WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIA SOLIMAN, *Applicant*

vs.

UNIVERSITY OF CALIFORNIA, BERKELEY, permissibly self-insured; administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ18432382
Oakland District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the July 11, 2025 Findings and Order (F&O) wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed by defendant as a manager in the IT department on February 1, 2023, applicant did not sustain injury arising out of and in the course of employment (AOE/COE) to the right shoulder, and thus ordered a take nothing.

Applicant contends that the finding is erroneous because she was on a mandatory Zoom call while working remotely at home when she tripped, fell, and injured her right shoulder. (Petition, p. 4.)

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

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition, rescind the F&O, substitute it with new F&O which finds that applicant sustained injury AOE/COE to her right shoulder on February 1, 2023, and return this matter to the trial level for further actions consistent with this opinion.

FACTS

Applicant filed an Application for Adjudication of Claim alleging that while employed by defendant as a manager in the IT department on February 1, 2023, she sustained injury AOE/COE to her right shoulder and hip when she "answered [her] doorbell while on a work [Z]oom call and tripped and fell."

The claim was apparently denied by defendant, and on October 22, 2024, applicant filed a Declaration of Readiness to Proceed requesting that the matter be set for a mandatory settlement conference on all issues.

At the November 21, 2024 mandatory settlement conference, the parties filed a joint pre-trial conference statement (PTCS) stipulating that the only issues for determination were injury AOE/COE and the admissibility and relevance of a medical report from Dr. Alberto Retodo dated August 31, 2023. (PTCS, November 21, 2024, p. 3.) Dr. Retodo was serving as a Qualified Medical Evaluator (QME) in a companion file, but not in the instant case.

After several continuances, the trial took place on May 12, 2025. The parties jointly submitted as evidence, a report from primary treating physician (PTP), Dr. David Smolins, dated February 8, 2023. Defendant submitted as evidence, a printout of applicant's calendar from February 1, 2023. Additionally, the court entered into evidence, a transcript of applicant's May 28, 2024 deposition testimony. Applicant's proposed exhibit, the QME report of Dr. Retodo dated August 31, 2023, was marked for identification. Thereafter, the matter stood submitted.

On July 11, 2025, the WCJ issued an F&O wherein he found, in relevant part, that while employed by defendant as a manager in the IT department on February 1, 2023, applicant did not sustain injury AOE/COE to the right shoulder and thus ordered a take nothing. The WCJ further ordered that the report of Dr. Retodo dated August 31, 2023, be admitted into evidence over defendant's objection.

It is from this F&O that applicant seeks reconsideration.

DISCUSSION

I.

Preliminarily, former Labor Code[1] 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, 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.

Under 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 under the Events tab 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 October 2, 2025, and 60 days from the date of transmission is December 1, 2025. This decision was issued by or on December 1, 2025, so that we have timely acted on the petition as required by section 5909(a).

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. Section 5909(b)(2) provides that service of the Report and Recommendation shall constitute notice of transmission.

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

Here, according to the proof of service for the Report, it was served on September 18, 2025, however the case was not transmitted to the Appeals Board until October 2, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on October 2, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on October 2, 2025.

II.

Turning now to the merits of the Petition, California has a no-fault workers' compensation system. With a few exceptions, all California employers are liable for the compensation provided by the system to employees injured or disabled in the course of and arising out of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no-fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms of 'service to an employer' and by including a general presumption that any person 'in service to another' is a covered 'employee.'" (Lab. Code, §§ 3351, 5705(a); *S. G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80.)

Notwithstanding the above, it is well established that 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 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.) Whether an injury arose out of and in the course of employment is generally a question of fact to be determined based upon the circumstances of each case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346, 353 [67 Cal.Comp.Cases 51].) For an injury to be considered as one arising out of employment, it must occur as a condition or incident of employment. (*Employers Mutual Liability Ins. Co. of Wisconsin v. Industrial Acc. Com.* (*Gideon*) (1953) 41 Cal.2d 676 [18 Cal.Comp.Cases 286, 288].) "[T]he employment and the injury must be

linked in some causal fashion," but the connection need not be the sole cause, a contributory cause is sufficient. (*Maher v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 729 [48 Cal.Comp.Cases 326].)

The phrase "in the course of employment" "'ordinarily refers to the time, place, and circumstances under which the injury occurs.'" (*Latourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644, 651 [63 Cal.Comp.Cases 253].) An employee is acting within "the course of employment" when "he does those reasonable things which his contract with his employment expressly or impliedly permit him to do." (*Ibid.*) "Acts of 'personal convenience' 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 773]; *Fremont Indemnity Co. v. Workers' Comp. Appeals Bd* (*Makaeff*) (1977) 69 Cal.App.3d 170, 176 [42 Cal.Comp.Cases 297]; *Vogt v. Herron Construction* (2011) 200 Cal.App.4th 643.) "[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*, at pp. 567-568.) Thus, even if an employee is doing something purely personal at the time of injury, the employee may be considered performing services incidental to employment within the meaning of section 3600. This is especially true in cases where the applicant is being paid during the time involved. (*Western Greyhound Lines v. Industrial Acc. Com.* (*Brooks*) (1964) 225 Cal.App.2d 517; *Rankin v. Workmen's Comp. Appeals Bd.* (1971) 17 Cal.App.3d 857.) Conversely, an injury which occurs during an unpaid break, particularly if off premises, is less likely to be considered AOE/COE. (*Mission Ins. Co.* v. *Workers' Comp. Appeals Bd.* (1978) 84 Cal.App.3d 50, 53-57; *County of Los Angeles* v. *Workers' Comp. Appeals Bd.* (*Swift*) (1983)145 Cal.App.3d 418, 421; *Hinkle v. Workers' Comp. Appeals Bd.* (1985) 175 Cal.App.3d 587.)

Once an applicant has met their initial burden of proof, the burden shifts to defendant to prove, by a preponderance of evidence, a non-connection or deviation from an injured worker's job duties or an unauthorized departure from the course of the employment. (Lab. Code, § 5705; *Rockwell International. v. Workers' Comp. Appeals Bd.* (*Haylock*) (1981) 120 Cal.App.3d 291 [46 Cal.Comp.Cases 664]; *City of Los Angeles v. Workers' Comp. Appeals Bd.* (*Rivard*) (1981) 119 Cal.App.3d 633 [46 Cal.Comp.Cases 625]; *Pacific Tel. & Tel. Co. v. Workers' Comp. Appeals Bd.* (1980) 112 Cal.App.3d 241 [45 Cal.Comp.Cases 1127].)

In the instant case, applicant was at home on a mandatory Zoom call for work when she ran to the door and tripped. (Exhibit X, pp. 96-100:17-21.) Applicant testified that the work call took place from approximately 11:00 a.m. until 12:30 p.m. and the vet appointment for her dog was scheduled to start between 12:00 and 1:00 p.m. (*Ibid*.) She was running to answer the door for the vet when the injury occurred. (*Ibid*.) Defendant and the WCJ allege that applicant deviated from work by answering the door for a scheduled appointment during her work Zoom call. We disagree. The fact that the vet appointment was scheduled is irrelevant in that the act of answering the door is one that can be reasonably contemplated by an employee working from home. As such, the act was not a deviation but one of personal convenience. Further, it is unlikely applicant would have rushed for the door but for the fact that she was on a work call. Unfortunately, in rushing for the door, applicant became injured.

As noted above, the report of Dr. Retodo, dated August 31, 2023, was admitted into evidence by the WCJ. Dr. Retodo completed an evaluation of the applicant on June 8, 2023, and reviewed extensive medical records. (Exhibit 1, pp. 1-2.) Per Dr. Retodo, applicant "called her primary medical physician on the [the day of the February 1, 2023 injury] due to significant right shoulder pain." (*Id*. at p. 13.) Thereafter, as noted in his summary of medical records, applicant underwent an April 2, 2023 MRI study and was found to have "labral fraying and a supraspinatus tear injury[.]" (*Id*. at p. 3.) Orthopedic surgeon, Dr. Paul Abeyta therefore "recommended physical therapy and possible surgery to the right shoulder." (*Ibid*.) Ultimately, Dr. Retodo concluded that applicant sustained a "[s]pecific industrial [sprain/strain] injury to the right shoulder [on] February 1, 2023[.]" (*Id*. at p. 12.) Based upon Dr. Retodo's report, and our review of evidentiary record, including the transcript of applicant's unrebutted May 28, 2024 deposition testimony (Exhibit X), and applicant's unrebutted May 12, 2025 trial testimony (Minutes of Hearing and Summary of Evidence, pp. 4-7), we conclude that there is substantial medical evidence of injury AOE/COE to the right shoulder.

Accordingly, we grant applicant's Petition, rescind the July 11, 2025 F&O, substitute it with a new F&O to reflect that applicant sustained injury AOE/COE to her right shoulder on February 1, 2023, and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the July 11, 2025 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 11, 2025 Findings and Order is **RESCINDED** and the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant, Maria Soliman, born [], while employed on February 1, 2023, as a manager in the IT department by the University of California, Berkeley, sustained injury arising out of and in the course of employment to her right shoulder.

2. At the time of the alleged injury, the employer was permissibly self-insured.

ORDERS

1. The report of Albert Retodo, M.D., dated August 31, 2023, is admitted into evidence.

2. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

I DISSENT (see attached dissenting opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 1, 2025

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

MARIA SOLIMAN
LAW OFFICES OF DAVID L. HART
MICHAEL SULLIVAN & ASSOCIATES LLP

RL/*cs*

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

DISSENTING OPINION OF COMMISSIONER JOSÉ RAZO

I respectfully dissent. I would have denied applicant's Petition for Reconsideration for the reasons stated below.

As noted by the majority opinion above, an employee is considered to be acting within "the course of employment" when "he does those reasonable things which his contract with his employment expressly or impliedly permit him to do." (*Latourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644, 651 [63 Cal.Comp.Cases 253].) "Acts of 'personal convenience' 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 773]; *Fremont Indemnity Co. v. Workers' Comp. Appeals Bd* (*Makaeff*) (1977) 69 Cal.App.3d 170, 176 [42 Cal.Comp.Cases 297]; *Vogt v. Herron Construction* (2011) 200 Cal.App.4th 643.)

In the instant matter, a scheduled vet appointment would not be reasonably contemplated by the employment, and had applicant not scheduled said appointment to occur at the same time as her work Zoom call, she would not have needed to answer the door at that particular time. I therefore agree with the WCJ that the act had "nothing to do with her remote employment" and was not intended "to serve or benefit her employer in any way[,]" and as such, was not an act contemplated under the personal convenience doctrine. (Report, p. 6.) Although it is also true that "an employer who permits an employee to work from home can reasonably expect or contemplate" personal comfort in the form of "bathroom breaks, meals, and [answering] the door … for an *unexpected visitor*," that was not the case here. (*Ibid*.) As noted above, whether an injury arose out of and in the course of employment is a question of fact to be determined based upon the circumstances of each case, and based upon the facts presented herein, the injury was not industrial. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346, 353 [67 Cal.Comp.Cases 51].) Rather, it was the result of a "deviation…unrelated to personal comfort[,]" "arranged purely for the employee's benefit." (Report, p. 6.)

Accordingly, I would have denied applicant's Petition for Reconsideration and affirmed the WCJ's July 11, 2025 Findings and Order.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 1, 2025

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

MARIA SOLIMAN
LAW OFFICES OF DAVID L. HART
MICHAEL SULLIVAN & ASSOCIATES LLP

RL/*cs*

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