WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JUSTIN THARPE, *Applicant*

vs.

ARCATA FOREST PRODUCTS; ACE AMERICAN INSURANCE, *Defendants*

Adjudication Number: ADJ17462575
Eureka District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order and Opinion on Decision (F&O) issued by the workers' compensation administrative law judge (WCJ) on November 2, 2023. By the F&O, the WCJ found that: 1) while employed on January 30, 2023 by Barrett Business Services, applicant claimed to have sustained injury to his right ankle arising out of and in the course of employment (AOE/COE), and 2) applicant's injury was not AOE/COE. In the Opinion on Decision, the WCJ explained that applicant's alleged injury did not occur on his employer's premises and was therefore not compensable. The WCJ thus ordered that applicant take nothing by way of his claim.

Applicant contends that he sustained injury AOE/COE because he was injured on his employer's premises.

Defendant filed an Answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report with respect thereto. Based upon our review of the record, and for the reasons discussed below, we will grant the Petition for Reconsideration. As our Decision After Reconsideration, we will affirm the F&O except that we will amend Finding of Fact number 1 to reflect that, at the time of his alleged injury, applicant was employed by both a general employer and a special employer. The general employer was Barrett Business Services,

which handled payroll, tax, and workers' compensation benefits. The special employer was Arcata Forest Products.

FACTS

The record shows that applicant's alleged injury occurred during his uncompensated lunch break while he was visiting his friend, Joe Zavala, on a nearby, but non-adjacent, property known as the Figas Construction property. (Minutes of Hearing and Summary of Evidence (MOH/SOE), October 4, 2023, p. 5; Def. Exhs. A, B [Google maps images].)

In denying compensation, the WCJ stated that, generally, unpaid lunchtime injuries are not compensable when the injury occurs off of the employer's premises. The WCJ found that the evidence did not show that applicant was on his employer's premises when the injury occurred. In so finding, the WCJ explained:

> [Mr. Tharpe] argues the injury was on premises and thus compensable. In support of his position, he states the property he was on at the time of injury was owned by the owner of Arcata Forest Products and occasionally used to store property owned by Arcata Forest Products.
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> * * *
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> Mr. Tharpe was not on Arcata Forest Products' property when he was hurt. The property where the injury occurred was Figas Construction Property. The connection between the location of Mr. Tharpe's injury and Arcata Forest Products is not sufficient to establish an exception to the rule that injuries during uncompensated lunch hours are not compensable.

(F&O, pp. 3-4.)

In the Report, the WCJ further explained that "[i]mages from Google Maps submitted as evidence by defendant showed that the properties were not adjacent to each other....Arcata Forest Products did occasionally park equipment on the Figas Construction property, but they were operated as separate businesses." (Report, p. 3.)

The WCJ thus concluded that, while applicant attempted to extend the site of his alleged injury to his employer's premises, the effort failed, and applicant failed to demonstrate that he sustained injury AOE/COE.

DISCUSSION

Applicant contends that he injured his right ankle on his employer's premises on January 30, 2023, and, as a result, he incurred a compensable industrial injury, i.e., injury AOE/COE. (Petition, pp. 4-5.)

An 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.) 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].) Labor Code section 3600, subdivision (a)(2) requires as a condition of compensation that "at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment." (Lab. Code, § 3600(a)(2).)

The phrase "in the course of employment" "'ordinarily refers to the time, place, and circumstances under which the injury occurs. [citations].'" (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644 [63 Cal.Comp.Cases 253].) An "employee is in the 'course of employment' when he does those reasonable things which his contract with his employer expressly or impliedly permits him to do. [citations]." (*Id.* at p. 651.) For the injury to arise out of employment, it must "'occur by reason a condition or incident of [the] employment.' [citation] That is, the employment and the injury must be linked in some causal fashion." (*Id.* at p. 651.) "If the particular act is reasonably contemplated by the employment, injuries received while performing it arise out of the employment, and are compensable." (*Id.* at p. 652.)

While not specifically stated, applicant's argument raises the widely recognized workers' compensation rule known as the "going and coming rule, which precludes compensation for injuries suffered during the course of a local commute to a fixed place of business at fixed hours in the absence of certain exceptional circumstances. However, injuries sustained by an employee while going to or coming from the place of work upon premises "owned or controlled" by the employer are generally deemed to have arisen out of and in the course of the employment. (*California Casualty Indem. Exchange v. Industrial Acci. Com*. (1943) 21 Cal.2d 751, 757-758 [8 Cal.Comp.Cases 55]; see also *Gonzalez v. Dept. of Indus. Rels*. (February 8, 2019, ADJ11121478) [2019 Cal. Wrk. Comp. P.D. LEXIS 52, *9].) Here, applicant contends that the place of injury,

namely, the Figas Construction property, was owned or controlled by his employer such that his injury occurred on employment premises and would therefore be deemed AOE/COE.

Before we address the aforementioned rule, generally known as the "premises line" rule, we note that the parties have been somewhat inconsistent in identifying the employer/defendant in this instance. At times, the parties have named Barrett Business Services as the employer/defendant, while, at other times, they have named Arcata Forest Products. The filings and evidence show, however, there was a general-special employment relationship between Barrett Business Services, acting as applicant's general employer, and Arcata Forest Products, as applicant's special employer, on the date of alleged injury. The general-special employer relationship formed between an entity handling payroll and workers' compensation benefits and a separate entity managing the employee's day-to-day activities is well recognized in workers' compensation. (See *McGee Street Productions v. Workers' Comp. Appeals Bd.* (2003) 108 Cal.App.4th 717, 720 [68 Cal.Comp.Cases 708] [referring to Entertainment Partners as a general employer that handled payroll and regular workers' compensation benefits and to a production company as the special employer].) Liability of general and special employers is joint and several. (*Id.* at p. 710.)

During trial, Arcata Forest Products' owner, Robert Figas, as well as the company's operations manager, Julie Moug, testified that Barrett Business Services provided Arcata Forest Products with workers' compensation insurance, payroll, and tax services. (MOH/SOE, October 4, 2023, pp. 6-7.) Ms. Moug and applicant testified that applicant worked for Arcata Forest Products as a mill worker and bucksaw operator. (*Id.* at pp. 2, 7-8; see also MOH, August 22, 2023, p. 2.)

Based on the foregoing, we will amend the F&O to reflect the general-special employment relationship between Barrett Business Services and Arcata Forest Products at the time of applicant's alleged injury.

We now turn to whether applicant's alleged injury occurred on premises "owned or controlled" by his employer such that the premises line rule would apply, and the going and coming rule would not bar his claim. Applicant contends that the location of the alleged injury, i.e., the Figas Construction property, is controlled by Arcata Forest Products, where: 1) applicant's boss, Robert Figas, owns both properties, and 2) Arcata Forest Products occasionally uses or stores a piece of equipment at the Figas Construction property. As noted above, the WCJ rejected these

arguments, concluding that these facts did not establish a sufficient nexus between the properties to warrant calling the Figas location Arcata Forest Product's "premises." We agree with the WCJ.

At trial, it was established that applicant's boss, Robert Figas, owned the Figas Construction property, as well as Arcata Forest Products; however, the unrebutted evidence showed that Mr. Figas and his wife owned the Figas Construction property as a corporate entity separate from Arcata Forest Products. Robert Figas made this very clear during trial, stating that "Figas Construction[] is a separate business owned by [him] and his wife ¶…as a limited liability company....*That property is not owned by Arcata Forest Products*." (MOH/SOE, October 4, 2023, pp. 6-7.) Thus, the Figas Construction property was not "owned" by Arcata Forest Products for the purposes of applying the premises line rule in this instance.

We also agree with the WCJ that the fact that Arcata Forest Products may have brought (or stored) a piece of equipment at the Figas location does not satisfy the premises line rule. At trial, applicant testified that Mr. Figas stored machines near Mr. Zavala's trailer on the Figas Construction property. However, Mr. Zavala testified that he did "not think Arcata Forest Products stores anything on the lot where he lives except for *perhaps* a water truck." (MOH/SOE, October 4, 2023, pp. 2, 6, emphasis added.) Mr. Figas and Ms. Moug testified that Arcata Forest Products did not use that property for equipment storage. (*Id.* at pp. 7-8.) After considering the discrepancies in the testimony, the WCJ ultimately concluded:

> Even if Arcata Forest Products occasionally stored a piece of equipment on Figas Construction property or loaned a forklift to Figas Construction that is not a sufficient nexus between the two...properties to warrant calling the Figas location the premises of Arcata Forest Products.

(F&O, p. 3.)

We agree with the WCJ that the occasional presence of a piece of equipment does not establish that Arcata Forest Products "controlled" the Figas property for the purposes of the premises line rule.

In summary, applicant asks us to extend the premises line rule to circumstances where he has offered no evidence that he suffered an injury at a time that the employer-employee relationship existed. Applicant simply did not present sufficient evidence that he injured himself on premises controlled or owned by his employer, and we decline to extend the premises line rule to the facts of this case.

Based on the evidence presented, we agree with the WCJ that applicant did not sustain his burden to prove that he suffered injury AOE/COE.

For the reasons stated above, we grant reconsideration for the limited purpose of amending Finding of Fact number 1 to reflect that Barrett Business Services and Arcata Forest Products were applicant's joint employers, but otherwise affirm the F&O.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the November 2, 2023 F&O is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that Finding of Fact number 1 is **AMENDED** as follows:

FINDINGS OF FACT

1. Justin Tharp, while employed on January 30, 2023 as a mill workers/laborer at Arcata, California by Arcata Forest Products, and Barrett Business Services, Inc., insured for workers' compensation by Ace American Insurance Company administered by Corvel, claims to have sustained injury to his right ankle arising out of and in the course of his employment.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 29, 2024

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

JUSTIN THARPE
SHATFORD LAW
TESTAN LAW

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