

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

**IMELDA TABBADA, *Applicant***

**COUNTY OF SACRAMENTO, DEPARTMENT OF WATER RESOURCES, PSI,  
administered by COUNTY OF SACRAMENTO WORK COMP, *Defendants***

**Adjudication Number: ADJ21172307  
Sacramento District Office**

**OPINION AND ORDER DENYING  
PETITION FOR RECONSIDERATION**

Applicant seeks reconsideration of the Findings of Fact and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on February 3, 2026, wherein the WCJ found that the parties stipulated to injury arising out of and occurring in the course of employment (AOE/COE) to the right shoulder if compensation was not barred by the going and coming rule; and, that applicant did not sustain an injury AOE/COE. The WCJ ordered that applicant take nothing in her claim for workers' compensation benefits.

Applicant contends that the facts of this case fall within either the "zone of employment" and/or the "special risk" exception to the going and coming rule.

Defendant filed an Answer to Petition for Reconsideration (Answer) and the WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied.

We have reviewed the record in this matter, the allegations of the Petition for Reconsideration and the Answer, and the contents of the Report. Based on the Report, which we adopt and incorporate herein, and for those reasons stated below, we deny reconsideration.

**I.**

Former Labor Code 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, Labor Code 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 Labor Code 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 in Events 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 February 25, 2026, and 60 days from the date of transmission is Sunday, April 26, 2026. The next business day that is 60 days from the date of transmission is Monday, April 27, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>1</sup> This decision is issued by or on Monday, April 27, 2026 so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on February 25, 2026 and the case was transmitted to the Appeals Board on February 25, 2026. Service of the Report and transmission

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<sup>1</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that: “Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.”

of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 25, 2026.

## II.

Liability for workers' compensation accrues for an injury "arising out of and in the course of the employment." (Lab. Code, § 3600, subd. (a).) Injuries sustained while an employee is "going and coming" to and from the place of employment do not normally arise out of and in the course of employment because the employee is neither providing benefit to the employer nor under the control of the employer during that commute. (*Santa Rosa Junior College v. Workers' Comp. Appeals Bd.* (1985) 40 Cal.3d 345, 351–352 [1985 Cal. LEXIS 410]; *Hinojosa v. Workers' Comp. Appeals Bd.* (1972) 8 Cal.3d 150, 157 [37 Cal.Comp.Cases 734].) "[T]he going and coming rule applies when the employee is commuting between his home and work or, as *Hinojosa* characterizes it, it applies to a 'local commute enroute to a fixed place of business at fixed hours.' (*Hinojosa, supra*, 8 Cal.3d at p. 157.)" (*Zhu v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1031, 1038 [82 Cal.Comp.Cases 692].)

The going and coming rule "has had a 'tortuous history.'" (*Price v. Workers' Comp. Appeals Bd.* (1984) 37 Cal.3d 559, 565 [49 Cal.Comp.Cases 772] (*Price*)). The rule, which has often been criticized and is "subject to numerous exceptions," is "difficult to apply uniformly..." and not "susceptible to 'automatic application.'" (*Ibid.* citing *Parks v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 585, 589, fn. 4 [48 Cal.Comp.Cases 208] (*Parks*)). Each case must be "judged on its own 'unique facts.'" (*Ibid.*) 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 [68 Cal.Comp.Cases 831]; *Price v. Workers' Comp. Appeals Bd.* (1984) 37 Cal.3d at p. 565; *Hinojosa, supra*, 8 Cal.3d at p. 155-156.)

Here, the issue presented concerns the concept of "in the course of the employment" which generally "... refers to the time, place, and circumstances under which the injury occurs." (*Maher v. Workers' Comp. Appeals Bd.* (1983) 33 Cal. 3d 729, 733 [48 Cal.Comp.Cases 326].) When applying the general "going and coming" rule to "borderline cases, the term 'employment' has

been held to include ‘not only the doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done.’ (Citations omitted.)” (*Pacific Indem. Co. v. Industrial Acci. Com. (Henslick)* (1946) 28 Cal.2d 329, 336 [1946 Cal. LEXIS 213].) Assessment of what is a “reasonable margin of time and space” depends on the “nature of the employment, the location and distances between different parts of the employer’s premises, the difficulty of access thereto, and other significant factors.” (*Henslick, supra*, 28 Cal.2d at p. 338.) It is therefore not dispositive that an injury accident occurs prior to (or after) work hours. (*Ibid.* citing *Friere v. Matson Navigation Co.* (1941) 19 Cal.2d 8, 13 [1941 Cal. LEXIS 439].)

Here, the facts are not in dispute:

In the present matter, the injured worker had not entered the employer’s premises at the time of injury. The injured worker testified that she worked at 827 7th Street in Downtown Sacramento (Minutes of Hearing, Summary of Evidence at Page 3, Line 6). She was on I street between 8th and 9th Street when the injury took place. She had not yet arrived at the entrance to her place of work (*Id.* at Page 3, Line 14-15). There is no evidence presented that the employer owned or had any control over the area where the injury took place.

(F&O, Opinion on Decision, pp. 3-4.)

Based on these undisputed facts, the WCJ determined that “the premise line rule [aka “zone of employment”] exception does not apply.” We concur, and also agree with the WCJ’s conclusion that the facts in *Lewis v. Workers’ Comp. Appeals Bd.* (1975) 15 Cal.3d 559 [40 Cal.Comp.Cases 717] (*Lewis*), and *Ultramar Diamond Shamrock v. Workers’ Comp. Appeals Bd.* (2000) 65 Cal.Comp.Cases 983 [2000 Cal.Wrk.Comp. LEXIS 6452] (*Ultramar*), are distinguishable from the facts in this case. (Report, pp. 3-4.) *Lewis* involved an employer-owned parking lot and *Ultramar* involved an employer who specifically directed employees to park in a particular parking lot. (*Ibid.*) Although it is not dispositive in this case that the premises where applicant was injured was neither owned or controlled by the County of Sacramento as in *Lewis*, it is dispositive that the County did not exercise any measure of direction or control over where applicant was located when she was injured as did the employer in *Ultramar*.

On the other hand, it is not necessary to find that an employee was injured on premises either owned or controlled by the employer. (*Lewis, supra*, 15 Cal.3d at p. 562.)

For example, the “special risk” exception to the going and coming rule provides for compensation where a risk associated with the employment causes injury just outside the employer’s premises. [citations]

(*Price, supra*, 37 Cal.3d at p. 566.)

However, we concur with the WCJ that the facts of this case do not establish a “special risk” exception to the “going and coming” rule. As an initial matter, there is a two-prong test employed to assess whether the “special risk” exception applies under the unique set of facts of any given case: (1) was the injury causally related to the employment, i.e., “but for” the employment, the applicant would not have been exposed to the mechanism of injury; and (2) is the risk “distinctive in nature or quantitatively greater than risks common to the public.” (*General Ins. Co. v. Workers’ Comp. Appeals Bd. (Chairez)* (1976) 16 Cal.3d 595, 601 [41 Cal.Comp.Cases 162].) Even assuming applicant established the first prong of this test, applicant did not produce substantial evidence establishing the second prong of the test.

Applicant cites to *Chavez v. JetBlue Airways Corp.*, 2025 Cal.Wrk.Comp. P.D. LEXIS 212 (*Chavez*), to support her argument that the “special risk” exception to the “going and coming” rule should be extended to her case. We disagree. The applicant in *Chavez* worked for JetBlue at Los Angeles International Airport and was injured “while getting ready to step into his girlfriend’s car waiting on World Way just outside the upper level of Terminal 5, just four minutes after clocking out of work for JetBlue.” (*Chavez, supra*, at \*8.) In *Chavez*, the Appeals Board applied the “special risk” exception because there was substantial evidence that *no matter how employees chose to commute to work, all JetBlue employees “would necessarily have to navigate along and/or across World Way” in order to arrive and/or depart their shifts for JetBlue at Terminal 5 of the airport.* (*Id.* at \*8-10.)

Therefore, every single time applicant went to work he was exposed to the risks associated with navigating World Way, whether upper or lower, and as a direct result, he was exposed to those risks at a rate “quantitatively greater than [those] risks common to the public.” (See *Chairez, supra*, 16 Cal.3d at p. 601, italics added.)

(*Chavez, supra*, at \*10.)

We concur with the WCJ’s conclusion that there is no substantial evidence to support the “special risk” exception to the “going and coming” rule based on *Chavez*. The facts here are distinguishable from *Chavez* because applicant “did not have to navigate a specific route to enter her place of employment that put her at greater risk.” (Report, p. 3.) Specifically, there is no evidence – as there was in *Chavez* – to establish that *entry to the jobsite itself* created “a particular

risk – one distinctive in nature – not shared by the public generally.” (*Chairez, supra*, 16 Cal.3d at p. 600 citing *Henslick, supra*, 28 Cal. 2d at pp. 337-338 and *General Ins. Co. v. Workers’ Comp. Appeals Bd. (Graydanus)* (1976) 16 Cal.3d 595, 600 [30 Cal.Comp.Cases 376]; see *Freire v. Matson Navigation Co.* (1941) 19 Cal.2d 8, 13 [1941 Cal. LEXIS 439] [injury sustained while on “the only practical means of access to the employer’s premises”].)

In *Henslick* the court also held that “the fact that an accident happens upon a public road and the danger is one to which the general public is likewise exposed, does not preclude the existence of a causal relationship between the accident and the employment **if the danger is one to which the employee, by reason of and in connection with his employment, is subjected peculiarly or to an abnormal degree.**” (*Id.* at p. 338.) **Basterretche was required as part of his job each day to turn off the highway into his employer’s dairy farm. In doing so he was exposed to a particular risk not shared by the public generally.**

(*Greydanus, supra*, 63 Cal.2d at p. 493, bold added.)

We thus affirm the WJC’s decision that applicant’s claim is barred by the “going and coming” rule and that there is no substantial evidence to support either the “zone of employment” or “special risk” exception to that rule.

Next, and because we affirm the WCJ’s decision that the going and coming rule bars compensation in this claim, it is not necessary to consider whether applicant’s participation in her employer’s alternative commute program *also* bars her claim under Labor Code section 3600.8.<sup>2</sup>

Accordingly, applicant was injured during her regular commute, and her claim is thus barred by the “going and coming” rule. There is no substantial evidence to support an exception to the “going and coming” rule. We therefore affirm the WCJ’s decision in this matter.

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<sup>2</sup> Labor Code section 3600.8, subdivision (a), does not bar compensation by invoking the “going and coming” rule. (*Miller v. Workers’ Comp. Appeals Bd.* (2025) 90 Cal.Comp.Cases 707, 710.) Instead, subdivision (a) removes one of the “necessary conditions of compensation” under section 3600, subdivision (a)(2), by finding as a matter of law that an employee is not acting within the course of their employment while voluntarily participating in an employer’s alternative commute program. (*Ibid.*; see Lab. Code, § 3600, subd. (a)(2) [employee must be acting within course of employment to meet condition of compensation]; Lab. Code, § 3600, subd. (a) [liability for employee injuries “shall...exist against an employer for any injury...arising out of and in the course of the employment...”], emphasis added.)

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings of Fact and Order issued by a workers' compensation administrative law judge on February 3, 2026, is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ PAUL F. KELLY, COMMISSIONER**



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

**APRIL 27, 2026**

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

**IMELDA TABBADA  
THE LAW OFFICES OF MARCUS & PULLEY, LLP  
MICHAEL SULLIVAN & ASSOCIATES LLP**

**AJF/mc**

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

## REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

### INTRODUCTION

1. Applicant Occupation: Assistant Civil Engineer  
Applicant's Age at Injury: 58 years old  
  
Date of Injury: May 14, 2024  
  
Parts of Body Claimed Injured: Right Shoulder  
  
Manner in Which Injury Occurred: Specific injury
2. Identification of Petitioner: Applicant Timeliness:  
The petition was filed timely.  
  
Verification: The petition was properly verified.
3. Date of Issuance of the Findings of Fact & Order: February 3, 2026  
  
Petitioner requests reconsideration of the finding that Applicant did not sustain an injury arising out of an occurring in the course of employment.
4. Petitioner's Contentions: Applicant contends that the facts of this case are an exception for the Going-and-Coming Rule and the claim is not barred by Labor Code §3600.8.

### FACTS

Applicant filed an Application for Adjudication of Claim alleging a specific injury on May 14, 2024, to the right shoulder due to an assault outside place of employment. Defendant filed an Answer denying AOE/COE based on lack of substantial medical evidence and witnesses to support the injury.

The parties proceeded to a Mandatory Settlement Conference on December 3, 2025, wherein the matter was set for trial on the issue of AOE/COE.

A trial took place on January 26, 2026, wherein the parties presented their evidence, arguments and witness testimony on the issue of AOE/COE.

On February 3, 2026, the undersigned issued a Findings of Fact & Order finding that Applicant did not sustain an injury arising out of and occurring in the course of employment because the facts of the case did not fall under an exception to the Going-and-Coming Rule and was barred by Labor Code §3600.8.

Applicant filed a Petition for Reconsideration on February 18, 2026. Applicant is appealing the "take nothing" finding contending that the facts of this case are an exception to

the Going-and-Coming Rule and is not barred by Labor Code §3600.8. No answer has been filed as of the submission of this Report & Recommendation.

### DISCUSSION

The facts of this case are undisputed. Applicant took advantage of a transit program, known as the Connect Card program, through her place of employment. The County provided a subsidy for its employees to use public transportation going to/from work. On May 14, 2024, Applicant was assaulted by an unknown assailant on a public street between the bus stop and her actual place of employment. She claims injury to her right shoulder. Applicant asserted that this case was an exception to the Going-and-Coming Rule.

#### THE FACTS OF THIS CASE ARE NOT AN EXCEPTION TO THE GOING-AND-COMING RULE

Applicant contends that injuries suffered while walking from the end of a regular commute, such as a parking lot, to the place of employment are not barred by the Going-and-Coming Rule, relying on *Lewis v. WCAB* (1975) 15 Cal. 3d 559 (40 Cal. Comp. Cases 727). The facts of *Lewis* are distinguishable. In *Lewis*, the injured worker parked in a parking lot leased by the employer for the exclusive use of its employees. The employee was injured while walking along public streets from the parking lot to place of employment. In the present matter, Applicant was injured while walking from a bus stop to place of employment. Applicant did not utilize an employer-controlled parking lot as part of her commute to work on the date of injury.

Applicant also cites *Ultramar Diamond Shamrock v. WCAB* (2000) 65 Cal. Comp. Cases 983 as an exception to the Going-and-Coming Rule. Again, the facts of this case are distinguishable from *Ultramar*. In *Ultramar*, the employees were directed by the employer to park at the Holiday Inn across from the place of employment. The injured worker was injured while crossing the street. In the present matter, there was no testimony that Applicant was instructed to commute to work in a specific manner. Applicant's testimony was that she would typically take the bus to work, but on days where she did not take the bus, she would drive her car to work and use the County parking garage connected to the building she

worked at.<sup>1</sup> The County’s Connect Card program was optional and Applicant was not obligated to accept it.<sup>2</sup> The County’s witness also testified that Applicant was not required to take the bus to work and her decision to take the bus was voluntary.<sup>3</sup> Applicant was not directed by the employer to utilize a specific manner of commute. She was free to begin and end her commute to work in any manner she wanted.

APPLICANT’S INJURY IS NOT COVERED BY THE SPECIAL  
RISK EXCEPTION TO THE GOING-AND-COMING  
RULE

Applicant argues that the special risk exception applies citing to *Chavez v. JetBlue Airways Corp.* (2025) (2025 Cal. Wrk. Comp. P.D. LEXIS 212). In *Chavez*, the Board found that the special risk exception applied because every method of entering the place of employment involved negotiating a public street called “World Way”, thus exposing the injured worker to risks associated with that method of navigating to his place of work. This case is distinguishable from *Chavez* in that Applicant did not have to navigate a specific route to enter her place of employment that put her at greater risk. Applicant was free to choose her method of travel to work either via bus that exited onto a public street or by car that terminated at an employer-controlled parking garage.

APPLICANT’S CLAIM IS BARRED BY LABOR CODE §3600.8

There is nothing in Applicant’s Petition for Reconsideration that causes the undersigned to reconsider the application of Labor Code §3600.8. As stated in the Findings of Fact & Order, Labor Code §3600.8 bars claims where the injured worker participates in a government-sponsored or mandated alternative commute program unless the employee is paid regular wage or salary for those commute periods. Applicant’s participation in the employer’s Connect Card program was voluntary, and there was no evidence that she was paid regular wage or salary for the commute period. The County’s witness testified that the official purpose of the program started with air quality control, which falls in line with the intended purpose of Labor Code §3600.8.

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<sup>1</sup> Minutes of Hearing, Summary of Evidence, page 3 line 18-19, 23-25.

<sup>2</sup> *Id.* at page 4, line 2-3.

<sup>3</sup> *Id.* at page 4, line 19-22.

Applicant argues that participation in the alternative program ended when she arrived at the bus stop. Assuming that argument is true, Applicant's commute to work had not terminated by arrival at the bus stop. Applicant still had to transverse from the bus stop to the place of employment and there was nothing presented via evidence, testimony or argument that presents as an exception to the Going-and-Coming Rule.

#### RECOMMENDATION

It is respectfully recommended that Applicant's Petition for Reconsideration be denied.

Dated: February 25, 2026

CHRISTY MALLORY  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

CM:

Served on the person(s) shown on the Official Address

Record. ON: 2.25.2026

BY: FHASHIM