WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARTIN CASTRO, et al., *Applicants*

vs.

WAWONA PACKING,
AMERICAN ZURICH INSURANCE COMPANY, administered by TRISTAR RISK MANAGEMENT, *Defendants*

Adjudication Numbers: ADJ16903801 (MF), ADJ16689751, ADJ17493829, ADJ16903295, ADJ16903722, ADJ16903753, ADJ16604010, ADJ16903824
Fresno District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact, Awards, Orders, and Opinion on Decision (F&A) issued on July 15, 2026.[1] The workers' compensation administrative law judge (WCJ) found, in relevant part, that seven of the applicants sustained compensable injury arising out of and in the course of employment, and that an eighth applicant, applicant Gustavo Ortiz Corona (Corona), was not an employee on the date of injury. The WCJ awarded benefits to seven applicants and ordered applicant Corona to take nothing.

Defendant contends that the going and coming rule bars a finding of injury as the applicants were injured during their regular commute to a fixed place of business.

None of the applicants filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending denial of the Petitions in Case Numbers ADJ16903801, ADJ16689751, ADJ16903295, ADJ16903722, ADJ16903753, ADJ16604010, and ADJ16903824 and dismissal of the Petition in Case Number ADJ17493829 (Corona).

We have considered the allegations of the Petitions and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated below,

[1] Defendant also filed a Petition in ADJ17493829. However, defendant withdrew its Petition in this case on August 3, 2026. Applicant did not file a Petition for Reconsideration.

we will deny the Petitions for Reconsideration in Case Numbers ADJ16903801, ADJ16689751, ADJ16903295, ADJ16903722, ADJ16903753, ADJ16604010, and ADJ16903824 and dismiss the Petition for Reconsideration in ADJ17493829.

FACTS

On July 22, 2022, a motor vehicle accident occurred on Mendocino Avenue in Fresno County at 5:10 am. A van carrying eight alleged employees of defendant was involved in the accident. With the exception of one person, all were transported to local hospitals with varying levels of injury. (Joint Exhibit 1.) No medical evidence was offered.

Each of the parties filed an Application for Adjudication of Claim. On March 20, 2023, five of the claims were consolidated by order of the WCJ for the limited purpose of addressing whether the injury arose out of and in the course of employment (AOE/COE) based on the applicability of the going and coming rule. On June 22, 2023, this order was amended to include two other passengers in the van. Finally on September 12, 2024, the eighth claim was consolidated with the other seven and continued to a Mandatory Settlement Conference to set the matter for trial.

The trial went forward on October 30, 2024 in the following cases: ADJ16903801 Martin Castro (Castro), ADJ16689751 Juan Carlos Penaloza Andrade (Andrade), ADJ16903295 Isabel Herrera (Herrera), ADJ16903722 Margaro Perez Contreras (Contreras), ADJ16903753 Cruz Garcia Arangure (Arangure), ADJ16604010 Artemio Hernandez Cuautle (Cuautle), ADJ16903824 David Acosta (Acosta), and ADJ17493829 Corona. At the time, the parties stipulated that the employer was Prima Wawona which was "self-insured" and administered by Tristar. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 10/30/2024, 3:4-8.) With regard to applicant Corona, the minutes reflected that there was an issue of employment and that the issues of employment were deferred. (*Id*. at 5:10-12.) The sole issue for trial was "injury arising out of and in the course of employment based on the application of the Going and Coming Rule." (*Id*. at 5:14.) The minutes also noted "that discovery is closed by stipulation of all parties, with the exception of [d]efendant's ability to take the deposition of the remaining applicants who were not previously deposed. The Court is allowing depositions to be taken only with regards to the issue of injury AOE/COE." (*Id*. at 6:8-11.)

At the continued trial on December 16, 2024, Castro was called as a witness. He was a foreman for defendant at the time of the accident. (MOH/SOE, 12/16/2024, 2:16-17.) On the date of injury, he was transporting other defendant employees to work. (*Id*. 2:19-24.) All the employees were hired for peach season, and each worker would have to use a belt or straps which held boxes that the workers used to hold picked peaches. Each employee would take the strap home daily but was responsible for having the straps at work. (*Id*. at 3:1-6.) He was paid by the hour, however his pay would increase as he brought more workers to the job site. (*Id*. at 3:8-10.)

He would carry jugs of water in his van for the workers to use throughout the day. Water provision was encouraged by the employer, and he was provided with re-fillable jugs, though he was not explicitly directed to bring water for the employees. (*Id.* at 3:17-23.) He would have to maintain the jugs and return them at the end of the season. (*Id*. at 7:19-21.) At the time of the accident, he had two full jugs in his car as well as a first aid kit and chair. (*Id*. at 4:3-4.) He would always carry shades, tarps, chairs, water, and the first aid kit in his car. (*Id*. 5:22.) Defendant does not provide transportation to work. (*Id*. at 5:23.)

The crew would work on a block of peaches at a time. When the block was complete, they would go to another block by driving in the van because it was too far to walk to the next block. (*Id*. at 4:10-13.) He confirmed that some blocks would take three days to complete, some less. They did not have to change blocks every day. (*Id*. at 5:9-10.) They would have to use public roads approximately once per month to transfer from one block to another. (*Id*. at 6:18.)

Generally, he would be at the worksite at 6:00 am with a trailer to start work. (*Id*. at 7:7.) He would begin picking up other passengers at 4:30 am. (*Id*. at 4:15-17.) The passengers would pay him $35 per week for the ride. (*Id*. at 5:1.) The witness was also responsible for moving a trailer which contained racks of ladders, which belonged to defendant, and restrooms. On the day before the accident, he could not recall where he left the trailer, but it could be left at a ranch or at a block they had not finished. (*Id*. at 5:6-8.) If parked at the ranch, it could take 30 to 40 minutes to get to the work area. (*Id*. at 6:3-4.) He attached the trailer with a hitch. (*Id.* at 6:17.)

He testified that applicant Corona had not yet been hired at the time of the accident and did not know whether he would be hired by defendant. (*Id*. at 8:6.) On the morning of the accident, Corona asked him whether there was work available. (*Id*. at 6:12.) The witness testified that he had the authority to hire workers if they needed additional workers, but that they would have to fill out forms and go through orientation. (*Id*. at 5:17-20.)

At the continued trial on February 19, 2025. Applicant Garcia was called to testify. He had worked for the defendant for approximately six years at the time of the accident. (MOH/SOE, 02/19/2025, 3:5-6.) He recalled using the straps discussed by applicant Castro, and testified that sometimes he would bring the strap home and other times he would leave the strap in the vehicle. (*Id*. at 3:10-11.) He testified that they would move field to field most days when blocks were finished and would use the van to do so if the next block was more than ten minutes away. (*Id*. at 3:13-15.)

He testified that when he was first hired, he had to complete a form and do an orientation in the field. (*Id*. at 4:6-8.) He never heard that the defendant ever rejected anyone from working. (*Id*. at 4:10-11.)

Applicant Cuautle testified similarly. He also would bring the strap home or sometimes leave it in the van. (*Id*. at 5:11-12.) The van was also used to help the crew do its work, including moving the trailer which carried the ladders and restroom. (*Id*. at 5:14-18.) He also confirmed that they used the van to change fields during the workday which would occur once a day if not more. (*Id*. at 5:21-23.) His crew would be about 15-18 people under applicant Castro, but he did not know how the others got to the worksite. (*Id*. at 6:3-6.)

He also had a training and orientation with videos when he first started. (*Id*. at 4-8.) He completed an application as well.

Applicant Andrade also testified similarly. He confirmed that the van was used for shade and to move crews from one field to the next, sometimes every day but at least once or twice per week. (*Id*. at 7:7-9.) He testified that the trailers would be left in a loading area at each ranch when not in use. The next day the foreman would be told which ranch location they would have to go to. (*Id*. at 8:22-24.) He never knew when they were going to change fields. (*Id*. at 9:3.) He also testified to the same onboarding experience as previously outlined.

Applicant Corona then testified. He initially confirmed that he had not worked for defendant previously, but later stated that he had worked there three years earlier. (*Id*. at 10:6.) He had met applicant Castro the day before the accident and was told that there was work available for him. (*Id*. at 10:23-4.) On the date of the accident, he brought his documents as well as the box strap that he had already in his possession. (*Id.* at 10:12-14.)

On April 9, 2025, testimony continued. Applicant Castro was re-called as a witness. He confirmed that he had some limited authority to hire if they were really short on workers, but that

a supervisor had the last word. (*Id*. at 2:12.) He could not recall if applicant Corona worked with him for the defendant before. (*Id*. at 2:19.) He could not recall if on the date of the accident he expected to be short on crew. (*Id.* at 3:2-7.) He confirmed that a worker could not work unless he had been registered and had gone through orientation and he does not know whether applicant Castro did either. (*Id*. at 3:12-13.)

Applicant Corona was also re-called to testify. He reiterated that he worked with applicant Castro for defendant for at least two and a half seasons perhaps two to four years ago. (*Id*. at 4:10-13.) He again testified that Castro approached him the day before the accident and was not told that any offer of work had to come from a supervisor. (*Id*. at 4:1-4.) Just a few days prior to the accident, he had been working for another company, Fruit Harvest, but never worked for defendant and Fruit Harvest concurrently. (*Id*. at 4:23-25.)

On June 27, 2025, the WCJ issued an F&A. Defendant was ordered to identify and produce the most knowledgeable person with regard to in-field hiring procedures, and to produce the records of applicant's prior employment history with defendant.

Defendant filed a Petition dated July 15, 2025, contending in pertinent part that the employer went bankrupt and could not comply with the order to produce witness and evidence.

The WCJ then issued an Order Vacating Submission in part due to defendant's allegation that the employer had gone bankrupt which because the employer was allegedly self-insured would require joinder of the Self Insured Security Fund (SISF).

Another trial went forward on April 22, 2026. The minutes note that defendant confirmed that the employer was insured by American Zurich Insurance Company (Zurich) administered by Tristar. (MOH/SOE, 04/22/2026, 2:7-10.) Yet again, applicant Corona and applicant Castro were called to testify, but defendant did not produce an employer witness nor any additional evidence.

Applicant Corona testified that he did not recall working for defendant in the past and did not recall ever working with applicant Castro in the past. (*Id*. at 3:1-2.) Prior to the date of the accident, he did not complete any paperwork or speak with any supervisor apart from applicant Castro. (*Id.* at 3:3-6.)

Applicant Castro then testified that he had been in touch with applicant Corona regarding availability of work and that was why he took applicant Corona to work. (*Id*. at 3:19-20.) He now testified that he had met Corona the night before when he asked for work. Castro told him that it would have to be approved by a supervisor but that there was work available. (*Id*. at 4:1-5.)

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909,[2] which states 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 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 August 17, 2026 and 60 days from the date of transmission is October 16, 2026.[3] This decision is issued by or on October 16, 2026, 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 shall be notice of transmission.

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[2] Unless otherwise stated, all further statutory reference is to the Labor Code.

[3] The master file, ADJ16903801, was transmitted on August 17, 2026, while the other files according to Case Events were transmitted at various later dates. Because the initial transmittal included all claim numbers and service on all parties, we will evaluate timeliness from August 17. 2026.

Here, according to the proof of service for the Report, the Report was served on August 17, 2026 and the case was transmitted to the Appeals Board on August 17, 2026. Service of the Report and transmission 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 Section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 17, 2026.

II.

Section 3600 imposes liability on an employer for workers' compensation benefits only if its employee sustains an injury "arising out of and in the course of employment" (AOE/COE). (Lab. Code, § 3600(a).) Whether an employee's injury arose out of and in the course of employment is generally a question of fact to be determined in light of the particular circumstances of the case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346 [67 Cal.Comp.Cases 51].)

California's "going and coming" rule is not legislatively mandated or enacted, but judicially conceived and created. (*Hinojosa v. Workmen's Comp. Appeals Bd.* (1972) 8 Cal.3d 150, 153 [37 Cal.Comp.Cases 734].) Workers' compensation laws must be "liberally construed" in order to extend "their benefits for the protection of persons injured in the course of their employment." (Lab. Code, § 3202.) It is well settled that "any reasonable doubt as to the applicability of the going and coming doctrine must be resolved in the employee's favor." (*Hinojosa*, *supra*, at pp. 155-156; *Parks v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 585, 593 [48 Cal.Comp.Cases 208]. In *Hinojosa,* the California Supreme Court explained the going and coming rule as follows:

> In substance the courts have held non-compensable the injury that occurs during a local commute enroute to a fixed place of business at fixed hours in the absence of special or extraordinary circumstances. The decisions have thereby excluded the ordinary, local commute that marks the daily transit of the mass of workers to and from their jobs; the employment, there, plays no special role in the requisites of portage except the normal need of the presence of the person for the performance of the work.
>
> On the other hand, many situations do not involve local commutes enroute to fixed places of business at fixed hours. These are the extraordinary transits that vary from the norm because the employer requires a special, different transit, means of transit, or use of a car, for some particular reason of his own. When the employer gains that kind of a particular advantage, the job does more than call for routine transport to it; it plays a different role, bestowing a special benefit upon the employer by reason of the extraordinary circumstances. The employer's special request, his imposition

> of an unusual condition, removes the transit from the employee's choice or convenience and places it within the ambit of the employer's choice or convenience, restoring the employer-employee relationship.

(*Hinojosa*, *supra*, 8 Cal.3d at p. 157.)

In *Hinojosa* and the opinions that followed it, the rule was established that the going and coming rule "provides that an injury suffered 'during a local commute en route to a fixed place of business at fixed hours in the absence of special or extraordinary circumstances is not within the course of employment.'" (*Price v. Workers' Comp. Appeals Bd.* (1984) 37 Cal.3d 559, 564-565 [49 Cal.Comp.Cases 772] quoting *Hinojosa*, *supra*, 8 Cal.3d at p. 157; *Schultz v. Workers' Comp. Appeals Bd.* (2015) 232 Cal.App.4th 1126, 1128 [80 Cal.Comp.Cases 16].)

The facts here are consistent with the facts in the *Hinojosa* case down to the type of fruit being harvested. In *Hinojosa*, the applicant was also a farm laborer who was hired to thin and pick stone fruits. Upon completion at one ranch, the foreman would direct and assign the workers to a different ranch often during the same workday and for pay. From day to day, the workers would not know which ranch they were assigned to or for how long. Thus, furnishing one's own transportation was required. Hinojosa did not have a car of his own, so he arranged to ride with a fellow worker and reimbursed him accordingly. On the way home from the ranch, he was involved in a motor vehicle accident.

The court relied on *Smith v. Workmen's Comp. App. Bd.* (1968) 69 Cal.2d 814, which provides an exception to the going and coming bar where the employee is expressly or impliedly required or expected to furnish his own means of transportation to the job. (*Hinojosa*, *supra*, 8 Cal.3d at p. 160.) Here, just as in *Hinojosa*, the nature of the work made it necessary for the employee to furnish his own transportation during the workday because of the shifting of blocks and ranches. All applicants testified, and the employer did not rebut this testimony, that on any given day they did not know their assignments, that they would move from one block to another using the van either because of distance or because the trailer had to be towed, that the distance between the ranch and a worksite could be 30 to 40 minutes away, that travel between blocks was ten minutes by car, and that they all carried their primary tool, the straps, and equipment in the van. Thus, the requirement of a vehicle for all the workers was implied and the evidence supports the required use exception.

Defendant also essentially argues that the accident occurred far from the fixed place of business and at a time not adequately proximate to the 6:00 a.m. start time. However, defendant did not provide evidence as to location of the fixed worksite nor how far the accident occurred from the worksite and did not rebut testimony that the meeting location for the start of work could be different. Thus, defendant's argument fails to prove the necessary elements for the going and coming rule to apply as a bar.

Even if the rule applies, defendant argues that the required vehicle exception in *Hinojosa* only applies to accidents occurring during inter-ranch travel while on the clock. However, both *Hinojosa* and *Smith* refute that proposition and extended the exception to the inbound and outbound commutes as well. Further, in *Hinojosa*, the Supreme Court explicitly held that the employee passengers were equally entitled to the required use exception outlined in *Smith* because all of the workers bear the burden and expense of providing the necessary vehicle for employment. (*Hinojosa*, *supra*, 8 Cal.3d at 162.)

As a result, the commute differs from routine commute in that the manner in which the job was structured was dependent on use of vehicle to transport employees, as well as the essential trailer, throughout the workday. Because the job impliedly required use of a vehicle, the accident did arise out of and in the course of employment and is therefore compensable.

Accordingly, we deny the Petitions for Reconsideration in Case Numbers ADJ16903801, ADJ16689751, ADJ16903295, ADJ16903722, ADJ16903753, ADJ16604010, ADJ16903824 and dismiss the Petition for Reconsideration in ADJ17493829.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration in ADJ16903801 is **DENIED**.

IT IS ORDERED that the Petition for Reconsideration in ADJ16689751 is **DENIED.**

IT IS ORDERED that the Petition for Reconsideration in ADJ16903295 is **DENIED.**

IT IS ORDERED that the Petition for Reconsideration in ADJ16903722 is **DENIED.**

IT IS ORDERED that the Petition for Reconsideration in ADJ16903753 is **DENIED.**

IT IS ORDERED that the Petition for Reconsideration in ADJ16604010 is **DENIED.**

IT IS ORDERED that the Petition for Reconsideration in ADJ16903824 is **DENIED.**

IT IS ORDERED that the Petition for Reconsideration in ADJ17493829 is **DISMISSED.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 16, 2026

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

TF/md

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

SERVICE LIST

MARTIN CASTRO
ARTEMIO CUAUTLE HERNANDEZ
JUAN CARLOS PENALOZA ANDRADE
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