjective”.) The report further states that “Patient came in because he fell at work and had severe back pain....Patient had back pain before but not as bad as he does now since fall; patinet [sic] slipped on oil.” (App. Exh. 5, p. 3, “Messages”.) After performing a physical examination, Dr. Ho issued an “Assessment” that applicant had a back contusion. (App. Exh. 5, p. 2, “Assessment”.)

On March 6, 2012, a supplemental report was issued by Dr. Keyvan Hariri, M.D. (App. Exh. 6, Report of Dr. Keyvan Hariri, 3/6/12.) Dr. Hariri’s report states that the visit was a “Follow up to back pain DOI: 2/29/12.”³ (App. Exh. 6, p. 1, “Progress Notes”.) Dr. Hariri’s “Assessment/Plan” confirmed Dr. Ho’s assessment of a back contusion and stated that the contusion “[i]s work comp.” (App. Exh. 6, p. 2, “Assessment/Plan”.)

During the hearing, defendant submitted Exhibit G containing emails regarding a potential lease agreement between defendant, CFR, and another freight-hauler, HTX, for a building located on Texaco Avenue. The WCJ marked Exhibit G for identification pending a ruling on admissibility. (MOH (Further), 9/22/21.)

On September 22, 2021, the matter was resubmitted for decision.

On November 4, 2021, the WCJ issued the disputed Findings of Fact, finding that applicant sustained injury AOE/COE to his back and hip on February 29, 2012. (Findings of Fact, 11/4/21, p. 1.) In the Opinion on Decision, WCJ explained that the medical reports corroborated applicant’s testimony and rendered his claim of injury AOE/COE credible.

On November 29, 2021, defendant filed the instant Petition for Reconsideration.

DISCUSSION

I.

The issues presented are whether applicant was defendant’s employee at the time of his injury and whether the injury was industrial.

Defendant contends that applicant was never its employee and that substantial evidence does not support the WCJ’s finding of injury AOE/COE. Defendant also contends that the WCJ erred in concluding that applicant’s claim was credible based on his medical records.

³ DOI is a common acronym for “Date of Injury.” It is not disputed that DOI stands for Date of Injury in this case.

It is well established that the decisions of the Workers' Compensation Appeals Board must be supported by substantial evidence. (Lab. Code,⁴ § 5903; *LeVesque v. Worker's Comp. Appeals Bd. (LeVesque)* (1970) 1 Cal.3d 627, 635-637 [35 Cal.Comp.Cases 16]; *Garza v. Workmen's Comp. Appeals Bd. (Garza)* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500].) When the WCJ's findings are supported by solid, credible evidence, they are to be accorded great weight by the Appeals Board and rejected only on the basis of substantial evidence in light of the entire record. (*Lamb v. Workmen's Comp. Appeals Bd. (Lamb)* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Bracken v. Workers' Comp. Appeals Bd. (Bracken)* (1989) 214 Cal.App.3d 246, 255 [54 Cal.Comp.Cases 349].)

Moreover, the WCJ's credibility determinations are afforded great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza, supra*, 3 Cal.3d at pp. 318-319.) A WCJ's credibility determinations may only be rejected where they are not supported by substantial evidence. (*Ibid.*)

We have carefully reviewed the testimony and the evidence and conclude that substantial evidence supports the WCJ's findings. As a result, we will affirm the decision.

1. Employment

Before addressing injury AOE/COE, we must determine whether applicant was defendant's employee at the time of injury. In the Findings of Fact, the WCJ found that applicant was defendant's employee on the date of injury. (Finding of Fact No. 1.) We agree with the WCJ.

Section 3351 defines "employee" as "every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed...." (Lab. Code, § 3351.) Under section 3357, "[a]ny person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee." (Lab. Code, § 3357.) Once a prima facie case of "employee" status is established, the burden shifts to the employer to affirmatively prove that the worker was "an independent contractor or otherwise excluded from protection under the [Workers'] Compensation Act." (*Johnson v. Workmen's Comp. Appeals Bd. (Johnson)* (1974) 41 Cal.App.3d 318, 321 [39 Cal.Comp.Cases 565]; Lab. Code, §§ 3202.5, 5705(a).)

Applicant testified that he began working for defendant on February 20, 2012, at which time he was given a Foytt email address and various equipment. Applicant testified that his duties

⁴ Unless otherwise stated, all further statutory references are to the Labor Code.

included checking in vehicles and documenting their condition, moving motorcycles from CFR to Foytt, and doing whatever Mr. Tate asked him to do. (MOH/SOE, 6/7/17, pp. 2, 4-5.) Applicant testified that, on February 29, 2012, Mr. Tate told him to go to the warehouse to obtain information from a vehicle, and that, while he was there, he slipped and fell. (MOH/SOE, 6/7/17, p. 5.) Applicant also told his wife that he was injured in the warehouse and that he was there “to do a job.” (MOH/SOE, 10/19/16, p. 4.)

We conclude that this evidence demonstrates that applicant was performing services for defendant such that a prima facie case of employee status was established. As a result, the burden shifted to defendant to affirmatively prove that applicant was instead performing these services as an independent contractor or was expressly excluded from coverage under the Workers’ Compensation Act. (*Johnson, supra*, 41 Cal.App.3d at p. 321; Lab. Code, §§ 3202.5, 3352, 5705(a) [burden of proof rests upon the party holding the affirmative of the issue].) As explained further below, here defendant did not meet that burden.

Injury AOE/COE

II.

Subject to statutory exceptions not argued here, an injured employee’s sole and exclusive remedy against his or her employer is the right to recover workers’ compensation benefits, provided “the conditions of compensation set forth in Section 3600 concur.” (Lab. Code, § 3602(a).) Section 3600(a) provides in part: “Liability for the compensation provided by this division...shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of employment....” (Lab. Code, § 3600(a).) “In all cases where the conditions of compensation set forth in Section 3600 do not concur, the liability of the employer shall be the same as if this division had not been enacted.” (Lab. Code, § 3602(c).)

“[T]he legal theory supporting...[the workers’ compensation] exclusive remedy provisions is a presumed ‘compensation bargain,’ pursuant to which the 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.] The function of the exclusive

remedy provisions is to give efficacy to the theoretical ‘compensation bargain.’” (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 16 [55 Cal.Comp.Cases 494].)

The two-pronged requirement in section 3600 - arising out of and course of employment - “is the cornerstone of the workers’ compensation system.” (*Maher v. Workers’ Comp. Appeals Bd. (Maher)* (1983) 33 Cal.3d 729, 732-733 [48 Cal.Comp.Cases 326].) The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*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.) In applying this requirement, however, all reasonable doubts as to whether an injury arose out of employment are to be resolved in favor of the employee. (*Dept. of Rehabilitation v. Workers’ Comp. Appeals Bd. (Lauher)* (2003) 30 Cal.4th 1281, 1290-1291 [68 Cal.Comp.Cases 831]; *Lamb, supra*, 11 Cal.3d at p. 280; *Lundberg v. Workers’ Comp. Appeals Bd. (Lundberg)* (1968) 69 Cal.2d 436, 439 [33 Cal.Comp.Cases 656].)

Course of employment, for purposes of section 3600(a), refers to the time, place and circumstances attending the injury.⁵ (*LaTourette v. Workers’ Comp. Appeals Bd. (LaTourette)* (1998) 17 Cal.4th 644, 651 [63 Cal.Comp.Cases 253]; *Argonaut Ins. Co. v. Workmen’s Comp. Appeals Bd.* (1967) 247 Cal.App.2d 669, 676-677 [32 Cal.Comp.Cases 14]; *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd.* (1982) 133 Cal.App.3d 643, 652 [47 Cal.Comp.Cases 729]). “For the injury to occur in the ‘course of the employment’ the employee must be engaged in the work he has been hired to perform; it must occur within the period of his employment and at a place where he may reasonably be for that purpose while engaged in the performance of his duties or while doing something necessarily incident thereto.” (*Robbins v. Yellow Cab Co. (Robbins)* (1948) 85 Cal.App.2d 811, 813 [13 Cal.Comp.Cases 201].)

Upon review, we agree with the WCJ that applicant’s injury took place while he was within the course of his employment. Applicant testified that, on February 29, 2012, he was in the warehouse because Mr. Tate told him to go there. Applicant told his wife that he was injured in the warehouse and was there “to do a job.” Applicant’s claim that he was in the warehouse at the time of injury finds support in Dr. Ho’s February 29, 2012 medical report assessing applicant with a back contusion. The report notes that applicant reported that he “was in a warehouse today, slipped

⁵ Courts routinely analyze the course of employment requirement in section 3600 before the question of whether the injury arises out of the employment, even though subdivision (a) of that section lists the latter requirement first. (See *LaTourette, supra*, 17 Cal.4th at p. 651; *Maher, supra*, 33 Cal.3d at p. 733; *Vaught v. State of Cal. Dept. of Parks & Rec. (Vaught)* (2007) 157 Cal.App.4th 1538 [73 Cal.Comp.Cases 125].)

in oil, fell on back and buttocks, this afternoon, at work....” (App. Exh. 5, pp. 1-2.) Although this portion of Dr. Ho’s medical report consists of applicant’s recounting of the history of the injury, as the WCJ explains in his Opinion and Report, the evidence corresponds to, and corroborates, applicant’s testimony that he was in the warehouse when the injury occurred. (Opinion on Decision, 11/4/21, p. 2; Report, 12/9/21, p. 3.) Applicant also testified that he had been to the warehouse several times prior to his injury and that he moved motorcycles from the warehouse to Foytt. This evidence indicates that applicant’s duties of employment required him to go to the warehouse. Applicant was in the course of this duty when he entered the warehouse and the injury occurred while he was in process of performing his duty as required by Mr. Tate. (*Robbins, supra*, 85 Cal.App.2d at p. 813; *LaTourette, supra*, 17 Cal.4th at p. 651.)

Defendant contends, however, that it presented “uncontroverted” evidence that the alleged injury could not possibly have occurred in the warehouse because defendant did not have access to the warehouse in February 2012. (Petition, p. 6.) Defendant is mistaken that its evidence regarding the location of the injury was “uncontroverted,” as it was contradicted by applicant’s testimony, applicant’s wife’s testimony, and applicant’s medical records. Defendant’s characterization of its evidence as “uncontroverted” is also difficult to reconcile with Mrs. Tate’s own testimony. Mrs. Tate initially testified that she did not have access to the warehouse in February 2012, but later testified that she had walked through the warehouse in January and February 2012. (Further MOH/SOE, 3/7/18, pp. 4-5.)

The parties’ conflicting accounts presented a factual dispute for the WCJ to resolve. The WCJ, as the trier of fact, is vested with the responsibility of resolving conflicts in the evidence. (*Garza, supra*, 3 Cal.3d at pp. 317-319.) Here, the WCJ considered the parties’ competing versions of the events and resolved those conflicts in applicant’s favor. Defendant fails to provide a persuasive basis to question the WCJ’s decision. Furthermore, we conclude that there is no evidence of considerable substantiality that would warrant rejecting the WCJ’s finding that applicant’s injury occurred “in the course of” his employment, and we decline to disturb it. (*Bracken, supra*, 214 Cal.App.3d at p. 225.)

Section 3600 also “requires that an injury ‘arise out of’ the employment...It has long been settled that for an injury to ‘arise out of the employment’ it must ‘occur by reason of a condition or incident of [the] employment....’” (Lab. Code, § 3600; *Maher, supra*, 33 Cal.3d at p. 733; *Employers Mut. Ins. Co. v. Industrial Acc. Com. (Gideon)* (1953) 41 Cal.2d 676, 679 [18

Cal.Comp.Cases 286].) “That is, the employment and the injury must be linked in some causal fashion” to satisfy the arising out of requirement. (*Maier* at p. 734; *Atascadero Unified School Dist. v. Workers’ Comp. Appeals Bd.* (2002) 98 Cal.App.4th 880, 883 [67 Cal.Comp.Cases 519].) “However, ‘[i]f 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.’” (*Maier* at p. 734; *Gideon* at p. 680.)

Defendant contends that it is not responsible for applicant’s injury because applicant had a history of back problems, as noted in the February 29, 2012 medical report. (App. Exh. 5, p. 4.) However, the rule has been long established in workers’ compensation cases that “an employer takes the employee as he finds him at the time of the employment.” (*Ballard v. Workmen’s Comp. Appeals Bd.* (1971) 3 Cal.3d 832, 837 [36 Cal.Comp.Cases 34].) And again, as explained in *Maier*, when looking for a causal connection between the employment and the injury, all that is required is that the employment be one of the **contributory** causes. (*Maier, supra*, 33 Cal.3d at p. 734, fn. 3; *Wickham v. North American Rockwell Corp.* (1970) 8 Cal.App.3d 467, 473 [35 Cal.Comp.Cases 751]; *Clark, supra*, 61 Cal.4th at pp. 297-298, 302.) In other words, as long as there is some causal connection between the employment and the injury and the injury is sustained in the course of employment, the injury “arose out of” employment. (Cf. *Vaught, supra*, 73 Cal.Comp.Cases at p. 132.)

These requirements are satisfied here. Applicant testified that the warehouse incident caused pain in his back, leg, and hip, and that afterwards, he was unable to walk very well, which caused him to immediately seek medical treatment. (MOH/SOE, 6/7/17, pp. 3-5.) The medical evidence corroborates applicant’s assertions. (App. Exhs. 5, 6.) In the February 29, 2012 medical report, Dr. Ho assessed applicant with a back contusion, noting that “Patient had back pain before **but not as bad as he does now since the fall**, patinet (sic) slipped on oil.” (App. Exh. 5, p. 4, emphasis added.) In the March 6, 2012 follow-up report, Dr. Hariri confirmed Dr. Ho’s assessment, going so far as to state that the back contusion was “work comp.” (App. Exh. 6, Assessment/Plan, p. 2.)

Thus, inasmuch as his employment contributed to his injury and the injury was sustained in the course of employment (*supra*), we conclude that applicant’s injury “arose out of” his employment. To the extent that defendant argues that applicant had pre-existing back issues, that

is an issue as to apportionment and goes to the nature and extent of applicant's injury, which is not presently before us.

As to the issue of credibility, in the Findings of Fact, the WCJ opined that "the contemporaneous medical record lends credibility to the fact that an injury occurred." (Opinion on Decision, 11/4/21, p. 2.) In his Report, the WCJ further explained,

With these documents now in evidence, the applicant's testimony became credible as there was collaborating evidence that showed while he was employed by Foytt...he went to a doctor on the date of injury, and told the doctor that he slipped and fell on oil (exhibit 5, page 3)....Further, it seems extremely unlikely that the applicant would create a story as to an injury in a location he did not have access to when he could have simply stated he was hurt at the Foytt location. Therefore, it is found that the applicant did sustain injury to his back and hip arising out of and occurring in the course of employment on 02/29/2012.

(Report, 12/9/21, pp. 2-3.)

We have given the WCJ's credibility determinations great weight in accordance with the California Supreme Court's directive in *Garza*. (*Garza, supra*, Cal.3d at pp. 318-319.) We find no basis to question the WCJ's decision that the medical records rendered applicant's claim of injury AOE/COE credible. We also conclude that is no evidence of considerable substantiality that would warrant overturning the WCJ's decision that applicant's evidence was more persuasive than defendant's. (*Ibid.*; *Bracken, supra*, 214 Cal.App.3d at p. 225.)

Based on the foregoing analysis and following our complete and independent review of the entire evidentiary record, we are persuaded that evidence supports a finding of industrial injury, to a preponderance of the evidence. (*Lamb, supra*, 11 Cal.3d at pp. 280-281.)

Accordingly, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the Findings of Fact issued by the WCJ on November 4, 2021 is affirmed, except that it is amended as outlined above.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact issued by the WCJ on November 4, 2021 is **AFFIRMED** except that it is **AMENDED**, as follows:

FINDINGS OF FACT

* * *

2. Defendant's Exhibit G is admissible.

ORDER

1. Defendant's Exhibit G is admitted into the record.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 31, 2026

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

**RONALD TURNAGE
LAW OFFICES SCOTT D. PERRY
LAW OFFICES OF SHELLEY A. WEINSTEIN
OFFICE OF THE DIRECTOR – LEGAL UNIT**

AC/mt

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