WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROBERT ULLREY, *Applicant*

STATE OF CALIFORNIA, DEPARTMENT OF GENERAL SERVICES-ADMINISTRATION, legally uninsured;
STATE COMPENSATION INSURANCE FUND,
adjusted by STATE CONTRACT SERVICES, *Defendants*

Adjudication Number: ADJ12672135
Sacramento District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on March 19, 2026, wherein the WCJ found that applicant did not sustain injury arising out of and occurring in the course of his employment (AOE/COE), and ordered that applicant take nothing from his claim.

Applicant contends that there is substantial, credible testimonial and corroborating evidence in the record that applicant's September 12, 2019 fall and resulting injury arose out of and in the course of his employment while applicant was a commercial traveler in San Francisco during Fleet Week; that under *Wiseman v. Industrial Acc. Comm.* (1956) 46 Cal.2d 570 ("*Wiseman*"), a commercial traveler is within the course of employment for the duration of the travel and that activities of personal comfort including meals and traveling to and from a meal are not considered deviations from employment; that the injury to his spinal cord resulting from a fall in an elevator while traveling to a meal while a commercial traveler arose out of his employment, even though he fell as a result of an idiopathic condition, pursuant to *Employers Mutual Ins. Co. v. Industrial Acc. Com. (Gideon)* (1953) 41 Cal.2d 676 [1953 Cal. LEXIS 317]; and, that the WCJ erred in denying that his injury arose out of his employment by applying *LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644 [63 Cal.Comp.Cases 253] ("*LaTourette*"), to the facts of this case.

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

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 our review of the record and for the reasons stated below, we grant reconsideration, and as our decision after reconsideration, we rescind the WCJ's decision and return this matter to the trial level for further proceedings consistent with this decision.

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.
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> (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 April 22, 2026 and 60 days from the date of transmission is Sunday, June 21, 2026. The next business day that is 60 days from the date of transmission is Monday, June 22, 2026. (See Cal. Code Regs., tit. 8, §

10600(b).)[1] This decision is issued by or on Monday, June 22, 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 April 22, 2026 and the case was transmitted to the Appeals Board on April 22, 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 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 April 22, 2026.

II.

The issue at trial in this matter was injury arising out of and in the course of employment (AOE/COE) (Lab. Code, § 3600). (Minutes of Hearing and Summary of Evidence, December 16, 2025 (December MOH), Issues, p. 2.) It was applicant's burden of proof to establish with substantial evidence "'the reasonable probability of industrial causation.'" (*LaTourette*, *supra*, 17 Cal.4th at p. 650, citing *McAllister v. Workers' Comp. App. Bd*. (1968) 69 Cal. 2d 408, 413 [33 Cal.Comp.Cases 660].) However, any determination of compensability must be "guided by the...fundamental principle that the requirement is to be liberally construed *in favor of awarding benefits*." (*Maher v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 729, 732-733 [48 Cal.Comp.Cases 326], emphasis in the original; see *Westbrooks v. Workers' Comp. Appeals Bd.* (1988) 203 Cal.App.3d 249, 253 [53 Cal.Comp.Cases 157] ("*Westbrooks*").) Thus, "[e]ven if, arguendo, the issue is debatable...all reasonable doubts as to whether an injury is compensable are

[1] 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."

to be resolved in favor of the employee." (*California Compensation & Fire Co. v. Workers' Comp. Appeals Bd. (Schick)* (1968) 68 Cal.2d 157, 161 [33 Cal.Comp.Cases 38]; see *Western Greyhound Lines v. Industrial Acci. Com. (Brooks)* (1964) 225 Cal.App.2d 517, 520-521 [1964 Cal.App. LEXIS 1398] [acts taken for an employee's personal comfort on work break while off an employer's premises may not deviate from employment].

The concept of "in the course of the employment" generally "... refers to the time, place, and circumstances under which the injury occurs." (*Maher*, *supra*, 33 Cal.3d at p. 733; see *Westbrooks*, *supra*, 203 Cal.App.3d at p. 252.) "Arising out of" employment is "a more difficult question," and generally refers to the causal connection between the employment and the injury. (*Id*.) In other words, the injury must be "proximately caused by the employment, either with or without negligence." (Lab. Code, § 3600(a)(3).) The determination of whether an injury arises out of and in the course of employment is based on "criteria" that are "fluid" and "must therefore be decided on the facts peculiar to each case." (*Westbrooks*, *supra*, 203 Cal.App.3d at p. 255; see *Latourette*, *supra*, 17 Cal.4th at pp. 651-652.)

Proximate cause in workers' compensation cases is not the same as in civil tort cases. (*Maher*, *supra*, 33 Cal.3d at p. 734, fn. 3 citing *Truck Ins. Exchange v. Industrial Acci. Com. (Dollarhide)* (1946) 27 Cal.2d 813, 816 [1946 Cal. LEXIS 359].) In workers' compensation cases, "'[a]ll that is required is that the employment be one of the contributing causes without which the injury would not have occurred.' (citations)..." (*Maher*, *supra*, 33 Cal.3d at p. 734, fn. 3; see *South Coast Framing, Inc. v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-299 [80 Cal.Comp.Cases 489] ("*South Coast Framing*") ["We have recognized the contributing cause standard since the very beginning of the workers' compensation scheme."].) Although it is the employee's burden to demonstrate by a preponderance of the evidence that he or she sustained a compensable injury (Lab. Code, §§ 3600(a), 3202.5, 5705), the concept of what constitutes a work-related injury is broad. (*South Coast Framing*, *supra*, 61 Cal.4th at p. 298.)

Here, applicant contends on reconsideration (as contended at trial), that he was injured while on the way to dinner while traveling for work and that he was therefore a commercial traveler engaged in a reasonable act of personal comfort at the time of his injury. (Petition for Reconsideration, p. 6; December MOH, Issues, p. 2.) Defendant counters in response (as it did at trial), that applicant was not an authorized commercial traveler; sustained a non-industrial injury;

was intoxicated (Lab. Code, § 3600, subd. (a)(4)); and/or, was engaged in an off-duty recreational social activity (Lab. Code, § 3600, subd. (a)(9)). (Answer, p. 2; December MOH, Issues, p. 2.)

"Ultimately the court found that applicant's injury occurred from a non-industrial disease (sick sinus syndrome) and was thus not covered by the commercial traveler rule per *LaTourette v. WCAB* (1998) 17 Cal 4th 644." (Report, p. 1.) The WCJ commented that although the parties' contentions dealt primarily with the "in the course of employment" prong of section 3600, the medical evidence established that applicant's injury did not "arise out of his employment under *LaTourette*, *supra*, because applicant's injury was caused by a fall precipitated by a non-industrial disease. (F&O, Opinion on Decision, p. 3; Report, p. 2.)

> The court found that applicant's injury (the fall) was caused by a nonoccupational disease (sick sinus syndrome) and thus per *LaTourette v. WCAB* (1998) 17 Cal 4th 644 was not covered by the commercial traveler doctrine. **In *LaTourette* the injured worker passed away after having a cardiac arrest while on a business trip; applicant died during treatment (surgery) for the cardiac event. It was undisputed that applicant had non-industrial cardiac disease.** The case held that "commercial travelers are also subject to the general rules governing injury from a nonoccupational disease. As a general rule such injury does not arise out of the employment and is noncompensable. *Id* at 653. In the case at hand it is undisputed that applicant's sick sinus syndrome was non-industrial and the medical evidence concludes that this is what caused applicant to fall.

(Report, pp. 2-3, bold added.)

The WCJ declined to issue a finding of fact as to whether applicant was in the course of his employment under the commercial traveler rule prior to determining whether his injury arose out of his employment. (See F&O, Findings of Fact.) This was an error.

In fact, the parties were correct to first focus on the "course of employment" prong of section 3600 given that the mechanism and cause of applicant's spinal injury appears to be undisputed. Applicant claims an injury to his spinal cord (resulting in paralysis, neurogenic bowel and bladder, and sexual impairment). (See F&O, for eg., Findings of Fact no. 1.) It appears undisputed that applicant's spinal injury resulted when he fell and struck his head on an elevator railing and floor. (Answer, p. 2 ["The Applicant was injured after striking his head after experiencing a syncopal episode."].) It also appears undisputed that applicant fell in the elevator because he suffered a syncopal episode caused by "sick sinus syndrome and/or an arrythmia induced by his cardiac pacemaker" which was non-industrial. (Report, p. 2 citing Joint Exh. D4,

Report of Norman Linder, M.D., panel qualified medical evaluator (PQME), December 26, 2023, p. 3.) However, there is no claim for injury in the form of syncopy or arrythmia plead or claimed in this matter. **In other words, *it was not the syncopal episode that broke applicant's neck – it was his contact with the elevator rail and floor that broke his neck.***

> 1. HISTORY OF SYNCOPAL EPISODE, LIKELY SECONDARY TO SICK SINUS SYNDROME **WITH FALL ON SEPTEMBER 19, 2019 RESULTING IN CERVICAL SPINE FRACTURES**.

(Joint Exh. E5, Report of PQME Linder, April 14, 2024, p. 5, bold added.)[2]

As stated by the PQME in declining to address industrial causation in this matter:

> As stated in the "Discussion & Recommendations" portion of my October 1, 2020 PQME report, it appears to me that the legal issues regarding ·this claim is not whether the treatment is appropriate, the medical necessity for future medical care, or even whether there is significant apportionment toward prior injuries. It appears that the issue is whether this injury was of industrial causation.
>
> In her cover letter dated September 2, 2020, Ms. Aragon indicated that the applicant is claiming that this injury occurred in San Francisco while he was attending a mandatory work-related conference. The employer denies that knowledge of this conference and that the applicant was never scheduled to attend any conference.
>
> I reviewed both the deposition that was transcribed for this report as well as the actual transcript. The testimony appears to be limited to the applicant's work history and his treatment subsequent to the injury. The pertinent issue is whether there was a work-related conference in San Francisco scheduled for September 13, 2019 and if so, did the employer direct the applicant to attend this conference, which lead to the injury which occurred on September 12, 2019 in an elevator in San Francisco.
>
> Absent testimony from the applicant and his supervisors, this will have to be left to trier of fact and therefore up to a WCAB judge.

(PQME Linder Report, Joint Exh. B2, p. 3.)

The facts giving rise to applicant's claim are easily distinguished from those in *LaTourette* where the estate was denied benefits when an injured worker suffered a cardiac arrest while

[2] We note that the PQME did not address whether applicant's injuries were industrial because the PQME could not in his initial evaluation, and was thereafter asked not to do so all supplemental reports as he was informed the question would be for the trier of fact, i.e., whether applicant was in the course of his employment at the time of his fall. (See Joint Exh. A1, p. 14; B2, p. 3; C3, p. 38; D4, p. 3; E5, p. 6.)

traveling for work and later died from complications during treatment. (*LaTourette*, *supra*, 17 Cal.4th at p. 648.) The cardiac arrest was later determined to be caused by a preexisting medical condition. (*Ibid.*)

On the other hand, the facts giving rise to applicant's claim are not distinguishable from other cases finding compensability for injuries caused by a fall and resulting contact with an object, even when the fall itself was caused by an idiopathic condition of the employee:

> It is settled in this state and elsewhere that an injury suffered from a fall on the employer's premises, in the course of employment, from a height or on or against some object, arises out of the employment and is compensable, **even though the fall was caused by an idiopathic condition of the employee** (*National Auto. etc. Ins. Co. v. Industrial Acc. Com.*, 75 Cal.App.2d 677 [171 P.2d 594], where numerous authorities are cited). . .
>
> **The reasoning of those authorities is that the injury for which compensation is sought, was caused by the impact of the employee's body with an object or surface of the employer's premises, and hence arose out of the employment, because such injury was an incident thereof, although the fall may also have been a causal factor which had no connection with the employment. That reasoning is equally applicable where the fall is merely to the floor or ground, in the course of the employment, and death or injury results from striking the floor or ground. It has been held that such injury arises out of the employment, and is compensable, although the fall was caused by a disease of the employee, having no relation to the employment.** . . .
>
> The contrary holdings in denying compensation overlook several important principles. Though an injury to be compensable must arise out of the employment, that is, occur by reason of a condition or incident of employment, **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.** (*Pacific Emp. Ins. Co. v. Industrial Acc. Com.*, 26 Cal.2d 286 [158 P.2d 9, 159 A.L.R. 313]; *Pacific Emp. Ins. Co. v. Industrial Acc. Com*., 19 Cal.2d 622 [122 P.2d 570, 141 A.L.R. 798].) **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**. (*Colonial Ins. Co. v. Industrial Acc. Com*., 29 Cal.2d 79 [172 P.2d 884].) **Where a person is required to be on the streets in the course of his employment and falls to the street, the resulting injury arises out of the employment.** (*State Comp. Ins. Fund v. Industrial Acc. Com*., 194 Cal. 28 [227 P. 168].) And finally ". . . reasonable doubts as to whether an injury is compensable are to be resolved in favor of the employe." (citations)

(*Gideon*, *supra*, 41 Cal.2d at pp. 678-680, bold added.)

We note that workers' compensation benefits are to be provided *regardless of fault*, and the defenses available to an employer are set forth in the Labor Code. (Lab. Code, § 3600(a).) "Even the fact that an injury was received by an employee while violating an instruction or rule of his employer, does not necessarily prevent the injured employee from recovering..." (*Associated Indemnity Corporation. v. IAC (Macfie)* (1941) 18 Cal.2d 40, 47.) To find otherwise "would totally undermine the no-fault foundation of workers' compensation law." (*Westbrooks*, *supra*, 203 Cal.App.3d at p. 254.)[3] Thus, it cannot vitiate compensability in this case that it was applicant's "fault" that he fell due to a non-industrial syncopy event. However, and to reiterate, applicant is not claiming injury in the form of syncopy – he is claiming an injury to his spine *caused by his fall and contact with the elevator rail and floor*.

We note that PQME Linder provides substantial evidence that intoxication is *not* a defense in this case, and thus further development on the issue should not be needed:

> The applicant had a BAC of .17. Please note that the applicant has a history of alcohol abuse. Hence, it is within reasonable medical probability that he has developed more tolerance at a BAC of .17 than an occasional drinker. **Alternatively stated, is <u>not</u> within reasonable medical probability that the applicant would have suffered a syncopal episode with a BAC of .17.**
>
> **Therefore, based upon the medical records and within reasonable medical probability the applicant, Robert Ullrey, suffered a syncopal episode in the elevator in relation to his sick sinus syndrome and/or an arrythmia induced by his cardiac pacemaker.**

(Joint Exh. D4, PQME Report, December 26, 2023, p. 3, underline in the original.)

Consequently, we must grant reconsideration and order rescission of the WCJ's decision as there is substantial medical evidence that applicant sustained a spinal cord injury as a result of his contact with the elevator rail and floor when he fell, and his injury is compensable pursuant to cases such as *Gideon* and distinguishable from *LaTourette*.

We also concur that the commercial traveler rule is relevant given the facts in this case. A "commercial traveler is regarded as acting within the course of his employment during the entire period of his travel upon his employer's business." (*LaTourette*, *supra*, 17 Cal.4th at p. 652;

[3] "Indeed, the Workers' Compensation Act contemplates that intentional ('serious and willful') misconduct may occur within the course of one's employment and that any injury resulting from such misconduct should not necessarily preclude recovery of benefits. (See Lab. Code, § 4551.)" (*Westbrooks*, *supra*, 203 Cal.App.3d at p. 254.) To hold otherwise "would totally undermine the no-fault foundation of workers' compensation law." (*Id*., at p. 254.)

Wiseman v. Industrial Acc. Comm. (1956) 46 Cal.2d 570, 572; *3 Stonedeggs v. Workers' Comp. Appeals Bd. (Nanez)* (2024) 101 Cal.App.5th 1136, 1142 (rev. den.).) An employee away on business can "hardly [be] expected to remain holed up in his hotel room." (*Fleetwood Enterprises, Inc. v. Workers' Comp. Appeals Bd. (Moody)* (2005) 134 Cal.App.4th 1316, 1327 [70 Cal.Comp.Cases 1659] (rev. den.).) If a commercial traveler is injured during "off hours," then the test to be employed is whether the activity during injury was one "that an employer may reasonably expect to be incident to its requirement that an employee spend time away from home." (*IBM Corp. v. Workers' Comp. Appeals Bd. (Korpela)* (1978) 77 Cal.App.3d 279, 283.) This rule is construed liberally in favor of injured employees. (*Korpela*, *supra*, at p. 282 (citing Lab. Code, § 3202).)[4]

Procuring food and the travel incident to procuring food are activities "reasonably necessary" for the sustenance and personal comfort of the commercial traveler. (See *LaTourette*, *supra*, 17 Cal.4th at pp. 652-653 citing *Wiseman*, *supra*, 46 Cal.2d at p. 572.)

> **As a result, workers' compensation coverage applies to injuries the employee sustains during the travel itself and during the course of other personal activities "reasonably necessary for the sustenance, comfort, and safety of the employee," such as procuring food and shelter**. (citation) However, personal activity not reasonably contemplated by the employer may constitute a material departure from the course of employment. (citation)
> . . .
>
> **Workers' compensation coverage "applies to the travel itself and also to other aspects of the trip reasonably necessary for the sustenance, comfort, and safety of the employee."** (*LaTourette*, *supra*, 17 Cal.4th at p. 652.) **A traveling employee "could hardly [be] expected to remain holed up in his hotel room**." (*Fleetwood Enterprises, Inc. v. Workers' Comp. Appeals Bd.* (2005) 134 Cal.App.4th 1316, 1327 [37 Cal. Rptr. 3d 587].)

(*3 Stonedeggs v. Workers' Comp. Appeals Bd. (Nanez)* (2024) 101 Cal.App.5th 1136, 1142-1143, 1151 [89 Cal.Comp.Cases 417].)

[4] Compensability for commercial travelers has been found in a *wide* range of cases including but not limited to injury resulting from use of a hotel pool; death by asphyxiation from negligent cigarette use resulting in a hotel room fire; death or injury while traveling to and from home or to and from visits home. (See *3 Stonedeggs v. Workers' Comp. Appeals Bd. (Nanez)* (2024) 101 Cal.App.5th 1136, 1156-1160 [89 Cal.Comp.Cases 417].)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, former § 10566, now § 10787 (eff. Jan. 1, 2020).)

The record in this case is incomplete as the WCJ did not correctly address the issues presented and we therefore cannot interpose our own findings without violating the parties' right to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker v. Workers' Comp. Appeals Bd*. (2000) 82 Cal.App.4th 151, 157-158).

Accordingly, it is our decision after reconsideration to return this matter to the trial level for further proceedings so that the parties and the WCJ may develop the record on the issue of whether applicant was a commercial traveler whose spinal injury was sustained while pursuing an activity "reasonably necessary" for his sustenance and personal comfort.

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 March 19, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order issued by a workers' compensation administrative law judge on March 19, 2026 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

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

June 18, 2026

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

ROBERT ULLREY
EASON & TAMBORNINI, ALC
STATE COMPENSATION INSURANCE FUND, LEGAL

AJF/mc

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