

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

DONALD DACUMOS (Deceased), *Applicant*

vs.

PETE'S HOME; STATE COMPENSATION INSURANCE FUND, *Defendants*

**Adjudication Number: ADJ14393426
Oakland 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. Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 10, 2022

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

**DONALD DACUMOS (deceased)
IVANCICH & COSTIS, LLP
STATE COMPENSATION INSURANCE FUND**

AS/ara

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

By timely, verified petition filed on August 11, 2022, defendant seeks reconsideration of the decision filed herein on August 2, 2022, in this case, which arises out of the death of an employee, Donald Dacumos at the hands of a coworker, Edward Go. Petitioner, hereinafter defendant, contends that it was error to find that the assault arose out of decedent's employment. Applicant (decedent, in care of his survivor(s)) has not filed an answer.¹ However, his arguments in favor of compensability are set out in his trial brief. I will recommend that reconsideration be denied.

BACKGROUND

The salient facts, which are not disputed, are summarized in the opinion on decision:

On the morning of November 9, 2020, Mr. Dacumos was working. Mr. Go was not. Mr. Go's spouse phoned the supervisor, Maritas Reddy, to report that her husband had been drinking all night, without sleeping. It is unclear why she made that call; she put her husband on the line at some point; the reason for that is also unclear. Ms. Reddy told the Gos that she had to take a shower and get to work. (All of the relevant employees worked at multiple, similar facilities. Ms. Reddy worked at a different residential care home on that November day.) Mr. Go then made his way to Pete's home, armed with his gun, and, seeing Mr. Dacumos through the kitchen window, at the rear of the house, and fired several shots through the window. (There is some possibility that he used his key to enter through the kitchen door and fire more rounds; this was not established, to my satisfaction, though it may not matter to the outcome. The police report of the incident was reportedly sought but not obtained by the time of trial, for reasons that are not explained.) After this occurred, another employee, Bernard Sigua, called Ms. Reddy to tell her what had happened, and she told him to call the police.

Prior to this incident, Mr. Go had become convinced that decedent had had, or was having, an affair with Ms. Go, and had, the previous month, asked Ms. Reddy to alter their work schedules so that they would not both be on duty at the same time and so that he could spend more time with his wife. The supervisor complied. She

¹ Although a party is not required to file an answer to a petition for removal or reconsideration, it is commonly viewed as an appropriate practice. See, *California Workers' Compensation Practice*, Continuing Education of the Bar, section 21.44; *State Farm Fire and Cas. Co. v. Wkrs. Comp. Appeals Bd. (Felts)* (1981) 119 Cal.App.3d 193 [46 Cal.Comp.Cases 622]. The appeals board and appellate courts are "not required to search the record in an attempt to develop answers to the contentions of the petitioner and [are] entitled to assume that the petitioner's statement of facts is accurate and that the contentions advanced are meritorious." *Id.*, citations omitted. Any answer must be filed within ten days of service of the petition (§ 5905), and if service is by mail five days are added (Code Civ. Proc. § 1013, imported into workers' compensation law by § 5316). However, the judge's report and recommendation is due 15 days after the filing of the petition, so as a practical matter if the responding party uses all of the allotted time to file an answer, including the extension, it is impossible for the trial judge to consider it when preparing that report. In fact, this report was delayed in the hope of receiving an answer. All statutory references not otherwise identified are to the California Labor Code.

also told the other employees at Pete's Home not to allow either on the premises when not scheduled to work. Mr. Go had a key to the house; Mr. Dacumos did not.

Mr. and Ms. Go and Mr. Dacumos had all worked together at multiple facilities. Defendant contends that Ms. Go and the decedent had not worked at Pete's Home at the same time; this appears to be uncontroverted. Nonetheless, their work had begat their acquaintance. And Messrs. Go and Dacumos continued to work at Pete's Home. The assailant did not testify at trial; local newspapers reported at the time that Mr. Go had taken his own life shortly after taking that of Mr. Dacumos.

Following trial, I concluded that the death of Mr. Dacumos did arise out of his employment, because the parties had all become acquainted through their work, including (though not solely) at Pete's Home, and because decedent was at work, performing services for that employer, when Mr. Go assaulted him.

DISCUSSION

As in its trial brief, defendant emphasizes the assault cases placing greatest importance on the nature of the underlying dispute, rather than the relationship between the incident and the workplace. As in the cases defendant cites, the dispute was, itself, unrelated to work, even if it was in some ways fostered by work: As stated above, Mr. Go, Ms. Go, and Mr. Dacumos all became acquainted through their work at various home-care facilities, including the one where Mr. Go shot the decedent. The opinion discusses *Cal. Comp. and Fire Co. v. Wkrs. Comp. Appeals Bd. (Schick)* (1968) 68 Cal. 2d 157 [33 Cal.Comp.Cases 38] (*Schick*):

There, the Supreme Court faced a situation in which an employee, divorced for three years and employed to go to the homes of customers of table pads to measure their furniture, was shot and killed by her ex-husband who had rented an apartment under an assumed name. The ex-husband, Carl Schick, contacted the table-pad retailer to make such a purchase, knowing that the employee, Lillian Schick, would be dispatched to meet him and take the measurements. He then attacked her. Rather than focus on the underlying motive for the assault, which was in no way connected to Ms. Schick's employment, the court emphasized that that employment was a proximate cause of the incident, based on where she was and what she was doing. "We cannot say that the assault upon her was so remotely connected with her employment that as a matter of law it must be held not to arise therefrom. Citing the principle of liberal construction in favor of employees codified in section 3202, the court concluded, "That the grievance which impelled Schick to commit the homicide originated in events unrelated to Ms. Schick's employment does not vitiate the foregoing conclusion." It cited numerous cases supporting such a holding, several of them cited by applicant here.

In the cases cited by defendant, I have been unable to identify any in which the assailant had any connection with the victim's workplace other than knowing its location. As in the cases cited by applicant, all involved underlying disputes that were personal, rather than work-related, but here we have not only the fact that applicant was at work, performing his duties, but also the fact that

his assailant was a coworker, and one with access to the locked premises. (As stated, it is unclear whether Mr. Go actually used his key to enter the building.)

Defendant's argument most centrally relies on *Transactron v. Wkrs. Comp. Appeals Bd. (Spears)* (1968) 68 Cal.App.3d 233 [42 Cal.Comp.Cases 236], in which an employee's boyfriend went to her place of employment, evaded interference by other employees, and killed her in the restroom. I believe the applicability of that holding, that the connection with employment was "so remote that it cannot be said to arise therefrom," may be somewhat overstated. (For instance, the three-element test of a shooting's compensability in workers' compensation is not actually found in that decision, as defendant contends.)

As stated, the alleged affair between Ms. Go and Mr. Dacumos appears to have no direct connection with Pete's Home, although they did work together, in the same capacity, elsewhere. However, Mr. Go and Mr. Dacumos were coworkers at Pete's Home until their deaths. This fact, at least, distinguishes this case from those cited by defendant.

As quoted in the opinion, the court in *Schick* concluded:

There is no sound reason to deny compensation to an employee whose duties expose her to a peculiar risk of assault merely because the assailant was motivated by personal animus. Had Mrs. Schick gone to the home of a customer whom she had not met before and had he committed an assault upon her for purely personal reasons unconnected with her employment, there seems to be no doubt that she would have been entitled to compensation. The mere fact that the "customer" was her former husband who had arranged an elaborate ruse to facilitate the commission of the assault does not, under the rationale of *Madin*², exclude her employment as a contributory cause or vitiate the implied finding of the board that the assault was sufficiently connected with her employment to be an incident thereof.

I remain persuaded that the killing of Donald Dacumos, at work, by his coworker, over an alleged affair between Mr. Dacumos and the assailant's wife, also a coworker, elsewhere, was sufficiently connected with the decedent's employment to have arisen therefrom.

² *Madin v. Indust. Accid. Commn. (Richardson)* (1956) 46 Cal.2d 90 [21 Cal.Comp.Cases 49]. In summarizing that case, the court in *Transactron* quoted the decision: "If we look for a causal connection between the employment and the injury, such connection need not be the sole cause; it is sufficient if it is a contributory cause." And: "Where the injury occurs on the employer's premises, while the employee is in the course of employment, the injury arises out of the employment unless the connection is so remote from the employment that it is not an incident of it."

RECOMMENDATION

I recommend that reconsideration be denied.

Dated: September 9, 2022

Respectfully submitted,

Christopher Miller
Workers' Compensation Judge

OPINION ON DECISION

This matter arises out of the death of an employee at the hands of a coworker. The act was intentional: The assailant, Edward Go, fired multiple gunshots at the decedent, Donald Dacumos, killing him. The issue submitted for decision is whether that death arose out of the decedent's employment. The exhibits, numbering two, consist of the transcripts of two depositions of employees of Pete's Home, a residential care facility. Trial testimony was elicited from one of those employees, a supervisor at Pete's Home, and the decedent's widow. None of that testimony was terribly helpful, but the salient facts are not disputed.

FACTS

On the morning of November 9, 2020, Mr. Dacumos was working. Mr. Go was not. Mr. Go's spouse phoned the supervisor, Maritas Reddy, to report that her husband had been drinking all night, without sleeping. It is unclear why she made that call; she put her husband on the line at some point; the reason for that is also unclear. Ms. Reddy told the Gos that she had to take a shower and get to work. (All of the relevant employees worked at multiple, similar facilities. Ms. Reddy worked at a different residential care home on that November day.) Mr. Go then made his way to Pete's home, armed with his gun, and, seeing Mr. Dacumos through the kitchen window, at the rear of the house, and fired several shots through the window. (There is some possibility that he used his key to enter through the kitchen door and fire more rounds; this was not established, to my satisfaction, though it may not matter to the outcome. The police report of the incident was reportedly sought but not obtained by the time of trial, for reasons that are not explained.) After this occurred, another employee, Bernard Sigua, called Ms. Reddy to tell her what had happened, and she told him to call the police.

Prior to this incident, Mr. Go had become convinced that decedent had, or was having, an affair with Ms. Go, and had, the previous month, asked Ms. Reddy to alter their work schedules so that they would not both be on duty at the same time and so that he could spend more time with his wife. The supervisor complied. She also told the other employees at Pete's Home not to allow either on the premises when not scheduled to work. Mr. Go had a key to the house; Mr. Dacumos did not.

Mr. and Ms. Go and Mr. Dacumos had all worked together at multiple facilities. Defendant contends that Ms. Go and the decedent had not worked at Pete's Home at the same time; this appears to be uncontroverted. Nonetheless, their work had begat their acquaintance. And Messrs. Go and Dacumos continued to work at Pete's Home. The assailant did not testify at trial; local newspapers reported at the time that Mr. Go had taken his own life shortly after taking that of Mr. Dacumos.

DISCUSSION

Section 3600¹ provides that an employer is liable for the injury of an employee "arising out of and in the course of the employment" where, as is relevant here, the employee, when injured, "is

¹ All statutory references not otherwise identified are to the California Labor Code.

performing service growing out of and incidental to his or her employment” and “the injury is proximately caused by the employment, either with or without negligence.” As stated, the central inquiry here is whether decedent’s injury arose out of employment.

Both parties cite several cases applying those statutory requirements for compensation. Rather than recite the factual backgrounds of all of these cases (and there are others), I will primarily focus on two. While providing several interesting cases involving analogous instances of horseplay by others, both coworkers and otherwise, applicant relies most relevantly on *Cal. Comp. and Fire Co. v. Wkrs. Comp. Appeals Bd. (Schick)* (1968) 68 Cal. 2d 157 [33 Cal.Comp.Cases 38] (*Schick*). There, the Supreme Court faced a situation in which an employee, divorced for three years and employed to go to the homes of customers of table pads to measure their furniture, was shot and killed by her ex-husband who had rented an apartment under an assumed name. The ex-husband, Carl Schick, contacted the table-pad retailer to make such a purchase, knowing that the employee, Lillian Schick, would be dispatched to meet him and take the measurements. He then attacked her. Rather than focus on the underlying motive for the assault, which was in no way connected to Ms. Schick’s employment, the court emphasized that that employment was a proximate cause of the incident, based on where she was and what she was doing. “We cannot say that the assault upon her was so remotely connected with her employment that as a matter of law it must be held not to arise therefrom. Citing the principle of liberal construction in favor of employees codified in section 3202m the court concluded, “That the grievance which impelled Schick to commit the homicide originated in events unrelated to Ms. Schick’s employment does not vitiate the foregoing conclusion.” It cited numerous cases supporting such a holding, several of them cited by applicant here.

Defendant’s legal position finds support in *Western Airlines v. Wkrs. Comp. Appeals Bd.* [claimant not identified] (1984) 155 Cal.App.3d 355 [49 Cal.Comp.Cases 344] (*Western*), where the court address the distinction, made below, between “personal risk” and “neutral risk,” long employed in case law involving assaults. The employee in *Western* was a flight attendant enjoying a 26-hour layover (paid) in Honolulu, sitting on the beach, where she was approached by a stranger who struck up a conversation. The two went for a bicycle ride and the stranger later assaulted her. This crime, the court concluded, had no connection to her employment whatsoever, and the focus below on its being a “neutral” risk was too narrow.

In this matter, it is without question that the alleged relationship between Ms. Go and the decedent was not a direct outgrowth of his employment. Nonetheless, his relationship with his assailant, Mr. Go, did arise in the workplace, both at Pete’s Home and elsewhere, and was ongoing. Mr. Go, even intoxicated, knew where to find him and when. Mr. Dacumos was undeniably performing services for his employer when he was killed, and I must conclude that his employment was a proximate cause, if not the only cause, of the incident. As the court stated in *Schick*,

There is no sound reason to deny compensation to an employee whose duties expose her to a peculiar risk of assault merely because the assailant was motivated by personal animus. Had Mrs. Schick gone to the home of a customer whom she had not met before and had he committed an assault upon her for purely personal reasons unconnected with her employment, there seems to be no doubt that she would have been entitled to compensation. The mere fact that the "customer" was

her former husband who had arranged an elaborate ruse to facilitate the commission of the assault does not, under the rationale of *Madin*², exclude her employment as a contributory cause or vitiate the implied finding of the board that the assault was sufficiently connected with her employment to be an incident thereof.

In short, I have found the death of Donald Dacumos to be compensable.

Date: August 1, 2022

Christopher Miller
Workers' Compensation Judge

² *Madin v. Indust. Accid. Commn. (Richardson)* (1956) 46 Cal.2d 90 [21 Cal.Comp.Cases 49]