

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

**JOSE MARTINEZ, *Applicant***

**vs.**

**CUSTOM PIPE COUPLING;  
FEDERAL INSURANCE CO., *Defendants***

**Adjudication Number: ADJ17834281  
Van Nuys 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.<sup>1</sup> Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

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.

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<sup>1</sup> We also considered the Answer filed by defendant.

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 September 10, 2025 and 60 days from the date of transmission is Sunday, November 9, 2025. The next business day that is 60 days from the date of transmission is Monday, November 10, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, November 10, 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 September 10, 2025 and the case was transmitted to the Appeals Board on September 10, 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 September 10, 2025.

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<sup>2</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**NOVEMBER 7, 2025**

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

**JOSE MARTINEZ  
ROSE, KLEIN & MARIAS LLP  
SUTOW & ASSOCIATES**

I certify that I affixed the official seal of  
the Workers' Compensation Appeals Board  
to this original decision on this date.  
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**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION**

**I. INTRODUCTION**

The undersigned issued a Finding & Order (F&O) in which it was found that Applicant's injury did not arise out of and occur in the course of employment because it fell within the "going and coming" rule. Applicant Jose Martinez (Petitioner) timely filed a Petition for Reconsideration. Petitioner contends that the evidence does not justify the findings of fact and that the findings of fact do not support the order. The undersigned recommends that the Petition for Reconsideration be denied.

**II. FACTS**

Petitioner was a forklift operator at Custom Pipe Coupling. (See Summary of Evidence dated 2/13/25 at p. 4: 20-25.) Prior to becoming a forklift operator, Petitioner was a driver, but as of the date of injury, May 26, 2023, he had been a forklift operator for more than 10 years. (*Ibid.*) As a forklift operator, Petitioner would occasionally drive and make deliveries for the company as needed. (See *Id.* at p. 4: 20-23.) On average, it was about two times per month, but sometimes deliveries would not happen for several months. (*Ibid.*) In the last 5 years prior to his injury, Petitioner had made approximately 2-3 deliveries. (Summary of Evidence dated 3/13/25 at p. 4: 12-13, p. 5: 6-8.)

On May 25, 2023, Petitioner drove home a truck owned by his employer, Custom Pipe Coupling. (Summary of Evidence dated 2/13/25 at p. 5: 1-3.) Earlier that day, supervisor Luis Mares had asked him to deliver a pipe to another company near his house — either on his way home from work that afternoon or on his way to work the next day on May 26, 2023. (Summary of Evidence dated 12/5/24 at p. 4: 20-25.) With permission from plant manager Todd Kalau, Petitioner also took a sheet of scrap metal home for personal use and had loaded it into the company truck. (Summary of Evidence dated 2/13/25 at p. 5: 4-11.) If Todd Kalau had not given the sheet metal to Petitioner, then it would have been put in a scrap bin to be sold by Custom Pipe Coupling for low level value. (Summary of Evidence dated 3/13/25 at p. 2: 12-16.)

At some point before leaving work on May 25, 2023, the pipe delivery was taken away from Petitioner. (See Summary of Evidence dated 2/13/25 at p. 5: 2-21.) Petitioner was aware that he was no longer being asked to deliver the pipe and that it had been removed from the company truck. (*Ibid.*) The only item Petitioner took home with him from work that day on May 25, 2023 was the sheet metal given to him by his employer for his own personal use. (*Id.* at p. 5: 18-19.)

There is a discrepancy as to whether Petitioner was permitted to take home the company truck once the pipe delivery was taken away from him. Petitioner testified that he told Mr. Mares that the pipe delivery was taken away, but that Mr. Mares told

him he could still take the company truck home since he had already loaded the sheet metal in the company truck. (See Summary of Evidence dated 2/13/25 at p. 5: 4-6, 14-18; p. 6: 1-6.) On the other hand, Mr. Mares testified that Petitioner only had permission to take home the company truck if he was delivering the pipe for the company. (Minutes of Hearing and Summary of Evidence dated 3/13/25 at p. 4: 15-18, 24-25; p. 5: 10-14.)

On May 26, 2023, on his way to work in the company truck, Petitioner was involved in a motor vehicle accident (MVA). Petitioner had not performed any services for his employer in the afternoon/evening on the way home from work on May 25, 2025. Petitioner was not performing any errands, tasks, or services for his employer when he was driving to work on the morning of the MVA; he was driving directly from home to work. (Summary of Evidence dated 2/13/25 at p. 5: 18-21.) Petitioner sustained injury as a result of the 5/26/23 MVA. This case was set before the undersigned on the issue of whether the injury arose out of and in the course of employment.

### **III. DISCUSSION**

Pursuant to Labor Code section 5903, there are only five grounds on which reconsideration may be sought. Among those grounds, Petitioner contends that the evidence does not justify the findings of fact and that the findings of fact do not support the order. The undersigned recommends that the Petition for Reconsideration be denied.

#### **AOE/COE**

The undersigned found that Petitioner did not sustain injury arising out of and occurring in the course of employment on May 26, 2023 because his claim is barred by the “going and coming” rule. Under the “going and coming” rule, injuries sustained during an employee's commute to and from work are generally non-industrial. (See *Ocean Accident and Guarantee Co. v. IAC* (1916) 173 Cal. 313, 322; *Hinojosa v. WCAB* (1972) 8 Cal. 3d 150.) The “going and coming” rule applies to injuries occurring during a local commute to or from a “fixed place of business at fixed hours in the absence of special or extraordinary circumstances.” (*Hinojosa v. WCAB* (1972) 8 Cal.3d 150, 157.) Unless an exception is established, the going and coming rule will bar an employee workers’ compensation claim. None of the exceptions to the going and coming rule apply to the facts at hand. Nevertheless, the undersigned will discuss the only two plausible exceptions whereby Petitioner could theoretically argue that he met an exception to the going and coming rule.

Even if Petitioner’s version of events is accurate that Mr. Mares allowed him to take the company truck home so that he could take home the scrap metal given to him by Todd Kalau, Petitioner’s injury would still not meet the special mission or special errand exception to the going and coming rule. Under the “special mission” exception, injuries sustained by an employee traveling to or from the work site are compensable if the employer requests that the employee make a special trip, as a part of the usual

commute or to another location, for the employer's benefit. (See *Southern California Rapid Transit District, Inc. v. WCAB (Weitzman)* (1979) 23 Cal.3d 158, 164, 166-167; *Dimmig v. WCAB* (1972) 6 Cal.3d 860, 866-869.)

Here, it is undisputed that Petitioner was no longer making a delivery for the employer; Petitioner himself testified that he was aware that the delivery was taken away from him. Petitioner argues that he was given permission by his supervisor to use the company truck and was injured while in a company vehicle that he was authorized to drive. While it is disputed by the employer that Petitioner had permission to take its truck home once the pipe delivery had been taken away from him, even if Petitioner did have permission, his claim would still be barred, because there was no benefit whatsoever to the employer for Petitioner to take the company truck home. Petitioner himself testified that he was not performing any errands or tasks for the employer when he drove home the afternoon/evening before the MVA on May 25, 2023 or when he drove to work the morning of the MVA on May 26, 2023. Even assuming *arguendo* that Petitioner was permitted to drive home the company truck, the reason he did so was to transport the sheet metal that his employer had allowed him to take home for *personal* use. The employer gained no benefit from Petitioner taking home the scrap metal; in fact, the employer would have sold the scrap metal for low level value, so allowing Petitioner to take home the scrap metal was actually a detriment to the employer as opposed to a benefit. On the other hand, Petitioner gained a benefit because his employer gave him the sheet metal free of charge for his own personal use, he was able to utilize the bigger company truck to haul the sheet metal, and he did not pay for the gas used to drive the company vehicle home. Hence, Petitioner does not qualify for the special mission exception to the going and coming rule.

Petitioner also does not meet the exception under which the employer – as a part of the employment contract – provides employees with transportation to and from work and controls the means of transportation. (See *Dominguez v. Pendola* (1920) 46 Cal.App. 220, 221-222; *California Casualty Indemnity Exchange v. IAC (Duffus)* (1942) 7 Cal. Comp. Cases 305, 306-307; *Trussless Roof Co. v. IAC (Moreno)* (1931) 119 Cal.App. 91, 93-94; *Smith v. IAC* (1941) 6 Cal. Comp. Cases 261, 262-263.) The concept behind this exception is that the transportation furnished to the employee is incidental to their employment, so the employee is engaged in the employer's business while being transported. (*Dellepiani v. IAC* (1931) 211 Cal. 430, 437.) Here, transportation is not provided to Petitioner as part of his job; he has his own form of transportation. While Petitioner had on infrequent occasion taken one of the company trucks in order to deliver parts, it is not as if Petitioner was provided with a “company car” that he drives to and from work each day. Moreover, Petitioner did not accept the job based on the promise of transportation or because a company car would be provided as part of the employment contract. Accordingly, Petitioner also does not meet the exception where transportation is furnished by the employer.

Petitioner contends that his injury meets an exception to the going and coming rule under the “permissive use” doctrine. However, there is no “permissive use” exception to the going and coming rule. In fact, Petitioner fails to cite any cases to support his theory that his case falls under the so-called “permissive use” doctrine. As

such, Petitioner's argument should be disregarded.

Based on the foregoing, Petitioner did not sustain injury arising out of and occurring in the course of employment on May 26, 2023 because his claim is barred by the going and coming rule.

**RECOMMENDATION**

The undersigned respectfully recommends that the Petition for Reconsideration filed on September 5, 2025 be denied.

This Report and Recommendation was transmitted to the Recon Unit on 9/10/2025.

DATE:

9/10/2025

A handwritten signature in black ink, appearing to read "Mykil Bachman", is written over a horizontal line.

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE