

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

CHRISTIAN CHAVEZ, *Applicant*

vs.

**JETBLUE AIRWAYS CORPORATION;
STARR INDEMNITY AND LIABILITY COMPANY,
administered by SEDGWICK, *Defendants***

**Adjudication Number: ADJ18302905
Los Angeles District Office**

**OPINION AND ORDER DENYING
PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Order (F&O) issued on April 15, 2025 by a workers' compensation administrative law judge (WCJ). The WCJ found that applicant Christian Chavez sustained injury arising out of and in the course of his employment (AOE/COE) on July 10, 2023, while employed as a ground operations worker by JetBlue Airways Corporation at Los Angeles Airport (LAX); that applicant's injury was not barred by the going and coming rule based on the special risk exception to that rule; and that all other pending issues, including parts of body injured, remain bifurcated and off-calendar. The WCJ ordered this matter off calendar for further discovery.

Defendant contends that applicant's injury is not AOE/COE and is barred by the going and coming rule because there is no evidence to support a finding that the special risk exception to that rule applies in this case; that applicant was not subjected to a risk distinctive in nature or quantitatively greater than risks common to the public at the time of his injury; that the public also had access to World Way, the location of applicant's injury, and that public would also use the road for picking up passengers, which is the reason applicant was on that road at the time of his injury; that there was no evidence to support a finding that there was any risk distinctive in nature to applicant over the public travelling on World Way, especially given that there was evidence that applicant did not routinely use the particular location of the injury causing incident for ingress or egress from work; and, that applicant was not taking the normal egress from his employer's

premises to catch the employer bus on the lower level of LAX but rather was injured while being picked up by his girlfriend on the upper level of LAX outside of Terminal 5, something he had only done 5 or 6 times before that day.

Applicant filed an Answer to Petition for Reconsideration (Answer), and the WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), wherein the WCJ recommended that the petition be denied.

We have reviewed the record in this matter, the allegations of the Petition for Reconsideration and the Answer, as well as the contents of the Report. Based on the reasons set forth in the Report and for the reasons set forth below, we deny Reconsideration.

I.

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on May 27, 2025, and 60 days from the date of transmission is July 28, 2025. This decision is issued by or on

July 28, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on May 27, 2025, and the case was transmitted to the Appeals Board on May 27, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on May 27, 2025.

II.

We concur with the finding of the WCJ that applicant's claim is not barred by the going and coming rule based on the special risk exception to that rule. "The judge's findings of fact as to an industrial injury are entitled to great weight. (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd.* (1973) 9 Cal.3d 848, 853 [109 Cal.Rptr. 211, 512 P.2d 843]; *Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 319 [90 Cal.Rptr. 355, 475 P.2d 451].)" (*Lefebvre v. Workers' Comp. Appeals Bd.* (1980) 106 Cal.App.3d 745, 751 (*Lefebvre*).)

As the court stated in *Pacific Indem. Co., supra*: ". . . if the employment creates a special risk, an employee is entitled to compensation for injuries sustained within the field of that risk. The employee may be subject to such a risk as soon as he enters the employer's premises, *or the necessary means of access [or egress] thereto*, even when the latter is not under the employer's control or management. (*Freire v. Matson Navigation Co., supra*, and cases cited therein.)" (28 Cal.2d 329 at p. 336.) (*Italics added.*)

(*Lefebvre, supra*, 106 Cal.App.3d at p. 750, italics in the original.)

As set forth in the WCJ's Opinion on Decision, there is essentially a two-prong test employed to assess whether the special risk exception applies in a given case, i.e., under a specific set of facts:

(1) was the injury causally related to the employment – “but for” the employment the applicant would not have been exposed to the mechanism of injury; and (2) is the risk distinctive in nature or quantitatively greater than risks common to the public. Both prongs of the test need to be met for the application of this exception to the going and coming rule. (*Chairez, supra*, at 601.)

(F&O, Opinion on Decision, p. 4, citing *General Ins. Co. v. Workers' Comp. Appeals Bd. (Chairez)* (1976) 16 Cal.3d 595, 601.)

“The point at which an employee is no longer ‘going or coming’ and has entered [or left] the zone of his employment involves a factual determination.” (*Lefebvre, supra*, 106 Cal.App.3d at p. 749 citing *Greydanus v. Industrial Acc. Com.* (1965) 63 Cal.2d 490, 492.) The Appeals Board is the trier of fact in all workers’ compensation matters, “and its findings of fact are not reviewable where they find support under any rational view of the evidence.” (*North Pacific S.S. Co. v. Industrial Acci. Com.* (1917) 174 Cal. 500, 502; *Western Growers Ins. Co. v. Workers’ Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, 233 (“*Western Growers*”).)¹ In addition, and as pointed out by applicant in the Answer, when determining whether a claim is barred by the going and coming rule, “the courts must abide by the mandate of Labor Code section 3202, which provides that the Act ‘shall be liberally construed’ to protect the injured. **Any doubts as to the rule’s application are to be resolved in favor of coverage.** (citations)” (*Price v. Workers’ Comp. Appeals Bd.* (1984) 37 Cal.3d 559, 565, bold added.)

Defendant argues that there is no substantial evidence of the *second* prong of *Chairez*. However, defendant misses the gravamen of the special risk exception, which the WCJ explains:

Defendant’s claim that Applicant’s actions were “unusual” on the date of injury ignores the controlling legal standard: whether the employment created the risk and whether the risk was greater than for the public—not whether the employee’s exact method of travel was routine.

(Report, p. 4.)

¹ “Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.” (Lab. Code, § 5952; see *Gage v. Workers’ Comp. Appeals Bd.* (2016) 6 Cal.App.5th 1128, 1135.)

Indeed, there is substantial evidence in the record to support the WCJ’s finding that applicant’s claim is not barred by the going and coming rule based on the special risk exception to that rule. It is undisputed that defendant JetBlue Airways Corporation (JetBlue) “operates at LAX...and occupies terminal space in Terminal 5 of LAX.” (Petition for Reconsideration, p. 4:5-8.) Further, it is undisputed that the shuttle for the employee parking lot stops outside of Terminal 5 on the lower level of World Way, i.e., the arrivals level. (*Id.*, at p. 4:19-25.) It is undisputed that employees are *not* required to park in the employee parking lot *or* to use the employee parking lot shuttle. (Transcript of Record, December 9, 2024, Stipulations, p. 4:8; applicant testimony, pp. 9-14, 18-20, 22, 23-24, 32-35, 37.) It is the un rebutted testimony of applicant that he used the JetBlue time clock on the upper level of Terminal 5, i.e., the departures level, to clock in and out of work, and that is the time clock he used on July 10, 2023. (Transcript of Record, December 9, 2024, pp. 12, 23-24, 34-35.) Defendant does not dispute that applicant sustained injury on July 10, 2023 while getting ready to step into his girlfriend’s car waiting on World Way just outside the upper level of Terminal 5, just four minutes after clocking out of work for JetBlue. (Transcript of Record, December 9, 2024, Stipulations, p. 4:3-8, applicant’s testimony, pp. 9-14, 18-20, 22-24, 32-35, 37.)

It is undisputed that World Way consists of an upper and lower roadway, one for arrivals (upper) and one for departures (lower), and is used for public traffic to access all airport terminals which support more than 50 airlines. (Transcript of Record, January 29, 2025, testimony of Deputy Executive Director of Commercial Development at Los Angeles World Airports, David Jones, at pp. 6, 18, Declaration of David Jones, Joint Exh. X, 3-5, 8.) World Way is also used by employees of airlines, government agencies, air travel support companies, and concessions including dining and shops to access their jobsites at the airport; by multiple shuttles for both employees and customers of the airport, including rental car and hotel shuttles; the Metro Connector bus; and, Uber rideshare drop-off and pick-up. (*Ibid.*; Transcript of Record, December 9, 2024, applicant testimony, at p. 20.) Defendant does not dispute in its Petition for Reconsideration that JetBlue employees arrive and depart for shifts with JetBlue from Terminal 5, and that no matter how they chose to do so, including taking the shuttle to/from the employee parking lot, they would necessarily have to navigate along and/or across World Way. (Transcript of Record, December 9, 2024, pp. 9-14, 18-20, 22-24, 32-35, 37.)

Applicant's un rebutted testimony was that he and other JetBlue employees used various ways to get to the Terminal 5 worksite including driving personal cars and taking the employee parking lot shuttle; driving personal cars and using a scooter to get to the terminal; driving personal cars and parking in the expensive parking lot across the street from Terminal 5; driving personal cars and getting an Uber ride from the employee parking lot to be off at Terminal 5; taking an Uber ride from home and getting dropped off at Terminal 5; and, getting a ride to/from Terminal 5 from friends or family. (Transcript of Record, December 9, 2024, pp. 9-14, 18-20, 22-24, 32-35, 37.) **Each and every one of these methods of getting to his worksite at Terminal 5 involved applicant negotiating either upper or lower World Way. (*Ibid.*)**

Therefore, every single time applicant went to work he was exposed to the risks associated with navigating World Way, whether upper or lower, and as a direct result, he was exposed to those risks at a rate "*quantitatively greater* than [those] risks common to the public." (See *Chairez, supra*, 16 Cal.3d at p. 601, italics added.) Accordingly, we are not persuaded by defendant's argument that the special risk exception cannot apply in this case because applicant was somehow not exposed to a risk "*quantitatively greater* than risks common to the public" merely because on the day of his injuries, he traversed World Way to catch a ride from his girlfriend rather than traversing World Way to catch the shuttle bus.

We note that applicant's testimony was consistent that during the two months he worked for JetBlue prior to the injury at issue in this case, he got a ride to and from work approximately *15 times* – not "on five or six occasions" as alleged by defendant. (Transcript of Record, December 9, 2024, pp. 22, 24, 32-33; see Petition for Reconsideration, pp. 4-5.) On cross examination, applicant testified that *in addition* to the day he sustained the injuries at issue in this case, he was picked up on World Way outside of Terminal 5 during his two months with JetBlue "*more than* five or six times." (*Id.* at p. 22, italics added.) During questioning by the WCJ, applicant testified that when he was picked up from work, his ride would judge whether to take upper or lower World Way based on the state of traffic at the time, and that there would be a text or telephone communication informing him of where to meet his ride. (*Id.*, at pp. 14, 34.) Thus, the inference arising from applicant's un rebutted testimony is that he was picked up enough from work that there was already a routine in place on the day of the accident and injury.²

² When the facts are not in dispute, the reviewing court may decide the matter as a matter of law but when "the issue may relate to the credibility of witnesses, the persuasiveness or weight of the evidence and the resolving of conflicting

We therefore concur with the WCJ that there is substantial evidence in the record to support the finding of AOE/COE in this matter, and that applicant's claim is not barred by the going and coming rule based on the special risk exception to that rule:

LAX handles a great number of passengers and vehicle movements daily through the terminal loop World Way. Airport terminals in LAX are surrounded by layers of vehicular congestion and constant movement of diverse vehicles. Unlike a typical workplace, LAX lacks isolated or employee-only access routes. Instead, employees and the general public navigate the same chaotic environment.

Though World Way is technically a public street, for airport employees it functions as the practical and necessary means of ingress and egress. It is not a traditional public street where pedestrian traffic is common or expected—rather, it is a vehicular artery essential for accessing specific terminals. Such environment places employees like Applicant in direct and repeated contact with fast-moving, often unpredictable traffic, including vehicles pulling in and out of the curb lanes, vehicles double-parked, and vehicles stopping abruptly. This increases the risk of sudden and violent encounters with vehicles.

Unlike members of the public who might visit LAX sporadically, employees like Applicant are exposed to this high-traffic environment on a daily basis. This repeated exposure enhances the risk of injury. Courts have recognized that routine exposure to common perils, if required by employment, increases the degree of risk. (*Parks v. WCAB* (1983) 33 Cal.3d 585, 593). **Applicant's routine commute—whether by bus, private vehicle, or drop-off—required him to traverse this congested traffic zone regularly, and thus subjected him to more frequent danger than a member of the public who might only occasionally be present.**

(Report, pp. 4-5, bold added, citing *Parks v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 585, 593; see *Chairez, supra*, 16 Cal.3d at p. 601 and *Makins v. Industrial Acci. Com.* (1926) 198 Cal. 698, 701.)

Accordingly, we deny defendant's Petition for Reconsideration.

inferences, the questions are of fact.” (*Lantz v. Workers' Comp. Appeals Bd.* (2014) 226 Cal.App.4th 298, 316-317 quoting *Mercer-Fraser Co. v. Industrial Acc. Com.* (1953) 40 Cal.2d 102, 115.)

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Order issued on April 15, 2025 by a workers' compensation administrative law judge is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 25, 2025

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

**CHRISTIAN CHAVEZ
ROBERT BLANCO, ESQ.
JETBLURE AIRWAYS CORPORATION
PEETZ LAW, P.C.
SEDGWICK**

AJF/mc

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