WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LINDA OLIVAREZ, *Applicant*

vs.

CHICO DENTAL ARTS;
THE DENTISTS INSURANCE COMPANY, administered by
SEDGWICK CLAIMS MANAGEMENT, *Defendants*

Adjudication Number: ADJ13479589
Redding District Office

OPINION AND DECISION AFTER RECONSIDERATION

We granted reconsideration[1] in order to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on October 13, 2021. The WCJ found, in relevant part, that while employed on January 17, 2018 as a receptionist, applicant sustained injury arising out of and occurring during the course of employment (AOE/COE) "to her teeth initially and the claim was amended to include circulatory system, internal system, neck, and back." As applicant was at her employment and obtained treatment by her employer, the WCJ ordered that applicant's claim of injury to her teeth, circulatory system, internal system, neck, and back fell within the exclusive jurisdiction of workers' compensation.

Defendant contends, in pertinent part, that the evidence does not justify the WCJ's finding that workers' compensation is the applicant's sole remedy and that she sustained AOE/COE. More specifically, defendant argues that (1) the elective dental procedure was performed while the applicant was off duty, voluntary, and not expressly or impliedly required by the applicant's employment; (2) the employer had no duty to provide the service and did not undertake a duty to

[1] Commissioner Lowe, who was on the panel that issued the order granting reconsideration, no longer serves on the Appeals Board. Another panelist has been appointed in her place.

provide the service as a direct benefit of employment; (3) the employer derived no benefit from the applicant undergoing treatment on the premises while off duty and the treatment was not incidental to the applicant's employment; and (4) exclusive remedy would not apply as Dr. Kyle was acting in the capacity of a treating dentist and not in the capacity as an employer.

We have received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), which recommended that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration (Petition) and the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will affirm the F&O, except that it will be amended to clarify applicant sustained injury AOE/COE to the teeth. The issue of injury to other body parts will be deferred.

FACTS

We will briefly review the relevant facts.

On August 10, 2020, applicant filed an Application for Adjudication (Application) claiming an injury on January 17, 2018 to the teeth while employed by defendant as a receptionist.

On February 11, 2021, applicant filed an amended Application, adding the claimed body parts of the circulatory system and internal.

On February 26, 2021, applicant filed a second amended Application, adding the claimed body parts of the neck and back.

On March 21, 2025, applicant filed a third amended Application, adding the claimed body parts of hearing, TMJ, vertigo, and mastication.

In addition, the WCJ provided the following factual background in the Report:

> Linda Olivarez was employed by David C. Kyle, DDS, Inc., dba Chico Dental Arts, as a Receptionist. Applicant's employment benefit package included a waiver of any co-payments and deductibles arising from any dental treatment performed by Dentist Kyle; however note that any treatment an employee received, including Applicant Olivarez, was strictly voluntary.
>
> Employees of David C. Kyle, DDS, Inc. and/or Chico Dental Arts were not required to seek dental treatment with their employer.
>
> Applicant Olivarez did seek dental treatment from Dentist Kyle and had successful treatment multiple times prior to 1/17/2018. She was thus both an employee and a patient. On 1/17/2018, Applicant Olivarez was present at work but checked out of said employment, to obtain further treatment as a patient. Treatment on that day

was to insert a left-side implant. That treatment caused injury when the implant was placed too deep.

Applicant filed a medical malpractice lawsuit; however a Summary Judgment issued by the Superior Court found that Applicant's only recourse was to file a claim in the Workers' Compensation Arena. That determination was not further appealed.

Such a workers' compensation claim was filed, which Defendants denied, claiming that the injury was not in the course and scope of Applicant's employment. That denial raised the instant question of whether an injury occurring during the course of an employee's treatment, while the injured worker is present at the employment location, but has checked out of the employment, for treatment by a co-employee can be considered as having occurred during the course and scope of the employment.

(WCJ's Report, pp. 1-2.)

On October 15, 2020, applicant was evaluated by dental panel qualified medical evaluator (QME), Jason A. Scorza, D.D.S. Dr. Scorza opined with reasonable medical probability that applicant's "symptoms related to her left IA nerve injury, including loss of some sensory and motor capabilities in her left jaw region, were a result of her injury when she had an implant placed to replace missing #19." (Joint Exhibit ZZ, PQME Report of Dr. Jason Scorza, dated October 15, 2020, at p. 9.)

DISCUSSION

Whether an employee's injury arose out of and in the course of employment is generally a question of fact to be determined in light of the particular circumstances of the case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346 [67 Cal.Comp.Cases 51].) Labor Code section 3600(a)[2] provides for liability for injuries sustained "arising out of and in the course of the employment." Section 3600(a)(2) requires as a condition of compensation that "at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment." (Lab. Code, § 3600(a)(2).) An employer is liable for workers' compensation benefits "without regard to negligence." (Lab. Code, § 3600(a).) An employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.)

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

The determination of 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." (*Id.* at p. 645.) An "employee is in the 'course of employment' when he does those reasonable things which his contract with his employer expressly or impliedly permits him to do. [citations]." (*Id.* at p. 651.) If a worker is injured while doing an activity reasonably attributable to employment or incidental thereto, they 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].)

Second, the injury must "arise out of" the employment, "that is, occur by reason of a condition or incident of employment, [however], the injury need not be of a kind anticipated by the employer nor peculiar to the employment in the sense that it would not have occurred elsewhere." (*Employers Mut. Liability Ins. Co. v. Ind. Acc. Com.* (*Gideon*) (1953) 41 Cal.2d 676, 679-680.) "[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, 736 [48 Cal.Comp.Cases 326].)

Generally, the employment relationship begins/ends when the employee enters/exits the employer's premises ("premises line" rule), although injuries sustained in close proximity to the employer's premises may also arise out of the employment. (*General Ins. Co. v. Workers' Comp. Appeals Bd.* (*Chairez*) (1976) 16 Cal.3d 595, 598 [41 Cal.Comp.Cases 162]; *Hinojosa v. Workmen's Comp. App. Bd.* (1972) 8 Cal.3d 150, 157 [37 Cal.Comp.Cases 734]; *Lewis v. Workmen's Comp. App. Bd.* (1975) 15 Cal.3d 559, 561, quoting *California Casualty Indem. Exchange v. Ind. Acc. Com.* (1943) 21 Cal.2d 751, 754].) If the employment places an applicant in a location and they were 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. (*Brooks*, *supra*, 225 Cal.App.2d 517.)

Acts of the employee for personal comfort and convenience while at work are within the course of employment if they are "reasonably contemplated by the employment." (*Price v. Workers' Comp. Appeals Bd.* (1984) 37 Cal.3d 559, 568 [49 Cal.Comp.Cases 772]; *Pacific Indem. Co. v. Ind. Acc. Com.* (1945) 26 Cal.2d 509, 514; *California Casualty Indem. Exchange v. Ind.*

Acc. Com. (*Cooper*) (1943) 21 Cal.2d 751, 758.) "[A]cts necessary to the life, comfort and convenience of the servant while at work, though strictly personal to himself, and not acts of service, are incidental to the service, and injury sustained in the performance thereof is deemed to have arisen out of the employment." (*Price*, *supra*, 37 Cal.3d at pp. 567–68 (citations omitted).) Thus, even if an employee is doing something purely personal at the time of injury, the employee may be considered to be performing services incidental to employment within the meaning of section 3600. The "personal comfort" doctrine applies to situations where the employee is compensated during the time of the injury, or where the injury occurs on the employer's premises, or where the employee is performing a special service to the employer. (*Mission Ins. Co. v. Workers' Comp. Appeals Bd.* (1978) 84 Cal.App.3d 50, 54 [43 Cal.Comp.Cases 889); *Brooks*, *supra*, 225 Cal.App.2d 517; *Rankin v. Workmen's Comp. Appeals Bd.* (1971) 17 Cal.App.3d 857.)

The sole issue to address in this case is whether applicant demonstrated that her injury of January 17, 2018 was AOE/COE. When applicant was first hired, defendant verbally informed the applicant that as part of her employment benefits package, if her spouse was insured, any of her copay and deductibles for dental treatment provided by the defendant would be waived. (Minutes of Hearing/Summary of Evidence (MOH/SOE), July 19, 2021, at p. 3.) Over the course of applicant's employment, applicant took advantage of this benefit several times for procedures like crowns, cleanings, and fillings. (*Id.* at p. 3.) Applicant never had to pay for any of the dental treatment she received with defendant. (*Id.* at p. 5.) Other employees were also given the same benefit as part of their employment with defendant. (*Id.* at p. 4.) On January 17, 2018, the day of the alleged injury, applicant worked but clocked out of work prior to the dental procedure. (*Id.* at p. 5.)

We turn to a case addressing a similar issue as the instant case. In *Teresa Herrera v. Ross Stores* (February 6, 2024, ADJ16049965) [2024 Cal.Wrk.Comp. P.D. LEXIS 131], a panel[3] of the Appeals Board determined that the personal comfort doctrine applied and that applicant's injury was AOE/COE when applicant fell while shopping for clothes after clocking out from her shift. In

[3] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to the panel decision because it considered a similar issue.

Herrera, a benefit offered for the employees a few times a year was double discount days, when only employees and their legal spouses received a special discount of 40 percent. Moreover, the evidence showed that defendant used these special shopping days as an opportunity to clear outdated or less desirable inventory. On double discount days, employees were advised to use the discounts after they clocked out of work. The Appeals Board concluded that the personal comfort doctrine applied as shopping on a double discount day was a reasonably contemplated activity of applicant's employment.

We continue to follow the logic of the *Herrera* panel and analyze the case under the personal comfort doctrine. As part of applicant's employment benefits, receiving dental treatment was incidental to applicant's employment and reasonably contemplated by the defendant. On the day of the injury, applicant remained on the premises after clocking out for the dental implant with the understanding any copay or deductible would be waived as in the past.

Defendant contends the employer derived no benefit from the applicant undergoing treatment on its premises while off duty and the treatment was not incidental to applicant's employment. (Defendant's Petition for Reconsideration, November 2, 2021, at p. 5.) However, it was defendant's agreement that if applicant's spouse had dental insurance, any copay or deductibles after the insurance coverage would be waived. Conversely, per review of applicant's account history, defendant was regularly issued checks by applicant's dental insurance, and the remaining charges were waived. (Joint Exhibit UU, Records of David Kyle, D.D.S., at pp. 6-7.) Just as in *Herrera*, defendant derived a benefit because applicant received and took advantage of this opportunity, thereby helping defendant to retain applicant as an employee, and defendant received payment for the services it offered to applicant.

Defendant argues in the Petition that Dr. Kyle did not waive the January 17, 2018 procedure due to an "Employee Courtesy," but only after applicant informed him about a suspected injury. (Defendant's Petition, at p. 5.) However, defendant put forth no evidence, including any witness testimony by Dr. Kyle, to support this argument. In contrast, a review of applicant's account history actually shows applicant's copays were waived throughout her employment. (Joint Exhibit UU, at pp. 6-7.) Therefore, we conclude that applicant demonstrated that her injury was AOE/COE.

Based on the reporting of QME Dr. Scorza, we conclude that there is substantial medical evidence of injury AOE/COE for the teeth. However, upon return to the trial level, further

development of the medical record is appropriate regarding the issue of injury to the additional claimed body parts of the circulatory system, internal system, neck, and back. Thus, we will not consider and will defer the issue of whether applicant sustained injury to the other body parts.

Accordingly, as our Decision After Reconsideration, we amend the F&O to find that applicant sustained injury AOE/COE to her teeth and to defer the issue of injury to other body parts; we otherwise affirm the F&O.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the August 30, 2021 Findings and Order is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Linda Olivarez, born on [], while employed on January 17, 2018 as a receptionist in Chico, California, by David C. Kyle, DDS, Inc., Chico Dental Arts, whose workers' compensation insurance carrier was Sedgwick Claims Management Services, Inc., sustained injury arising out of and occurring in the course of employment to her teeth. The issue of injury to other body parts is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 16, 2025

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

LINDA OLIVAREZ
LAW OFFICES OF EDWARD J. SINGER
ALBERT & MACKENZIE

JL/abs

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