WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

OMAR MARAVILLA, ***Applicant***

vs.

ATWAL BROTHERS FARMING, INC.,
ADVANTAGE WORKERS' COMPENSATION INS. CO., ***Defendants***

Adjudication Number: ADJ12214846
Van Nuys District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted defendant's Petition for Reconsideration of the Findings of Fact (Findings) issued on September 8, 2020, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues.[1] This is our Opinion and Decision After Reconsideration.

The WCJ found that applicant sustained injury occurred arising out of and occurring in the course of employment (AOE/COE) to his legs and right arm on May 3, 2019, when applicant was beaten and shot by a third-party assailant at the workplace. In particular, the WCJ found the attack industrial because the employer assisted the assailant, who owned a neighboring farm, in locating applicant.

Defendant contends that applicant's injury did not arise out of and occur in the course of employment because defendant alleges that the third-party assailant's motives were personal to applicant and that applicant's employment was merely a stage upon which the injury occurred.

We have not received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

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[1] Commissioners Sweeney and Dodd were on the panel when we granted reconsideration, but Commissioner Sweeney is no longer a member of the Workers' Compensation Appeals Board (WCAB) and Commissioner Dodd is unavailable to participate. New panel members have been appointed in their place.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration we will affirm the September 8, 2020 Findings.

FACTS

Applicant claims to have sustained an industrial injury on May 3, 2019, to his legs, hand, and arm as a result of workplace violence. (Minutes of Hearing and Summary of Evidence, July, 21, 2020, p. 2, lines 5-7.) Applicant worked on defendant's farm as a laborer. (*Id*. at p. 3, line 5.)

Kuldip Atwal and his brother were owners of the farm. (*Id*. at p. 6, line 9.)

Andy Pursley, the third-party assailant, was the owner of a neighboring farm and a good friend of the Atwal brothers. (*Id*. at p. 3, lines 8-9; p. 6, lines 9-13.)

A few days prior to the attack, Mr. Pursley's daughter had spoken with Mr. Atwal and accused applicant of stealing an ATV from the Pursley farm. (*Ibid*.)

On the day of the attack, applicant was in the front of the shop making hoses. (Id. at p. 3, lines 5-11.) Applicant was talking with a mechanic and an Atwal brother. The Atwal brother was on the phone when he said: "He's here." (*Ibid*.) Applicant did not know who the Atwal brother was talking to. (*Ibid*.)

Five minutes later, Andy Pursley and Mr. Pursley's daughter arrived at the Atwal farm. (*Id*. at p. 4, lines 14-17; p. 6, lines 14-20.) Kuldip Atwal told Mr. Pursley where he could find applicant on the farm and brought Mr. Pursley and the daughter to applicant. (*Id*. at p. 4, lines 4-7.) Mr. Pursley pointed a gun at applicant and told Mr. Atwal to tie applicant up. (*Id*. at p. 3, lines 21-25; p. 4, lines 5-7.) Mr. Atwal, applicant's boss, proceeded to assist in restraining applicant, however applicant escaped. (*Ibid*.) While escaping, applicant was shot in the leg. (*Ibid*.) Five other shots were fired at applicant, but all of them missed. (*Ibid*.)

Applicant ran to the street when Mr. Pursley caught up to applicant. (*Id*. at p. 4, lines 1-3.) Mr. Pursley began to hit applicant with a bat, after which the police arrived. (*Ibid*.)

DISCUSSION

To be compensable, an injury must arise out of and occur in the course of employment (AOE/COE). (Lab. Code, § 3600.) The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd*. (*Clark*)

(2015) 61 Cal. 4th 291, 297–298, 302 [188 Cal. Rptr. 3d 46, 349 P.3d 141, 80 Cal. Comp. Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) In applying this requirement, however, all reasonable doubts as to whether an injury arose out of employment are to be resolved in favor of the employee. (*Department of Rehabilitation v. Workers' Comp. Appeals Bd*. (*Lauher*) (2003) 30 Cal. 4th 1281, 1290–1291 [135 Cal. Rptr. 2d 665, 70 P.3d 1076, 68 Cal. Comp. Cases 831]; *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal. 3d 274, 280 [113 Cal. Rptr. 162, 520 P.2d 978, 39 Cal. Comp. Cases 310]; *Lundberg v. Workers' Comp. Appeals Bd*. (1968) 69 Cal. 2d 436, 439 [71 Cal. Rptr. 684, 445 P.2d 300, 33 Cal. Comp. Cases 656].) As the California Supreme Court discussed in *Lauher*, Labor Code section1 3202 provides that:

> [I]ssues of compensation for injured workers "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." Thus, "[a]lthough the **employee bears the burden of proving that his injury was sustained <u>in the course</u> of his employment**, the established legislative policy is that the Workmen's Compensation Act must be liberally construed in the employee's favor … , and **all reasonable doubts as to whether an injury <u>arose out of</u> employment are to be resolved in favor of the employee.** …"

(*Lauher*, *supra*, at 1290, quoting *Lamb*, *supra*, at 280 (emphasis added); see Lab. Code, § 3202.)

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 [72 Cal. Rptr. 2d 217, 951 P.2d 1184, 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." (*LaTourette*, *supra*, at 645.) Here, applicant was attacked while on the employer's premises and it is undisputed that he was injured in the course of her employment.

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. Industrial Acci. Com*. (*Gideon*) (1953) 41 Cal. 2d 676, 679-680.)

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. (*Gideon*, *supra*, at 680; *Maher v. Workers' Comp. Appeals Bd*. (1983) 33 Cal. 3d 729, 736 [190 Cal. Rptr. 904, 661 P.2d 1058, 48 Cal. Comp. Cases 326]; *Madin v. Industrial Acc. Com*. (1956) 46 Cal. 2d 90, 92–93 [292

P.2d 892, 21 Cal. Comp. Cases 49].) "All that is required is that the employment be one of the contributing causes without which the injury would not have occurred." (*Clark*, *supra* at 297–298, quoting *LaTourette*, *supra*, at 651, fn. 1; *Maher*, *supra*, at 734, fn. 3.) Moreover, "where the injury occurs on the employer's premises while the employee is in the course of his employment, the injury also arises out of the employment unless the connection is so remote from the employment that it is not an incident thereof. …" (*California Compensation & Fire Co. v. Workers' Comp. Appeals Bd*. (*Schick*) (1968) 68 Cal. 2d 157, 160 [65 Cal. Rptr. 155, 436 P.2d 67, 33 Cal. Comp. Cases 38].)

The legal principles governing the inquiry whether an injury caused by workplace violence arises out of employment was summarized by the Court of Appeal in *Atascadero Unified School Dist. v. Workers' Comp. Appeals Bd*. (*Garedes*) (2002) 98 Cal.App.4th 880, 884 [120 Cal. Rptr. 2d 239, 67 Cal.Comp.Cases 519] ("*Garedes*"):

> It is not sufficient for purposes of finding industrial causation if the nature of the employee's duties "merely provided a stage" for the injury (Citation.); if the employment were an after the fact rationalization (Citation.); or if the evidence established that the employment was a mere passive element that a nonindustrial condition happened to have focused on (Citation.). A finding of industrial injury is proper only where the employment plays an active or positive role in the development of the [injury]. (Citation.)
>
> An injury that grows out of a personal grievance between the injured employee and a third party does not arise out of the employment if the injury occurred merely by chance during working hours at the place of employment, or if the employer's premises do not place the injured employee in a peculiarly dangerous position. Thus, when a third party intentionally injures the employee and there is some personal motivation or grievance, there has to be some work connection to establish compensability. (Citations.)

(*Garedes*, supra, 98 Cal.App.4th at 884 (internal citations and quotations omitted).)

We agree with the WCJ's analysis in this matter. In doing so, 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, 504-505].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id*.)

The supervisor's act of assisting the assailant in locating applicant and assisting the assailant in attempting to restrain applicant's movement are sufficient work connections to warrant a finding of injury AOE/COE.

Defendant's petition primarily relies upon the analysis in *Transactron, Inc. v. Workers' Comp. Appeals Bd*., (1977) 68 Cal. App. 3d 233. In that case, applicant was murdered while hiding in the restroom at work. The motive for the murder was entirely personal. An *employee* had told the assailant that they believed applicant may be in the restroom. No security measures existed to block the assailant from going to the restroom. The manager was informed of the situation and then attempted to stop the assailant but was unsuccessful.

Two key facts distinguish *Transactron* from this case. First, it was not an employee who led the assailant to applicant, but applicant's supervisor. Second, rather than attempt to stop the assailant, applicant's supervisor actively assisted in attempting to restrain applicant. The fact that it was applicant's supervisor who led the assailant to applicant at the worksite and assisted in the assault is sufficient to create an industrial injury. Accordingly, we do not find the holding in *Transactron* persuasive.

Lastly, although the facts are clearly distinguished in this case, we observe that *Transactron* may be of limited precedential value given the duties of present-day employers to recognize hazards in the workplace, which includes reasonable steps to prevent workplace violence. (See Cal. Lab. Code, §§ 6401.7; 6401.9.)

Accordingly, as our Decision After Reconsideration we affirm the September 8, 2020 Finding.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued on September 8, 2020, is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ _JOSEPH V. CAPURRO, COMMISSIONER___

I CONCUR,

/s/ _LISA A. SUSSMAN, DEPUTY COMMISSIONER_

/s/ _KATHERINE A. ZALEWSKI, CHAIR____________

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 25, 2024

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

OMAR MARAVILLA
SHATFORD LAW
LAW OFFICES OF JACK PONCE

EDL/oo

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