WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DIMA PISLAR, *Applicant*

vs.

UC DAVIS MEDICAL CENTER, permissibly self-insured and administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendant*

Adjudication Number: ADJ17619294
Sacramento District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the January 22, 2024 Findings of Fact issued by the workers' compensation administrative law judge (WCJ), wherein the WCJ found that applicant's injuries arose out of and in the course of his employment (AOE/COE) and that his claim was not barred by the "going and coming" rule because it is subject to the "special mission" exception. Defendant asserts that the WCJ erred in applying the exception, because the activity applicant was injured on the way to was not "special" or "extraordinary."

We received an Answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition for Reconsideration.

PROCEDURAL BACKGROUND

Applicant filed an Application for Adjudication, alleging an injury to his head, brain, upper extremities, lower extremities, and fingers sustained on February 14, 2023 while employed by defendant as a Registered Nurse.[1]

[1] The claim was amended at trial to include injury to applicant's left eye as well.

The matter proceeded to trial on January 10, 2024 on the sole issue of AOE/COE, with testimony taken from applicant and from Siri Johnson, applicant's manager.

Applicant testified that he began working for defendant as a Registered Nurse in October 2022. (Transcript of Proceedings, 1/10/2024, at p. 12.) Applicant worked in the trauma unit; he would care for three to four patients during the night shift that lasted from 7:00PM to 7:00AM. (*Id.* at pp. 10–12.) He worked three days per week. (*Id.* at p. 12.)

On February 14, 2023, applicant was injured in an automobile accident while driving to a two-hour class scheduled for 8:00AM to 10:00AM. (*Id.* at pp. 13–15.) Applicant was required to attend the class, and it was the only class scheduled for that month. (*Id.* at p. 15.) The class took place at a different building than where he normally worked, but on the same campus. (*Id.* at p. 14.) Applicant did not have a night shift scheduled for that day. (*Id.* at p. 16.)

Applicant was aware when applied for his job that he would be required to take classes scheduled on an irregular basis such as the one he was travelling to when he was injured, because he was a first-year nurse. (*Id.* at p. 18.) The purpose was to further his knowledge and further his understanding of how UC Davis worked to help him integrate and comply with their standards. (*Ibid.*) The course was required for all first-year nurses at UC Davis and lasted one year; after the first year, nurses would simply continue working as normal, without the requirement to continue attending classes. (*Id.* at pp. 18–19.)

The classes were held approximately once per month; sometimes they were lectures, and sometimes they were more of a hands-on lab setting. (*Id.* at p. 21.) Applicant thought they had something similar at other hospitals, but that it was not as extensive as what was required at UC Davis. (*Ibid.*) The times of day would vary, and although it was not supposed to happen, sometimes he would be required to attend a class on the same day he had worked a night shift. (*Id.* at pp. 22–23.) Completion of the one-year course would not result in a degree, nor was completion of the one-year course a requirement to maintain applicant's license with the State Board. (*Id.* at pp. 24–25.)

Applicant was not reimbursed for mileage or gas for travel to and from the classes. (*Id.* at p. 23.) The route he took to and from the classes was the same basic route he took to and from work, and it was up to him to choose which route and method of transportation to use. (*Id.* at pp. 23–24.)

The subject of the class applicant was scheduled to attend on the day of his injury was changes in the patient's condition. (*Id.* at p. 27.) Applicant had not attended the class before; he knew from previous classes he had attended at that building that it would have been a lecture. (*Ibid.*)

Siri Johnson, applicant's direct supervisor, testified that the one-year "residency program" was "joint with" applicant's hire and was the "one-year educational component" for newly-graduated hires. (*Id.* at p. 30.) All classes are held at the UC Davis Medical Center. (*Ibid.*) Upon completion of the program, employees maintain their position. (*Ibid.*) Completion of the residency program makes someone more marketable in the job market, like any other educational program. (*Id.* at p. 31.) Attendance is required for new graduate hires. (*Ibid.*) No pay raise is specifically associated with completion of the program. (*Id.* at p. 32.)

Johnson testified that the majority of hospitals do not have an analogous program. (*Ibid.*) Johnson believed that completion of the program resulted in the award of a certificate, but she wasn't sure what kind of certificate it was. (*Id.* at pp. 32–33.) Johnson emphasized that the training program would be an advantage to applicant on the job market should he choose to pursue work elsewhere, because it was a generalized program of education. (*Id.* at pp. 30–31.)

On January 22, 2024, the WCJ issued his Findings of Fact, finding applicant's injury AOE/COE, with all other issues deferred. (Findings of Fact, at p. 1.) The Opinion on Decision makes clear that the WCJ believed applicant sustained injury AOE/COE based upon the "special mission" exception to the "going and coming" rule. (Opinion on Decision, at pp. 3–4.)

This Petition for Reconsideration followed.

DISCUSSION

The "going and coming" rule excludes from compensability injuries that occur while the employee is going to or returning from work in the routine commute. (*Ocean Acc. & Guarantee Co. v. Industrial Acc. Com. (Slattery)* (1916) 173 Cal. 313.) Injuries sustained during a "local commute enroute to fixed places of business at fixed hours" are not compensable. (*Hinojosa v, Workmen's Comp. Appeals Bd.* (1972) 8 Cal.3d 150, 157 [37 Cal.Comp.Cases 734, 739].) The rationale for this judicially created doctrine is that during an ordinary commute, the employee is not rendering any service for the benefit of the employer. (*City of San Diego v. Workers' Comp. Appeals Bd. (Molnar)* (2001) 89 Cal.App.4th 1385 [66 Cal.Comp.Cases 692].)

The "going and coming" rule "has had a 'tortuous history.'" (*Price v. Workers' Comp. Appeals Bd.* (1984) 37 Cal.3d 559, 565 [49 Cal.Comp.Cases 772].) The rule, which has often been criticized and is "subject to numerous exceptions," is "difficult to apply uniformly..." and not "susceptible to 'automatic application.'" (*Ibid.,* citing *Parks v. Workers' Comp. Appeals Bd.* (*Parks)* (1983) 33 Cal.3d 585, 589, fn. 4 [48 Cal.Comp.Cases 208].) Each case must be "judged on its own 'unique facts.'" (*Ibid.*)

One such exception is the "special mission" exception, which applies when the employer, for its own benefit, requires an employee to make an "extraordinary" trip. (*Hinojosa, supra,* 8 Cal.3d at. pp. 158–159.) To fall within the special mission exception, an unusually timed trip to or from work must be "extraordinary in relation to routine duties." (*Schreifer v.Industrial Accident Com. of L.A.* (1964) 61 Cal.2d 289, 295 [29 Cal.Comp.Cases 103, 107].)

The first prong[2] of the "special mission" exception requires the underlying activity to be extraordinary in relation to the employee's routine duties. (*Molnar*, *supra,* 89 Cal.App.4th at p. 1388.) The inquiry into whether an activity was extraordinary typically involves the consideration of three fundamental factors—the location, hour, and nature of the work to be performed by the employee. (*Id.* at p. 1389.) Some deviation in these three factors is the common thread that distinguishes the "special mission" from the normal work commute. (*Ibid.*; *Lantz v. Workers' Comp. Appeals Bd.* (2014) 226 Cal.App.4th 298, 317-318 [79 Cal. Comp. Cases 488].)

Here, defendant argues that the WCJ erred in finding that applicant's scheduled class was a "special mission," asserting instead that it was a normal part of his employment duties, and therefore neither extraordinary or special. (Petition, at pp. 7–9.)

Of the cases referenced in the papers, two in particular involved facts similar to those here. First, in *Dimmig v. Workers' Compensation Appeals Board*, the California Supreme Court held that a contracts administrator sustained a work-related injury when he died in an automobile accident on the way back from night classes he was attending at a local college. (*Dimmig v. Workers' Comp. Appeals Bd.* (1972) 6 Cal.3d 860, 862.) The employer had encouraged its employees to pursue further education, and offered reimbursement to its employees once they obtained degrees. (*Ibid.*) Explaining its conclusion, the Supreme Court stated:

---

[2] Defendant does not contest that applicant meets the second and third prongs of the "special mission" test, namely that the activity was within the course of the employment and undertaken at the express or implied request of the employer. (See *City of L.A. v. Workers' Comp. Appeals Bd.* (*DeLeon*) (2007) 72 Cal. Comp. Cases 1463, 1467.)

> Dimmig's attendance at Notre Dame College was a special activity as required by our holding in [*Schreifer]*, because it was not a part of his normal routine as a contracts administrator. *The fact that Dimmig's attendance at the college may have been routine, in that he regularly attended classes at certain times during the week, does not affect the character of the activity as special. The school attendance was extraordinary in relation to Dimmig's routine duties at Memorex.* In addition, Dimmig's travel to and from the college was not travel to and from his normal place of work at the normal hour.

(*Dimmig, supra,* 6 Cal.3d at p. 869 (italics added).)

Conversely, in *Molnar,* the Court of Appeal found that a policeman injured in an automobile accident while driving to the county courthouse to respond to a subpoena to testify was not engaged in a "special mission" and therefore not entitled to compensation. (*Molnar, supra,* 89 Cal. App. 4th at pp. 1387–89.) The Court of Appeal explained:

> The record shows that it is an integral part of a San Diego patrol officer's duties to testify, if subpoenaed to do so, in a proceeding arising out of his or her patrol work, and that such an officer testifies at such proceedings an average of twice a month. Molnar testified that he is subpoenaed to testify an average of one to two times per month. Testimony at the hearing also established that it is not unusual for officers to be called to testify on days when they are not scheduled to report to the station, and that the police department has various policies applicable to officers who testify on off-duty days. Pursuant to one such policy and a memorandum of understanding between the San Diego Police Officers Association and the San Diego Police Department, Molnar received overtime compensation for testifying on an off-duty day.

(*Id. at* p. 1389.) Accordingly, Molnar's claim failed because the activity he was travelling to at the time of his injury was not "special" or "extraordinary" but rather a fundamental part of his job duties. (*Ibid.*)

When comparing these two cases, the rule that emerges is that the activity the employee is injured while travelling to must be distinct from and separate to the employee's core job functions. (See *ibid.*) However, the activity need not be special in the sense that it is irregular. (*Dimmig, supra,* 6 Cal. 3d at p. 869.) In other words, "special" in this formulation refers not to frequency, but rather to a significant deviation from the normal activities of the employment.

Here, we agree with the WCJ that the facts appear closer to *Dimmig* than to *Molnar*. Like in *Dimmig,* applicant was engaged in an educational program distinct and separate from his core job duties as a nurse. Applicant's job was to take care of trauma patients at the trauma ward; the classes he attended were lecture or lab-based learning designed to improve his general abilities as

a nurse. (Transcript, at pp. 18, 30–31.) Taking lecture or lab-based classes is undeniably and fundamentally distinct from caring for trauma patients, applicant's primary job duties.

Also like in *Dimmig,* applicant attended these classes at a different time of day than his normal work duties; in applicant's case, in the morning, while he worked night shifts. (Transcript, at pp. 10, 13.) The day of applicant's injury, he had not worked a night shift, so he was commuting specifically for the purpose of attending the classes at the time of his injury. (*Id.* at pp. 15–16.)

In contrast to *Molnar,* applicant's attendance at these classes cannot easily be construed as a fundamental part of his job duties. Unlike the situation of the police officer in *Molnar,* where the Court considered testifying at trial as an "integral" part of the job, here the evidence is undisputed that only first-year nurses were required to attend the educational classes, and that once the one-year course had been completed, applicant would simply have continued on his work, without any change in core job duties or salary. (*Id.* at p. 32.) Nor was participation in the classes a requirement of applicant's nursing degree. (*Id.* at p. 24–25.)

The Petition argues that the case is closer to *Molnar* because "there was nothing unusual or extraordinary about applicant's commute that morning." (Petition, at p. 7.) Conversely, the Petition argues that the case is unlike *Dimmig* because the class was "at the same location where he worked (i.e., the UC Davis Medical Center Sacramento Campus)" and because attendance at the classes was "part of [applicant's] normal work routine" and a "condition of employment." (*Id.* at pp. 7–8.)

We do not find these arguments persuasive. Given that applicant's classes occurred at a separate building, but on the same campus, it does not seem particularly useful to quibble over whether the classes were at the same broad location, or a different specific location. More importantly, the Supreme Court in *Dimmig* specifically rejected the argument that an activity was not special because the employee attended it regularly at fixed dates and/or locations. (See *Dimmig, supra,* 6 Cal. 3d. at p. 869.) The key question was, instead, whether the activity itself was special or extraordinary in relation to the routine duties of employment. (*Ibid.*) As described above, that was the case here.[3] This conclusion is given further weight by the testimony indicating that

[3] *Baroid v. Workers' Comp. Appeals Bd.* (1981) 121 Cal. App. 3d 558, cited by defendant for the proposition that an activity cannot be found extraordinary when it occurs at scheduled dates and times with advance notice, in fact says nothing of the kind. In that case, an employee was injured on the way to work after having been called in early. (*Id.* at p. 564.) The Court found that the "special mission" exception could not apply because the employee was regularly called in early to work, that nothing about his work that day was any different than his normal work, and that he was travelling to the same location he normally worked at. (*Id.* at p. 568.) Moreover, *Dimmig* specifically states that the

defendant's educational program was unusual, in that most hospitals do not offer something similar. (Transcript, at p. 32.) In other words: such a program is not an integral part of being a nurse in a trauma ward – even a first-year nurse in a trauma ward.

Finally, defendant argues the fact that applicant was driving his own vehicle and was not reimbursed for gas or milage weighs against a finding of AOE/COE, citing *Santa Rosa Junior College v. Workers' Comp. Appeals Bd.* (1985) 40 Cal.3d 345.) That case dealt with a professor injured while driving back from his place of employment, who argued his injury was compensable because he was travelling home to grade papers. (*Id.* at pp. 348–49.) It is unclear why defendant cited this case for the proposition that gas or mileage reimbursement has relevance on the existence of a "special mission." Neither the words "gas" nor "mileage" appear in the decision, and the discussion of the "special mission" exception is limited to a single paragraph noting that there was no evidence to support anything special about the employee's activities that day. (See *id.* at pp. 354.) Perhaps more importantly, on the facts of our specific case, we do not see why gas or mileage reimbursement would bear on the question of whether applicant was engaged in a "special mission." Paying for mileage or gas would not have converted applicant's class attendance to part of his core job duties, nor, conversely, would it have been sufficient to convert core job duties into a special mission.

In concluding that applicant established AOE/COE pursuant to the "special mission" exception to the "going and coming" rule, we have been mindful of the Supreme Court's exhortation that "each case must be judged on its own 'unique facts.'" (*Price, supra,* 37 Cal.3d at 565.) Here, our best judgement is that the unique facts of this case militate in favor of finding AOE/COE, rather than against it. Accordingly, we will deny the Petition for Reconsideration and affirm the WCJ's finding.

---

fact that an activity is regularly scheduled does not preclude it from being special or extraordinary. (See *Dimmig, supra,* 6 Cal.3d at p. 869.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

CRAIG SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 12, 2024

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

DIMA PISLAR
MEHLHOP & VOGT
MICHAEL SULLIVAN & ASSOCIATES

AW/pm

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