WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JASMINE ORBERG, *Applicant*

vs.

INTER SOURCES, INC.;
STATE FARM FIRE AND CASUALTY COMPANY, *Defendants*

Adjudication Number: ADJ10492342
Oakland District Office

OPINION AND DECISION AFTER RECONSIDERATION

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

Applicant seeks reconsideration of the Findings and Award (F&A) issued in this case by a workers' compensation administrative law judge (WCJ) on September 4, 2018. By the F&A, the WCJ found that applicant was not an employee of defendant, Inter Sources, Inc., on July 22, 2015, when she was allegedly injured during a motor vehicle accident (MVA) while traveling to defendant's unpaid internship-training program. Because the threshold issue of employment was not satisfied, the WCJ did not address the remaining issue in the case, namely, whether applicant's claim is barred by the going and coming rule.

In her Petition for Reconsideration (Petition), applicant claims that she was defendant's employee at the time of her alleged injury, and that her alleged injury arose out of and in the course of her employment (AOE/COE), such that she is entitled to workers' compensation benefits.

We received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny reconsideration.

We have reviewed the record and have considered the allegations in the Petition, as well as the Answer and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will rescind the F&A and

[1] Commissioners Sweeney and Lowe, who were on the panel that issued the Opinion and Order Granting Reconsideration, no longer serve on the Appeals Board. Other panelists were appointed in their place.

substitute new findings that applicant was defendant's employee at the time of her alleged injury and that applicant's claim is not barred by the going and coming rule. All other issues will be deferred, and the matter will be returned to the trial level for further proceedings consistent with this decision.

FACTS

Applicant claims injury arising out of and in the course of employment (AOE/COE) to her head, neck, back, and knee when she was involved in a MVA on July 22, 2015, while traveling to an unpaid internship-training program provided by defendant at its office in Fremont, California. The case proceeded to trial on July 3, 2018 on the issues of employment and whether applicant's workers' compensation claim was barred by the going and coming rule. (Minutes of Hearing and Summary of Evidence (MOH/SOE), July 3, 2018, p. 2.)

During trial, applicant testified that, in June 2015, she applied for an internship position with defendant so that she could be trained as a business analyst. (MOH/SOE, July 3, 2018, pp. 3, 7; see also Jnt. Exh. 102, p. 4.) On June 12, 2015, applicant met with defendant's CEO, Ankit Shah, regarding the training program. It was applicant's understanding that defendant was a "staffing agency which would help her get a job. Before she would get the job, [defendant] would provide her with the skill she needed in order to be employed as a business analyst." (MOH/SOE, July 3, 2018, p. 4.) During her meeting with Mr. Shah, applicant was advised that "her income would be approximately $60,000 to $68,000 per year. She would be getting paid by [defendant]. The company they would place her at would pay [defendant], who would then pay her $60,000 to $68,000 a year." (MOH/SOE, July 3, 2018, p. 4.)

After their meeting, applicant and Mr. Shah entered into a written agreement offering applicant an "Internship position" in defendant's training program as a "Business Analyst". The agreement began as follows:

> Dear Ms. Orberg,
>
> On behalf of International Solution Sources, LLC (aka InterSources Inc.), we are pleased to offer you the Internship position of "Business Analyst." Your Internship is expected to start on July 10th 2015.
>
> Your weekly contribution would be at 40 hours per week at an unpaid internship. Your work location will be our Fremont office, 39159 Paseo Padre Pkwy, #106, Fremont 94538.

(Jnt. Exh. 101, Business Analyst Agreement, June 12, 2015.)

The Business Analyst Agreement also provided various "Essential Duties and Responsibilities" that required interns to, among other things,

- Develop Business Intelligence (BI) Data Warehousing and Reporting solutions to address the growing business reporting, analytics and data requirements
- Synthesize current business intelligence or trend data to support recommendations for action
- Communicate with customers, competitors, suppliers, professional organizations, or others to stay abreast of industry or business trends
- Manage timely flow of business intelligence information to users
- Work with the project team to ensure requirements are accurate, clear and understood
- Provide business partners and project teams with status on initiatives

The Business Analyst Agreement also provided that "[a]ny questions regarding Orberg's employment can be verified at 510-870-1512." (Jnt. Exh. 101.)

During trial, Mr. Shah provided additional details of the training program. According to Mr. Shah,

> There are two portions of his program. You can either pay $10,000 to go through the program, at the end of which you are just done, or you can go through the program for free, after which a placement service is provided to you. If you get employment through the placement services, you become an employee of International Solutions for a year. Your checks will go through International Solutions, not the customer who may have employed you through International Solutions.

(MOH/SOE, July 3, 2018, p. 6.)

The WCJ also admitted an unsigned contract, titled "Training & Placement Assistant Program Agreement" (contract), providing additional information regarding the so-called "placement services" provided to interns who, like applicant, chose to take defendant's training program for free. (Def. Exh. A.) The contract provided, in part:

> Article 1 – Training to be provided
>
> 1.1 InterSources Inc. will provide training at their Fremont, CA address mentioned above. Training will include classroom workshop sessions hands on project assignments....
>
> 1.2 The class schedule will be communicated to the trainee at the start of orientation before the workshop program. Assignments will be awarded and need to be completed on schedule. Participants are required to be present at InterSources, Inc. work facility on each agreed working day to complete these assignments and partake in other project activities related to the workshop program.
>
> * * *

1.4 Workshops will be hands on no books required and applications will be developed and tested during this period. Training material like handouts etc. will be provided.

* * *

1.6 The expected starting salary as a JR. Front End Developer as a billable resource for 2000 hours will be in a range of $60k – 68k the first year this workshop program carries a market value of 10K including H1B sponsorship. If a candidate decides to enter this program on a free scholarship after learning these new frame technologies decides to leave for any reason beside of medical discharge we have the right to recover lost fees of 10K Ten Thousand US Dollars by way of collection service to cover potential lost revenue resource invested for the program….

Article 2 – Placement Assistance

2.1 Upon completion of the workshop program, / you are assigned a program manager on-boarding Marketing manager to work closely with you daily to provide placement assistance. We will market you as a result for over 300 brands among the Fortune 500 companies. Our marketing team will provide job opportunities for 60 days after training is complete, if we haven't provided a fulltime job opportunity, you are released without any cost associated or penalties fees involved you gain a 10k program to market yourself to future employers.

Article 3 – Employment Contract

3.1 InterSources / will enter into an employment agreement with you the trainee, once he/she has been selected by InterSources, Inc.'s direct client. The salary and benefits details will be finalized again. The company must do a background check as part of the process. _ InterSources Inc performs Customer assignments under the terms of a prime agreement that InterSources Inc. may enter into with its customers and agrees to be bound by any of the obligations of any such agreement.

(Def. Exh. A, pp. 1, 3.)

Applicant testified that this contract was "not the same exact contract" that she signed after meeting with Mr. Shah, but stated that it was "[h]er understanding was that she would stay committed to the company for an entire year before she sought employment on her own." (MOH/SOE, July 3, 2018, p. 5.)

Applicant began the training program on July 12, 2015. In accordance with the Business Analyst Agreement, applicant attended the training classes at defendant's office in Fremont, California. (MOH/SOE, July 3, 2018, p. 4.) Applicant and Mr. Shah each testified that defendant provided trainees with transportation to and from defendant's office. (MOH/SOE, July 3, 2018, pp. 5, 7-8.) Mr. Shah stated that he hired an individual named Naren

to transport the students, and that Naren's friend, Rama, "assisted Naren with navigating the picking up of the students." (MOH/SOE, July 3, 2018, p. 8.) Mr. Shah testified that Rama was placed on the company's insurance policy, but that he was a "student [who] did nothing for employment for the company." (MOH/SOE, July 3, 2018, pp. 5, 7-8.)

On July 22, 2015, Rama and applicant were involved in a motor vehicle accident while driving to the training class. (Applicant Exh. 2, San Jose Police Report, July 22, 2015, p. 7.) At the time of the accident, applicant was in the rear passenger seat of Rama's car and reported experiencing pain in her knee. (Applicant Exh. 2, p. 7.) Following the accident, applicant did not attend any additional training classes and did not complete defendant's internship-training program.

After trial, the WCJ issued the disputed F&A, finding that applicant was not defendant's employee at the time of her alleged injury. Because the threshold issue of employment was not satisfied, the WCJ did not address the remaining issue in the case, namely, whether applicant's workers' compensation claim was barred by the going and coming rule.

DISCUSSION

I. Employer-employee relationship

Here, the first issue for consideration is whether applicant was defendant's "employee" within the meaning of the California Workers' Compensation Act (Act) at the time of her alleged injury.[2]

Labor Code section 3351[3] 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, italics added.) "[T]he fact that one is performing work and labor for another is prima facie evidence of employment and such person is presumed to be a servant in the absence of evidence to the contrary." (*Narayan v. EGL, Inc.* (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724].)

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[2] To the extent that applicant argues that the standard articulated in *Dynamex Operations W. v. Superior Court* (*Dynamex*) (2018) 4 Cal.5th 903 [83 Cal.Comp.Cases 817] applies to the case herein, although the Legislature has since expanded the reach of the ABC test articulated in *Dynamex*, those initiatives were adopted in 2019 and 2020, long after the WCJ issued her decision in September 2018. (Stats. 2019, ch. 296, § 2 (AB 5), eff. January 1, 2020; Amended Stats. 2019, ch. 415, § 1 (AB 170), eff. January 1, 2020; Repealed Stats. 2020, ch. 38, § 1 (AB 2257), eff. September 4, 2020.) Thus, at the time of the WCJ's decision, the *Borello* standard remained the relevant test for determining applicant's employee status.

[3] All further statutory references are to the Labor Code unless otherwise stated.

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*. (1974) 41 Cal.App.3d 318, 321 [39 Cal.Comp.Cases 565]; Lab. Code, §§ 3202.5, 5705(a).) An independent contractor is defined for the purposes of workers' compensation as "any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished." (Lab. Code, § 3353.) The question of whether a worker is an employee or an independent contractor is one of fact. (*Estrada v. Fedex Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 10-11.)

The evidence produced at trial demonstrates that applicant rendered "services" for defendant by participating as an intern in its training program, such that applicant successfully established a prima facie case of employee status. (Lab. Code, §§ 3351, 3357.) Specifically, as demonstrated by the Business Analyst Agreement, as part of her "Internship position," applicant was required to perform numerous "duties" and "responsibilities" that exceeded the bounds of simple training or education, including, but not limited to: 1) "communicat[ing] with customers, competitors...or others to stay abreast of industry or business trends," 2) "[p]rovid[ing] business partners and projects teams with status on initiatives," 3) working with defendant's "project team," and 4) "[m]anag[ing] timely flow of business intelligence information to users." (Jnt. Exh. 101, p. 1.) In performing these duties, applicant was providing "services" to defendant that extended to its customers, competitors, business partners, and "others," such that a prima facie case of "employee" status was successfully established. (*Narayan, supra,* 616 F.3d at p. 900; Lab. Code, §§ 3351, 3357.) Thus, applicant successfully met her burden to establish the presumption of "employee" status by showing that, as an intern in defendant's program, she was rendering a "service" to defendant.

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 Act. (*Johnson, supra,* 41 Cal.App.3d at p. 321; Lab. Code, §§ 3202.5, 5705(a) [burden of proof rests upon the party holding the affirmative of the issue].) Based on the record presented, we conclude that defendant did not sustain its burden to prove that, in performing the services, applicant was acting as an independent contractor. (Lab. Code, § 3357; *Narayan, supra,* 616 F.3d at p. 900; *Johnson, supra,* 41 Cal.App.3d at p. 321.)

The common law standard for determining whether a worker is an independent contractor, rather than an employee, was set forth by the Supreme Court of California in *Borello v. Department of Industrial Relations* (*Borello*) (1989) 48 Cal.3d 341, 349 [54 Cal.Comp.Cases 80]. Under *Borello*, the "principal test" of an employment relationship is "[w]hether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." (*Id.* at p. 350.) What matters is whether the hirer "retains all *necessary* control" over its operations. (*Id.* at p. 357, italics in original.)

While the right to control is paramount in the *Borello* analysis, other factors to be taken into consideration are: whether the work is part of the principal's regular business; the level of skill required; whether the worker supplies the instrumentalities, tools, and place of work; the length of time for which the services are to be performed; the method of payment, whether by time or by the job; whether the person performing the services is engaged in a distinct occupation or business; whether the type of work involved is normally done without supervision; and whether the parties believe that they are creating the relationship of employer-employee. (*Borello, supra,* 48 Cal.3d at pp. 351, 355.)

Here, the primary right to control factor must be determined in applicant's favor, where the evidence shows that defendant retained "all necessary control" over its training program, as well as applicant's activities as an intern. Specifically, pursuant to the Business Analyst Agreement, defendant established that, as an intern, applicant would attend training for 5 weeks, at 40 hours per week, that her "work location" would be defendant's office in Fremont, California, and that any issues regarding her "employment" were to be directed to a telephone number provided by defendant. (Jnt. Exh. 101.) Defendant also testified that "[t]hey do control the training program because they do hire someone to provide the training," that they established a "start time and end time for the program," and that they supervised applicant's attendance, notifying applicant at one point that she was "missing too many classes." (MOH/SOE, July 3, 2018, p. 8.) Based on this evidence, the primary right to control factor weighs in applicant's favor.

Moreover, our review of the evidence under the secondary remaining *Borello* factors also weighs in favor of finding employee, rather than independent contractor, status. First, applicant was an integral part of defendant's business. The record shows that there are two essential parts to defendant's business: 1) training individuals to become business analysts, and 2) providing "placement assistance" to individuals who, like applicant, take the training for free. (MOH/SOE, July 3, 2018, pp. 6-7.) According to defendant, trainees who complete

the program for free and who are successfully "placed" with a client company must enter a one-year employment contract with defendant. Defendant explained:

> The reason the contract was put in place is because they trained students for free and then the student would disappear after they completed the program; hence, they obtained the program for free without the company getting the benefit of having the student go through employment for an entire year so they can make some amount of money off the program.

(MOH/SOE, July 3, 2018, p. 7.)

In other words, absent trainees who, like applicant, take the training for free, the "placement assistance" portion of defendant's business would not exist, and defendant would have no business analysts to market to its client companies. As the Court in *Borello* aptly explained, the "permanent integration of the workers into the heart of [a] business is a strong indicator that [the principal] functions as an employer under the Act." (*Borello, supra,* 48 Cal.3d at p. 357.)

As for the other *Borello* factors, the evidence shows that defendant provided applicant with her place of work (its Fremont office), as well as transportation to and from the office. (MOH/SOE, July 3, 2018, pp. 4-6.) Additionally, applicant was not engaged in a distinct occupation or business as a business analyst; indeed, she enrolled in defendant's training program specifically *because* she lacked the skills necessary operate as such. (*Borello, supra,* 48 Cal.3d at p. 399 ["The modern tendency is to find employment…when the worker, relative to the employer, does not furnish an independent business or professional service."].)

As for the manner of compensation, payment by time, e.g., year, day, or hour, is more common for an employer-employee relationship, whereas per-job payment is more common for an independent contractor relationship. (*Alexander v. FedEx Ground Package System* (2014) 765 F.3d 981, 996 [79 Cal.Comp.Cases 1161] [hourly payment favors employee status, whereas per-job payment favors independent contractor status].) Here, if applicant had completed her internship and obtained client placement, defendant would have paid her between $60,000 and $68,000 annually. (MOH/SOE, July 3, 2018, p. 4; Def. Exh. A, p. 3.) This method of compensation is more indicative of an employer-employee relationship.

The remaining *Borello* factors pertaining to the length of applicant's services and the parties' views of their relationship are of little assistance to us. As to the length of a worker's service, the longer the timeframe, the more likely it is that the relationship is one of employer-employee. (See *Antelope Valley Press v. Poizner* (2008) 162 Cal.App.4th 839, 855.) Here, because applicant did not complete her internship, the length of her services is not particularly enlightening. Finally, the parties clearly disagree as to the nature of their

relationship. However, the label placed upon the relationship is entitled to little weight, as it is the reality of the relationship that controls. (*Borello, supra,* 48 Cal.3d at p. 349.)

In summary, because our review of the evidence demonstrates that the primary *Borello* factor of control as well as the majority of the secondary factors all weigh in applicant's favor, we conclude that defendant did not meet its burden to show that applicant was an independent contractor and not an employee.

II. Going and coming rule

We now turn to whether applicant's claim is barred by the "going and coming rule." As noted above, while this issue was presented at trial, the WCJ declined to rule on the matter based upon her determination that applicant was not defendant's employee at the time of her alleged injury. However, having now determined that an employer-employee relationship did exist between defendant and applicant at the time of applicant's alleged injury, a review of the record demonstrates that applicant's claim is not barred by the going and coming rule.

The going and coming rule is an affirmative defense raised in response to an applicant's claim that he or she sustained an injury arising out of and in the course of employment (AOE/COE). (Lab. Code, § 5705(a).) Section 3600 provides for liability for injuries sustained AOE/COE. An employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd*. (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].) Section 3600(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. [citation].'" (*Ibid*.) "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.)

Here, the parties' written business agreement expressly required applicant to complete her work at defendant's office in Fremont, and, as a result, it is reasonably contemplated that applicant would have traveled to defendant's office on the day of her alleged injury. (Jnt. Exh. 101.) Thus, as required by section 3600(a)(2), it is established that applicant's alleged injury was sustained AOE/COE, and defendant assumed the burden of coming forward with proof sufficient to apply the going and coming rule, in the manner of an affirmative defense under section 5705(a). (Lab. Code, § 5705(a).) We note that, when applying the going and coming rule, "[i]n view of this state's policy of liberal construction in favor of the employee...any reasonable doubt as to the applicability of the going and coming doctrine must be resolved in the employee's favor." (*Hinojosa v. Workers' Comp. Appeals Bd.* (*Hinojosa*) (1972) 8 Cal.3d 150, 155-156 [37 Cal.Comp.Cases 734]; Lab. Code, § 3202.)

Injuries sustained while an employee is "going and coming" to and from the place of employment do not normally arise AOE/COE because the employee is neither providing a benefit to the employer nor under the control of the employer during that commute. (*Santa Rosa Junior College v. Workers' Comp. Appeals Bd.* (1985) 40 Cal.3d 345, 351-352; *Hinojosa, supra,* 8 Cal.3d at p. 157.) However, the going and coming rule is subject to many exceptions.

One of the exceptions to the going and coming rule occurs when the employer provides the employee with transportation to and from work. (*California Casualty Indemnity Exchange v. Industrial Accident Commission* (*Duffus*) (1942) 21 Cal.2d 461 [7 Cal.Comp.Cases 305].) As the Supreme Court of California explained in *Duffus*:

> It is well recognized…that if an employer, as an incident of the employment, furnishes his employee with transportation to and from the place of employment and the means of transportation are under the control of the employer, an injury sustained by the employee during such transportation arises out of and is in the course of the employment and is compensable.

(*Duffus, supra,* 21 Cal.2d at p. 463.)

The rationale for the employer-provided transportation exception to the going and coming rule appears to be that the employer, by providing transportation, has expressly or impliedly agreed that the employment relationship shall continue during the period of going and coming, and that the employee is therefore also entitled to the protection of the Workers' Compensation Act during that period. (*Kobe v. Industrial Accident Commission* (1950) 35 Cal.2d 33, 35 [15 Cal.Comp.Cases 85].)

In this case, defendant testified that the company provided program participants with van service transportation to and from its office in Fremont, where they were required to perform all of their work. (MOH/SOE, July 3, 2018, pp. 7-8; Jnt. Exh. 101.) In most cases, this transportation was provided by Naren using the company van, with navigational assistance from Rama. (MOH/SOE, July 3, 2018, pp. 8-9.) On the date of applicant's alleged injury, however, transportation was provided by Rama using his personal vehicle. (MOH/SOE, July 3, 2018, p. 5.) Applicant testified that Rama had indicated that he was using his personal vehicle, rather than the company van, because "she was the only one needing a ride." (MOH/SOE, July 3, 2018, p. 5.)

Upon review, we conclude that, in driving applicant to defendant's office on the date of her alleged injury, Rama was providing defendant's transportation services and was acting as defendant's agent under its control. (*Duffus, supra,* 21 Cal.2d at p. 463.) Defendant clearly assumed the risks related to Rama's involvement with company transportation; the evidence shows that Rama was on defendant's insurance policy, which permits the inference that defendant was not only aware of Rama's activities, or potential activities, in transporting program participants to and from its office, but also affirmatively acted to protect itself against the risks associated therewith.

We note that the fact that Rama utilized his personal vehicle, rather than the company van, on the day in question is immaterial. Had Rama been driving the company van, he and applicant would have been driving on the same road, at the same time, in the same conditions, subject to the same risks. Defendant's control over Rama's activities was not eliminated by the vehicle used. (Cf. *Downing v. Workers' Comp. Appeals Bd*. (1999) 64 Cal.Comp.Cases 758 [1999 Cal. Wrk. Comp. LEXIS 5456]; *Griffith Construction Co. v. Workmen's Comp. Appeals Bd.* (1970) 9 Cal.App.3d 606 [35 Cal.Comp.Cases 351, 353-354].)

In view of the entire body of evidence, the guidance provided by the Supreme Court in *Hinojosa*, and this state's liberal construction policy in favor of the employee, we conclude that the employer-provided transportation exception to the going and coming rule applies, and that, as a result, applicant's claim is not barred by this rule.

Based on the foregoing, as our Decision After Reconsideration, we rescind the F&A and substitute new findings that applicant was defendant's employee at the time of her alleged injury on July 22, 2015 and that applicant's claim is not barred by the going and coming rule. All other issues are deferred, and the matter will be returned to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the F&A issued by the WCJ on September 4, 2018 is **RESCINDED** and that the following is **SUBSTITUTED** therefore:

FINDINGS OF FACT

1. Applicant, Jasmine Orberg, was an employee of Inter Sources, Inc. on July 22, 2015 when she was involved in a motor vehicle accident on her way to her unpaid internship-training program.

2. Applicant's alleged July 22, 2015 injury arose out of and occurred in the course of her employment, and her claim for compensation is not barred by the going and coming rule.

3. All other issues are deferred.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 27, 2023

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

JASMINE ORBERG
KNOPP & PISTIOLAS
MULLEN & FILIPPI

AH/*cs*

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