

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

ABRAHAM ALEX, *Applicant*

vs.

**ALL NATION SECURITY SERVICES, INC.;
ZENITH INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ11034618
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, and for the reasons stated below, we will deny reconsideration.

California has a no-fault workers' compensation system. With a few exceptions, all California employers are liable for the compensation provided by the system to employees injured or disabled in the course and scope of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no-fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms of 'service to an employer' and by including a general presumption that any person 'in service to another' is a covered 'employee.'" (Lab. Code §§ 3351, 5705(a); *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80.]

Notwithstanding the above, Labor Code section 3600 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." An employer is liable for workers' compensation benefits, where, at the time of the injury, an employee is "performing service growing out of and incidental to his or her employment and is acting within the course of employment." (Lab. Code, § 3600(a)(2).) Whether

an injury arises out of and in the course of employment requires a two-prong analysis. (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644 [63 Cal.Comp.Cases 253].)

First, the injury must occur “in the course of employment,” which ordinarily “refers to the time, place, and circumstances under which the injury occurs.” (*LaTourette, supra*, 63 Cal.Comp.Cases at p. 256.) An employee is acting within “the course of employment” when “he does those reasonable things which his contract with his employment expressly or impliedly permit him to do.” (*Ibid.*)

Second, the injury must “arise out of” the employment, “that is, occur by reason of a condition or incident of employment.” (*Employers Mutual Liability Ins. Co. of Wisconsin v. Industrial Acc. Com. (Gideon)* (1953) 41 Cal.2d 676 [18 Cal.Comp.Cases 286, 288].) “[T]he employment and the injury must be linked in some causal fashion,” but such connection need not be the sole cause, it is sufficient if it is a “contributory cause.” (*Maher v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 729 [48 Cal.Comp.Cases 326, 329].)

In *Westbrooks v. Workers' Comp. Appeals Bd.* (1988) 203 Cal.App.3d 249 [53 Cal.Comp.Cases 157], the Court of Appeals stated:

Employee misconduct, whether negligent, willful, or even criminal, does not necessarily preclude recovery under workers' compensation law. In the absence of an applicable statutory defense, such misconduct will bar recovery only when it constitutes a deviation from the scope of employment. (See *Traub v. Board of Retirement* (1983) 34 Cal.3d 793, 799–800 [195 Cal.Rptr. 681]; *Wiseman v. Industrial Acc. Com.* (1956) 46 Cal.2d 570, 572–573 [297 P.2d 649]; *Associated Indem. Corp. v. Ind. Acc. Com.* (1941) 18 Cal.2d 40, 47 [112 P.2d 615]; Larson, *Workmen's Compensation Law* (1985) §§ 30.00, 35.00.) In determining whether particular misconduct takes an employee outside the scope of his employment, “A distinction must be made between an unauthorized departure from the course of employment and the performance of a duty in an unauthorized manner. Injury occurring during the course of the former conduct is not compensable. The latter conduct, while it may constitute serious and willful misconduct by the employee (Lab. Code, § 4551), does not take the employee outside the course of his employment.” [Citations omitted.]

If the employment places an applicant in a location and he or she was doing an activity reasonably attributable to employment or incidental thereto, an applicant will be in the course of employment and the injury may be industrially related. (*Western Greyhound Lines v. Ind. Acc. Com. (Brooks)* (1964) 225 Cal.App.2d 517 [29 Cal.Comp.Cases 43].)

The record here reflects that when applicant was injured, he was in the middle of his work day, on the work premises, performing the duties he was hired to perform. Furthermore, it is well established that “[w]here an employee is in the performance of the duties of his employer, the fact that the injury was sustained while performing the duty in an unauthorized manner or in violation of instructions or rules of his employer does not make the injury one incurred outside the scope of employment.” (*Williams v. Workers’ Comp. Appeals Bd.* (1974) 41 Cal.App.3d 937 [39 Cal.Comp.Cases 619, 621].) Thus, an employee’s transgression of rules, instructions, or established custom is within the sphere of the employment. (*Id.*)

In workers’ compensation matters, the burden of proof rests on the party “holding the affirmative of the issue.” (Lab, Code, § 5705.) Section 3202.5 provides that “[a]ll parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence,” (Lab. Code, § 3202.5.) Thus, applicant has the affirmative burden of proving that his injury arose out of and occurred in the course of employment (AOE/COE). However, it is defendant that carries the burden to prove the non-connection or deviation from duties. (*Rockwell International v. Workers’ Comp. Appeals Bd. (Haylock)* (1981) 120 Cal.App.3d 291 [46 Cal.Comp.Cases 664]; *City of Los Angeles v. Workers’ Comp. Appeals Bd. (Rivard)* (1981) 119 Cal.App.3d 633 [46 Cal.Comp.Cases 625]; *Pacific Tel. & Tel. Co. v. Workers’ Comp. Appeals Bd.* (1980) 112 Cal.App.3d 241 [45 Cal. Comp. Cases 1127].)

The following cases are instructive on the wide scope of activities that were found to be AOE/COE. In *Southwest Marine, Inc. v Workers’ Comp. Appeals Bd. (Erby)* (1992) 57 Cal.Comp.Cases 216, an employee sat down on the job, an act forbidden by the employer, yet sustained an injury AOE/COE and did not abandon his employment. In *Williams, supra*, 39 Cal.Comp.Cases 619, 621, a travel agency employee in the process of delivering tickets and collecting money who was injured in a collision at the end of a high speed chase by a pursuing policeman was AOE/COE because illegal or even criminal conduct does not necessarily remove an employee from the course of his employment. In *McCarty v. Workers’ Comp. Appeals Bd.* (1974) 12 Cal.3d 677 [39 Cal.Comp.Cases 712], held that when an employee is injured while performing activities not specifically assigned, but which the employee consistently or customarily performs with the employer’s acquiescence, the employer impliedly authorizes the conduct and any resulting injuries are compensable. Furthermore, an employee’s act in exiting a hotel through an unauthorized door, although perhaps unwise, did not constitute a departure from the course of

employment. In exiting the premises albeit through an unauthorized door, applicant sustained a slip-and-fall injury. As the applicant was performing her duties in an unauthorized manner, her injury was compensable. (*THG, Inc., Safeco Insurance Company v. Workers' Comp. Appeals Bd. (Anderson)* (2001) 66 Cal. Comp. Cases 1436, 1437.)

Based on our review of the record, we agree with the WCJ that applicant was on the employer's premises performing the duties of a security guard. We also agree that the fact that applicant exited the station and attempted to chase and/or apprehend an individual who he had asked to leave the station did not constitute a deviation that took applicant outside the course of his employment.

Finally, we have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

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

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 20, 2021

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

**ABRAHAM ALEX
EASON & TAMBORNINI
CHERNOW & LIEB**

PAG/abs

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

Date of Injury:	August 24, 2017
Age on DOI:	65 years old
Parts of Body Injured:	Head
Petitioners:	Defendant
Timeliness:	Petition was filed timely
Verification:	Petition was verified
Date of Order:	February 26, 2021
Petitioner Contentions:	Defendant contends the Board acted without or in excess of its powers by the decision, the evidence does not justify the findings of fact, and the findings of fact do not support the decision.

II

FACTS

Applicant was employed as a security officer/guard by All Nation Security Services, Inc. on August 24, 2017. The matter went to trial on the issue of injury arising out of and in the course of employment involving the head after a fall. Defendant contended there was conduct outside the course of employment and/or material deviation. The Findings issued proving that Applicant sustained an industrial injury to the head and Defendant filed a Petition for Reconsideration.

III

DISCUSSION

The Department of Industrial Relations Website provides that employees are entitled to prompt, effective medical treatment for industrial injuries regardless of fault. (<https://www.dir.ca.gov/dwc/employer.htm> accessed 2/18/2021.) The performance of a duty in an unauthorized manner does not take the employee outside the course of employment even if the employee's conduct was serious and willful. *Pacific Telephone and Telegraph Co. v. WCAB (Blackburn)* (1980) 45 Cal. Comp. Cases 1127. The Supreme Court of California noted "the fact that an injury was received by an employee while violating an instruction or rule of his employer, does not necessarily prevent the injured employee from recovering on the ground that the injury did not arise out of or occur in the course of the employment." *Associated Indemnity Corporation. v. IAC (Macfie)* (1941) 6 Cal. Comp. Cases 129.

In his QME report dated September 4, 2018, neurologist Dr. Wayne Anderson provided a history of the injury. Applicant was working as a security guard when a homeless person came inside the lobby of the Greyhound bus station. The homeless person was dancing and speaking badly in the lobby. An employee asked Applicant to escort the homeless person outside. Applicant asked whether the homeless person had a ticket and asked him to leave. The homeless person did not leave and cursed at Applicant and hit Applicant in the left temple with a fist. Applicant fell outside

the lobby and the homeless person ran off. Dr. Anderson performed a physical exam and record review. Dr. Anderson opined that Applicant suffered a traumatic brain injury with evidence of intracranial hemorrhage for which he underwent surgery and continues to have symptoms associated with concussion that should fade gradually. Dr. Anderson diagnosed Applicant with left temporal intracranial hemorrhage, post-concussive syndrome, and persistent headaches attributed to moderate traumatic brain injury. Dr. Anderson opined that the intracranial hemorrhage and current symptomatology were medically caused by the subject injury. (Exhibit J)

Dr. Anderson produced a supplemental report dated August 5, 2019 based on a re-evaluation. Dr. Anderson diagnosed Applicant with post-concussive syndrome, resolved intracranial hemorrhage, degenerative brain changes, and headache disorder possibly due to medication overuse, cognitive disturbance, and depression with need to rule out pseudo dementia. Dr. Anderson acknowledged the legal dispute but provided his medial opinion that the injury and effects were caused by a blow to the head and/or the fall. (Exhibit AA)

Defendant offered an Injury Biomechanics Report by biomechanical engineer Stephanie Bonin, PhD dated September 20, 2019. Dr. Bonin reviewed and analyzed video footage and concluded that Applicant's injury of subdural hematoma and brain contusion are consistent with a head impact to the ground and not a punch to the head. (Exhibit I) Dr. Anderson produced a supplemental report dated February 18, 2020 based on review of security videos. Dr. Anderson described the first video as showing Applicant walking, another person speaks with him, the other person begins dancing, Applicant returns, words are exchanged, a customer comes between them, the other person swings at Applicant, and it is unclear if Applicant is struck. Dr. Anderson described the second video as showing Applicant chase after the other person and then trip on the sidewalk, Applicant attempts to rise when the other person returns and strikes Applicant causing Applicant to fall backwards striking his head. Dr. Anderson opines that the video shows Applicant fall and land on the left outside the station, and then Applicant being struck in the head, and then Applicant falling backward and striking his head. Dr. Anderson opines that the injury appears to have occurred outside. (Exhibit L)

Dr. Anderson produced a supplemental report dated March 31, 2020 based on further review of security videos. Dr. Anderson described the first video as showing Applicant fall forward with his arms outstretched to avoid significant impact to the head although there is sudden neck movement which could support a whiplash injury and concussion symptoms. Dr. Anderson opined it is unlikely Applicant suffered traumatic brain injury due to that part of the fall based on his speed and outstretched arms. Dr. Anderson described the second video of Applicant getting up when the homeless person turns around, strikes Applicant with his left arm and then pushes Applicant backward. Dr. Anderson indicates it is unclear whether Applicant is struck in the face or the chest. Dr. Anderson describes the third video wherein Applicant falls backward and strikes the back of his head against the ground. Dr. Anderson notes that Applicant's feet are in the air and his arms are up to prevent him from striking his head. Dr. Anderson indicates that Applicant struck the back of his head against the concrete. Ultimately, Dr. Anderson finds the strike to the left side of the head to have caused the subdural hematoma on the left and the subsequent fall onto the back of his head to have caused the post-concussive syndrome. (Exhibit BB)

Dr. Anderson was deposed on June 8, 2020 where he testified that he is board certified in neurology and pain management with a subspecialty in headache medicine and traumatic brain injury.

Dr. Anderson saw the video and opined that it corroborated the mechanism of injury and the general concept of a disruptive person in the station although he acknowledged there were some differences in what Applicant relayed. Applicant said he was just outside the door but it looked like he was actually a little further out when it happened. Dr. Anderson explained that he allows for the little nuances because when something traumatic happens a person may not have the most exact memory. Dr. Anderson found Applicant's history and the video footage to be reasonably close. Dr. Anderson had no doubt that the ongoing symptoms resulted from Applicant hitting the concrete but was not certain whether the subdural hematoma was caused by a punch to the head. (Exhibit M)

The job summary provided by Defendant states that the primary purpose of the security officer is to provide protection for Greyhound property and personnel. In addition, it states that security officer is the eyes and ears and Greyhound Management needs to know what is happening at all times at their facilities. The Post Orders state that the mission is to control access of all entering Greyhound and ensure a safe and secure facility with a primary focus to remain at the checkpoint to ensure people have a valid ticket. It states the terminal officer is to remain at the checkpoint and has authority to confiscate a ticket when a person is presenting a verbal or physical threat, refuses to follow policies, possesses narcotics, or is causing a disturbance. The terminal officer must also ask loiterers to leave the premises, respond to issues, and remain visible and vigilant to any suspicious activity. The security officer is expected to manage aggressive behavior or disturbed persons but refrain from chasing, restraining, and subduing individuals. (Exhibit D) The employee manual it provides that the security offices are "expected to challenge persons in a professional manner to enforce access to restricted areas" but are not to put themselves in danger. It further instructs officers to diffuse incidents verbally or call the proper authorities and refrain from touching, tackling, chasing, assaulting or grabbing anyone. (Exhibit C) Consistent with the expectations of the job, Applicant was controlling access to Greyhound, ensuring safety and security of the facility, asking a loiterer to leave, responding to issues, and remaining vigilant although chasing someone in the process.

At trial, Applicant testified in pertinent part as follows: He was a security guard for All Nations Security on August 24, 2017. He was responsible for checking passengers who came inside the Greyhound terminal or went to the restrooms and he was also supposed to check outside at the time of coming and going. On the date of injury, Applicant was working inside when a man came in and was dancing. Applicant had never seen that man before. The man was cussing at passengers who complained and wanted the man kicked out. Applicant asked the man if he had a ticket several times and the man got angry and cussed. Applicant believed the man had gone but the man came back and hit Applicant with a fist on the left side of his head. Applicant wanted to capture the man and give him to the police. Applicant was about one meter outside the door when he fell on the cement. Applicant was admitted to the hospital because of the injury. Applicant agreed he should have called the police on the date of injury but it happened suddenly. Applicant's primary job duty was to remain at the check post and check in passengers but his job also included checking the back door where the senior citizens enter and the front door where the vehicles arrive. His job included patrolling outside of the building as well. On the date of injury Applicant wanted to make sure the facility was safe so he went after the man, lost his balance, and fell. Applicant chased the man a short distance and was still on the property. Applicant's goal is consistent with performing his job.

At trial, Defendant called Sonny Blake who testified in pertinent part as follows: Sonny worked for All Nation Security Services from February 2016 until April 2020 and supervised Applicant. Sonny trained each of the guards regarding what they needed to work on based on his conversations with the client. The primary job duty of the security guard is to be at the front entrance, check luggage, make sure people entering the building have tickets, and to keep an eye on everyone waiting in the terminal. The security guards are not police and are unarmed. The security guards check luggage for suspicious paraphernalia, alert authorities, and deter people from taking paraphernalia onto the bus. The security officers are not allowed to chase, restrain, or detain people. Sonny was surprised by the security footage because Applicant's conduct was brave, the man was larger than Applicant, and it was potentially dangerous. There was no disciplinary action taken against Applicant. Sonny believes the man was using profanity. Sonny testified it is always helpful for an individual to leave if using profanity. The security guards are not allowed to restrain people but they always want to get rid of a problem. They do not want someone like the man in the video to come back. It would have been helpful if the man was still there when the police arrived and one of the jobs of the security guard is to ensure the facility is protected. The testimony of the employer's witness demonstrates that Greyhound derived value from Applicant's actions. Applicant was ensuring that an individual using profanity left the premises, was getting rid of a problem individual, and was protecting the facility from a physically violent person. Furthermore, the employer did not perceive Applicant's actions as warranting discipline.

The record, particularly the trial testimony of Applicant and Sonny Blake with due consideration to credibility of the witnesses, as well as the employer's job summary and opinions of Dr. Anderson, support a finding that Applicant sustained an injury arising out of and in the course of employment to his head on August 24, 2017. The record shows Applicant was performing his job as a security guard in furtherance of the Greyhound business when he was injured. This is true even if the injury was caused by an impact with the ground outside the station or if Applicant violated a policy in the process. Applicant is entitled to workers' compensation benefits.

IV RECOMMENDATION

For the reasons stated above, it is respectfully recommended that Defendant's Petition for Reconsideration be denied.

DATE: March 26, 2021

Ariel Aldrich
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE