

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

ISABEL AKERLUNDH (Deceased), *Applicant*

vs.

**COUNTY OF RIVERSIDE;
PERMISSIBLY SELF INSURED, *Defendants***

**Adjudication Number: ADJ12249871
Riverside District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and Opinion on Decision 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 and Opinion on Decision, which are both adopted and incorporated herein, and for the reasons stated below, we will deny reconsideration.

Liability for workers' compensation accrues for an injury "arising out of and in the course of the employment." (Lab. Code, § 3600(a).) "Under the well-established going and coming rule, an employee does not pursue the course of his employment when he is on his way to or from work." (*Smith v. Workmen's Comp.App.Bd.* (1968) 69 Cal.2d 814, 815-816 [33 Cal.Comp.Cases 771]) (*Smith*) citing *Zenith Nat. Ins. Co. v. Workmen's Comp. App. Bd.* (1967) 66 Cal.2d 944, 946.) Thus, injuries sustained while an employee is "going and coming" to and from the place of employment do not normally arise out of and in the course of employment because the employee is neither providing 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 v. Workers' Comp. Appeals Bd.* (1972) 8 Cal.3d 150, 157 [37 Cal.Comp.Cases 734] (*Hinojosa*)). It applies to a 'local commute enroute to a fixed place of business at fixed hours.' (*Hinojosa, supra*, 8 Cal.3d at p. 157.)" (*Zhu v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1031, 1038 [82 Cal.Comp.Cases 692].)

For the reasons stated by the WCJ in the Report and Opinion on Decision, we agree that defendant met its burden of proof that applicant's claim is barred by the going and coming rule and that applicant did not meet her burden of proof that an exception to the going and coming rule applied.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 3, 2023

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

**ISABEL AKERLUNDH
GUY LEVY LAW
HANNA BROPHY**

PAG/es

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

**REPORT & RECOMMENDATION OF JUDGE ON PETITION FOR
RECONSIDERATION**

INTRODUCTION

Petitioners, Andrea Rodriguez, Ana Rodriguez and Belisa Rodriguez (hereafter applicants), by and through their attorney of record, filed a Petition for Reconsideration on 12/5/2022 contesting the Finding and Order, dated 11/16/2011. The applicant alleges that by the award the WCJ acted without or in excess of his powers; that the evidence does not justify the findings of fact; and that the findings of fact do not support the order, decision, or award. The Petition is verified.

Respondent, County of Riverside, (hereafter defendant), by and through their counsel; Hanna Brophy; has not filed a verified Answer to the Petition for Reconsideration as of 12/18/2022.

At the trial, Applicant contended that the decedent was required to use her personal vehicle for work in order to perform her duties as a Behavior Health Specialist (BHS). Defendant contended that the coming and going rule was applicable. As a general rule, injuries sustained during the course of an employee's commute to and from work are not compensable. However, there are numerous exceptions to this rule.

FACTS

Isabel Akerlundh, born [], while employed on 5/20/2019, as a Behavioral Health Specialist II, by the County of Riverside Department of Mental Health, claims to have died arising out of and in the course of employment.

Exhibit B is the Traffic Collision Report. On 5/20/2019 at approximately 7:25 a.m., Isabel Akerlundh was involved in a fatal automobile accident. Two vehicles were involved in a head-on collision on Gilman Springs Road. It was determined that the other driver crossed the double parallel lines with rumble trips and traveled wrong way in the eastbound lane. The vehicle collided with Ms. Akerlundh's vehicle.

At the trial on 7/12/2022, Jill Forbes testified that she was the decedent's supervisor on 5/20/2019 at the Hemet Clinic. The decedent was employed as a Behavioral Health Specialist (BHS).

She testified that a BHS worked at the direction of the psychiatrist or therapist. They developed relationships with clients. They worked at the clinic. A BHS would meet with clients

depending on appointments. Sometimes, they had appointment at houses, hospitals or other clinics. A BHS could work in the field but it was not required. A BHS may go to appointments with clients meet with clients in the field.

Their job duties included assisting clients by talking to them and escorting clients to appointments. The staff member would take a county car to pick up a client to take them to appointments. Some clients had bedbugs, hygiene issues, and were dirty. It was preferred that staff members use a county vehicle to transport clients. If a county vehicle was not readily available, there were County Fleet vehicles. There was no evidence that the applicant used her personal vehicles to transport patients, because County vehicles were available (Summary of Evidence dated 7/12/2022, page 5:13-17).

Ms. Forbes testified that the use of a private vehicle was discouraged but permitted. Workers were not prohibited from using their own vehicles. She did not know if the decedent used her own private vehicle to transport patients (SOE dated 7/12/202, page 10:5-6).

Ms. Forbes testified that there was a white board that was used when a worker was not in the office. On the day of Ms. Akerlundh's passing, she had not come to work and was not marked out on the board. Ms. Akerlundh was not signed out for the morning of 5/20/2019 (SOE dated 7/12/2022, page 10:16-22).

As a condition of employment as a BHS, a California Driver's License and minimum insurance coverage was required (Exhibits 1, 2, and 3).

In the Petition for Reconsideration, it was alleged that the decedent was required to work in the field and used their private vehicles to transport patients (page 2, line 15 and 24-25). This is not an accurate statement of the testimony at the trial.

Applicant relies on the Accident Log (Exhibit 4) to show that employees were involved in motor vehicle accidents in their private vehicles. Exhibit 4 consists of Accident Log Sheets from 4/20/2017 through 9/30/2019 from the County of Riverside, consisting of 12.25 pages. A page has approximately 70 entries. Various County departments are listed. It is not known what situations or occupations are involved. The Applicant Attorney raised 15 entries where the drivers were using private vehicles, not County vehicles. This is approximately 2% of the entries. Applicant attorney was contending that employees may use their own private vehicles while performing job duties. The Accident Logs show that this does not happen often.

The Accident Logs show that the vast majority of county workers use County provided vehicles. A very small percentage use their own vehicles while at work.

The evidence at trial showed that employees mostly used County vehicles while performing work related duties. The use of private vehicles was the exception to common practice of using a County vehicle.

ISSUES

As a general rule, employees injured on an ordinary commute to a fixed place of employment at a fixed time are considered outside the course of employment (*Hinojosa v. W.C.A.B.* (1972) 8 Cal. 3d 150, 37 Cal. Comp. Cases 734). Injuries suffered on such a commute are not compensable, unless they fit within one of many exceptions resulting from case law.

Under the coming and going rule, an employee going to and from his or her place of employment was not rendering any service to the employer at the time of the commute. The court reasoned that an employee only begins to render service when arriving at the place of employment and that injuries traveling to and from work fell outside the scope of workers' compensation. The rule imposes on the employee the not inconsiderable risks of present day traffic conditions between his or her home and the place of employment (Sullivan on Comp, section 5.43). It is noted that there are numerous exceptions to this rule.

Applicant contends that the decedent was using her personal vehicle for the benefit of her employer because the Defendant required that the decedent maintain a valid California Driver's License and for her to have a minimum car insurance policy on her vehicle.

In *Smith v. W.C.A.B.* (1968) 69 Cal.2d 814, 33 Cal. Comp. Cases 771, the decedent was involved in a one-car automobile accident while driving his own car to the office of the Ventura County Welfare Department. The decedent's wife testified that her husband brought work home to be done over the weekend as was his usual practice. She saw him work at home for several hours. She also testified that the county required Smith to use his own car when he called on his aid recipients and that he was reimbursed for mileage. Mr. Smith's supervisor testified that it was unlikely that he worked on reports at home and that the papers returned by Mrs. Smith were mostly blank forms and contained no case reports or files. The court found that the employer instructed Smith to have his car available on the job every morning. On appeal, the Court found that Mr. Smith sustained an injury arising out of and in the course of employment, since the employer required that employees have their cars available at work.

In the present case, Ms. Akerlundh was not required to use her vehicle to visit clients. County vehicles were readily available for use. Based on Ms. Forbes' testimony, there was no shortage of County vehicles. There was no evidence that she was required to furnish her own transportation. There was no evidence that she had taken home work to be done in the evening. There was no evidence that she was on a special errand.

In the present case, on the morning of 5/20/2019, the decedent was traveling from her home to start work at County Clinic. She was traveling in her own vehicle. There is no evidence that she was going somewhere else or traveling to see a client. There is no evidence that she was scheduled to use her vehicle at work that day. There is no evidence that she was scheduled to leave the office that day to visit clients or participate in training outside office.

Applicant is attempting to expand the exception to the coming and going rule by arguing that the requirement to maintain a valid California Drivers' License and a minimum car insurance policy is the same as requiring an employee to bring his/her personal vehicles to work.

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

DATED AT RIVERSIDE, CA

**DAVID THORNE
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE**

OPINION ON DECISION

Isabel Akerlundh, born [], while employed on 5/20/2019, as a Behavioral Health Specialist II, by the County of Riverside Department of Mental Health, claims to have died arising out of and in the course of employment.

Exhibit 1 is a Conditional Offer of Employment as a Clinical Therapist I to Isabel Akerlundh, dated 8/2/2010. Subsequent to this offer, the applicant was not able to maintain her credentials as a Clinical Therapist. She was demoted to a Behavioral Health Specialist.

Exhibit 2 is a New Employee Orientation Checklist, signed by the decedent on 4/18/2006. The Checklist may not be applicable to her position on 5/20/2019.

Exhibit 3 is an Employee Evaluation for Isabel Akerlundh for 8/26/2018. Under “Skills,” possession of a valid California Driver’s License may be required for some positions in this class.

Exhibit 4 is are Accident Log Sheets from 4/20/2017 through 9/30/2019 from the County of Riverside, consisting of 12.25 pages. A page has approximately 70 entries. Various County departments are listed. It is not known what situations or occupations are involved. The Applicant Attorney raised 15 entries where the drivers were using private vehicles, not County vehicles. This is approximately 2% of the entries. Applicant attorney was contending that employees may use their own private vehicles while performing job duties. The Accident Logs show that this does not happen often.

Exhibit 5 refers to Vehicle Use and Safety Guidelines for the County of Riverside. Under I(A)(1), Each employee must have an Agency/Department written authorization to drive a County vehicle. The employee must complete General Form #30, “Authorization to Drive a Riverside County Vehicle or other vehicle on County Business.” Jill Forbes testified that Form #30 is filled out one time, not whenever a County vehicle is used. An employee is required to have the proper driver’s license and minimum insurance coverage. Under “Vehicle Safety Training,” all employees must attend a vehicle operation safety training class.

Exhibit 6 refers to a memo on Overnight Retention of County Vehicles.

Exhibit 7 refers to a memo on Reimbursement for General Travel and Other Expenses. There is a procedure for reimbursement for travel expenses.

Exhibit 8 shows Training Compliance for Isabel Akerlundh.

Exhibit 9 is an Employment Declaration Form for Ms. Akerlundh as a Behavior Specialist, dated 3/20/2006. Exhibit 10 is an Employment Declaration Form for Ms. Akerlundh as a Clinical Therapist, dated 8/2/2010.

Exhibit 11 is an Employee Transaction Form, dated 8/23/2018. Ms. Akerlundh was demoted to Behavior Specialist II.

Exhibit 12 is the job description for Behavior Specialist II. The essential job duties include visiting clients in living situations, visiting customers to observe progress, provide counseling, gather data and to report changes. One of the duties include attending in-service workshops and training.

INJURY AOE/COE

Exhibit B is the Traffic Collision Report. On 5/20/2019 at approximately 7:25 a.m., Isabel Akerlundh was involved in a fatal automobile accident. Two vehicles were involved in a head-on collision on Gilman Springs Road. It was determined that the other driver crossed the double parallel lines with rumble trips and traveled wrong way in the eastbound lane. The vehicle collided with Ms. Akerlundh's vehicle.

Applicant contends that the decedent was required to use her personal vehicle for work in order to perform her duties as a Behavior Health Specialist (BHS). Defendant contends that the coming and going rule is applicable. As a general rule, injuries sustained during the course of an employee's commute to and from work are not compensable. However, there are numerous exceptions to this rule.

At the trial on 11/2/2022, Thaddeus Wicki testified that he is employed by the County of Riverside as a Clinical Supervisor. He was Ms. Akerlundh's supervisor approximately from 2006 to 2009 when she was a Behavior Health Specialist. She left for a couple of years to get her Master's degree. She returned as a Clinical Therapist approximately from 2012 to 2018. As a Clinical Therapist, she was not required to use her personal vehicle or to visit patients at their homes. This is an office based position. Ms. Akerlundh had an issue getting re-licensed and was transferred to Jill Forbes' office as a BHS.

Mr. Wicki testified that employees are encouraged to use County vehicles for attending training. Ms. Akerlundh was working at a different office at the time of her death on 5/20/2019.

At the trial on 7/12/2022, Jill Forbes testified that she was the decedent's supervisor on 5/20/2019 at the Hemet Clinic. She has worked for the County of Riverside for 15 years and retired

in December 2020. She worked with the decedent for 5 years at the Perris Clinic and 2 years as her supervisor at the Hemet Clinic.

She testified that a BHS worked at the direction of the psychiatrist or therapist. They developed relationships with clients. They worked at the clinic. A BHS would meet with clients depending on appointments. Sometimes, they had appointment at houses, hospitals or other clinics. A BHS could work in the field but it was not required. A BHS may go to appointments with clients meet with clients in the field.

Their job duties included assisting clients by talking to them and escorting clients to appointments. The staff member would take a county car to pick up a client to take them to appointments. Some clients had bedbugs, hygiene issues, and were dirty. It was preferred that staff members use a county vehicle to transport clients. If a county vehicle was not readily available, there were County Fleet vehicles. There was no evidence that the applicant used her personal vehicles to transport patients, because County vehicles were available.

On 11/2/2022, the decedent's daughter, Ana Rodriguez, testified that she saw her mother on the morning of 5/20/2019. She was going to work in her personal vehicle.

On 5/20/2019, the decedent was traveling to work in her personal vehicle. There is no evidence that she was traveling to an appointment in the field prior to going to the clinic. There is no evidence that the decedent was scheduled to attend training on that day or attend any other special mission or task.

Under the coming and going rule, an employee going to and from his or her place of employment was not rendering any service to the employer at the time of the commute. The court reasoned that an employee only begins to render service when arriving at the place of employment and that injuries traveling to and from work fell outside the scope of workers' compensation. The rule imposes on the employee the not inconsiderable risks of present day traffic conditions between his or her home and the place of employment (Sullivan on Comp, section 5.43). It is noted that there are numerous exceptions to this rule.

In the present case, on the morning of 5/20/2019, the decedent was traveling from her home to start work at County Clinic. She was traveling in her own vehicle. There is no evidence that she was going somewhere else or traveling to see a client. There is no evidence that she was scheduled to use her vehicle at work that day. There is no evidence that she was scheduled to leave the office that day to visit clients or participate in training outside office.

Based upon coming and going rule, it is found that applicant did not sustain injury arising out of and occurring in the course of employment on 5/20/2019.

DATE: _____ 11/16/2022 _____

David Thorne
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE