

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

**GUILLERMO OROZCO, *Applicant***

**vs.**

**RUAN TRANSPORTATION MANAGEMENT SYSTEMS;  
ACE AMERICAN INSURANCE COMPANY, administered by HELMSMAN  
MANAGEMENT SERVICES, LLC, *Defendants***

**Adjudication Number: ADJ10919652  
Marina del Rey District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We granted reconsideration in order to study the factual and legal issues in this case. This is our Opinion and Decision After reconsideration.<sup>1</sup>

Defendant seeks reconsideration of the Findings of Fact issued by a workers' compensation administrative law judge (WCJ) on February 5, 2020. Defendant contends that Arizona has exclusive jurisdiction over applicant's claim of injury pursuant to Labor Code<sup>2</sup> section 3600.5(b).

We received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report. 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 discussed below, we will affirm the Findings of Fact.

We observe that California has an interest in protecting injured workers to avoid the possibility of economic burden upon the state resulting from non-coverage of the worker during the period of incapacitation, as well as from the contingency that the family of the worker might

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<sup>1</sup> Commissioners Sweeney and Lowe, who were previously panelists in this matter, no longer serve on the Appeals Board. Other panel members have been assigned in their places.

<sup>2</sup> All statutory references are to the Labor Code unless otherwise specified.

require relief in the absence of compensation. (*Travelers Ins. Co. v. Workmen's Comp. Appeals Bd. (Coakley)* (1967) 68 Cal.2d 7, 12 [32 Cal.Comp.Cases 527].) “Even if the employee may be able to obtain benefits under another state’s compensation laws, California retains its interest in insuring the maximum application of this protection afforded by the California Legislature.” (*Id.* at p. 13.) This interest is supported by the Labor Code’s declaration that it “shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment.” (Lab. Code, § 3202.)

Moreover, California has jurisdiction regarding work injuries that occur within or outside the state’s boundaries when there is sufficient connection with California’s legitimate interest in protecting employees injured at work. (See *McKinley v. Arizona Cardinals* (2013) 78 Cal.Comp.Cases 23, 27-32 (Appeals Board en banc) (writ den.).)

Thus, an employee can only be excluded from California workers’ compensation coverage if certain conditions are met. (*McKinley v. Arizona Cardinals, supra*, 78 Cal.Comp.Cases. at p. 29.) Section 3600.5(b) states that

- (1) An employee who has been hired outside of this state and his or her employer shall be exempted from the provisions of this division while the employee is temporarily within this state doing work for his or her employer if the employer has furnished workers’ compensation insurance coverage under the workers’ compensation insurance or similar laws of a state other than California, so as to cover the employee’s work while in this state if both of the following apply:
  - (A) The extraterritorial provisions of this division are recognized in the other state.
  - (B) The employers and employees who are covered in this state are likewise exempted from the application of the workers’ compensation insurance or similar laws of the other state.
- (2) In any case in which paragraph (1) is satisfied, the benefits under the workers’ compensation insurance or similar laws of the other state, and other remedies under those laws, shall be the exclusive remedy against the employer for any injury, whether resulting in death or not, received by the employee while working for the employer in this state.

(Lab Code, § 3600.5(b).)

The sole issue in this case is whether the applicant was “temporarily within this state doing work for his or her employer” pursuant to section 3600.5(b)(1). According to Merriam-Webster, “temporarily” is defined as “during a limited time.” (Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/temporarily>. Accessed January 8, 2024.)

We agree with the WCJ that the applicant in this matter was not temporarily within this state doing work for his employer as a minimum of 23.6% or 35% of his deliveries were made in California. Additionally, it is undisputed that the incident causing applicant's injury occurred at a California truck stop and applicant received medical attention in California. (Cf. *Federal Insurance Co. v. Workers' Comp. Appeals Bd. (Johnson)* (2013) 221 Cal.App.4th 1116, 1126 [78 Cal.Comp.Cases 1257] [location of injury and medical treatment are factors to consider in deciding if California workers' compensation applies].) Therefore, California has a strong interest in covering applicant under California's workers' compensation system.

Further, 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].) We conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

Thus, we agree with the WCJ that applicant was not "temporarily within this state" within the meaning of section 3600(b) when he sustained injury in California and therefore invoking California jurisdiction was appropriate in this case. Accordingly, as our decision after reconsideration, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued by the WCJ on February 5, 2020 is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



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

**January 23, 2024**

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

**GUILLERMO OROZCO  
LAW OFFICES OF LESTER FRIEDMAN  
WAI & CONNOR, LLP**

**JMR/ara**

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**  
**INTRODUCTION**

- |    |                                |   |
|----|--------------------------------|---|
| 1. | Applicant's Occupation:        | Truck Driver                                |
|    | Applicant's Age:               | 45  |
|    | Date of Injury:                | 4/11/17                                     |
|    | Parts of Body Injured/Claimed: | Left leg, left ankle and skin               |
| 2. | Identity of Petitioner:        | <b><u>Defendant</u></b> filed the Petition. |
|    | Timeliness:                    | The petition is timely.                     |
|    | Verification:                  | The Petition is verified.                   |
|    | Date of the Findings of Fact:  | 2/05/2020                                   |

**Petitioner's contention:** Defendant contends that the WCJ erred in finding that The State of California has jurisdiction over the applicant's claim of injury that occurred on 4/11/17 in Castaic California. That the applicant was only temporarily in California and therefore under *Labor Code § 3600.5 (b) (1)* jurisdiction lies in Arizona where the applicant resided when the injury occurred and where he still resides. That the applicant was not regularly within the State of California.

**II**  
**FACTS:**

The applicant, Guillermo Orozco, was employed as a truck driver for defendant Ruan Transportation Management Systems on the date of the injury 4/11/17. There is no dispute as to the fact that the applicant is not, and has never been, a resident of the State of California. He does not hold, and has never held, a California Driver's License. His contract for hire by Ruan Transportation Management Systems was in Arizona. It is also undisputed that the applicant was injured on 4/11/17 in the State of California. On that date, he stepped into a hole at a truck stop in Castaic California, after he had made a delivery in San Francisco California on 4/10/17. After that delivery, he then drove to Southern California and stopped at the Pilot Truck Stop to spend the night. (See MOH dated 1/15/20 page 3 lines 1-4, EAMS Doc ID 72017207). It was at that truck stop that the applicant was injured.

**III**  
**DISCUSSION:**

According to the credible testimony of the applicant, and the daily delivery schedule of the applicant, admitted into evidence without objection as Applicant's Exhibit 1 (See EAMS Doc. ID 71638404), and the route schedules, time sheets and GPS data sheets admitted into evidence without objection as Defendant's Exhibit E (See EAMS Doc. ID 71638469), the applicant made deliveries in the State of California on a regular basis. Although the majority of the applicant's routes were outside the State of California, the court does not believe that the applicant was only "temporarily in the state doing business for the employer". As such, the court finds that the

provisions of *Labor Code section 3600.5* and Arizona State Legislature 23-904 do not apply in this case to prevent the State of California from exercising its jurisdiction over the applicant injured in this state on a specific date of injury.

The Petition for Reconsideration indicated that this WCJ erred when finding that “approximately” 35% of the applicant’s deliveries were made in California. The petition concedes that 23.6% of the applicant’s deliveries were made in California. (See Petition for Reconsideration at page 3 line 5-8, EAMS Doc, ID 72323449). It is the court’s opinion that it is irrelevant whether it was “approximately” 35% or 23.6% of the applicant’s deliveries as it is the court’s opinion that the applicant was regularly in California doing business that benefited the employer and was injured on the specific date of 4/11/17 in California while doing business for the employer/defendant. In the case of Wilson v. Harlem Globetrotters International 2016 Cal. Wrk. Comp. P.D. Lexis 311 at page 314 the W.C.A.B. in discussing this very issue indicated that “In considering whether California has a legitimate and substantial connection to the injury, we are guided by the view of the Legislature at the time it amended section 3600.5 to specifically address claims by certain professional athletes. Although the amendments do not apply in this case, it is reasonable to consider the 20% threshold identified by the Legislature in the amendments as constituting a legitimate and substantial connection between California and an injury claim....”(Emphasis added).

The applicant credibly testified that he made deliveries for the employer from Northern California to Southern California. The applicant’s daily delivery schedule reflects that from 2/6/17 through 5/2/17, when he last drove his truck for defendant employer Ruan, he made deliveries and stops at numerous and several locations throughout the State of California. He had several trips where he would spend the night at various locations in California. (See Applicant’s Exhibit 1, EAMS Doc. ID 71638404). This was confirmed by the applicant’s credible testimony that he would have to stay overnight while on the road in California. He would stop at truck stops where he would eat, get gas, and use the facilities. (See MOH dated 1/15/20 page 2 lines 21 -23, EAMS Doc. ID 72017207). It was after one of these overnight stays that he was injured.

The court found that the State of California does have a legitimate and substantial interest in evoking jurisdiction to protect those injured in its state.

#### **IV** **RECOMMENDATION:**

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

DATE: March 04 2020

HON. ELLIOT F. BORSKA  
Workers Compensation Judge