WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

EIREN BRADFORD, *Applicant*

vs.

R&D WESTWING, INC;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants*

Adjudication Number: ADJ12116378
Long Beach District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on January 23, 2020, wherein the WCJ found in pertinent part that applicant's injuries did not arise out of her employment because they were sustained during a personally motivated attack.

Applicant contends that defendant has a duty of care to protect its employees from unsafe or hazardous conditions. Moreover, applicant contends that defendant's disclosure to her assailant of applicant's whereabouts was an essential part of the attack and therefore her injuries arose out of her employment.

We received an answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations in the Petition, the answer, and the contents of the Report with respect thereto.

Based on our review of the record, and for the reasons discussed below, we will rescind the January 23, 2020 F&O, substitute new Findings of Fact 1) that applicant sustained injury arising out of and in the course of employment to her left eye, the issue of injury to all other body

parts is deferred, 2) all other issues are deferred, and we will return the matter to the trial level for further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to her left eye, back, and psyche while employed by defendant as a cashier on March 27, 2019.

The parties stipulated that applicant sustained injury arising out of and in the course of employment to her left eye, back, and psyche. (Amended pre-trial conference statement, dated November 21, 2019, p. 2; Minutes of Hearing/Summary of Evidence, November 21, 2019 trial (MOH/SOE), p. 2.)

Despite stipulating that applicant sustained injury arising out of and in the course of employment, the matter proceeded to trial on the sole issue of injury arising out of and in the course of employment and all other issues were deferred. (MOH/SOE, at 2:11-14.)

Applicant testified in pertinent part as follows:

> On the day of the assault, she had arrived at work at 9:30 and was scheduled to work until 5:00 p.m. She was on her break .... seated eating in front of the store when she was attacked. She did not always eat or take her breaks at that location but typically would if it was too hot or busy. She was seated, looking at her phone with her head down, when an individual [] attacked her.
> (MOH/SOE, at 3:11-15.)
>
> ***
> Earlier in the day [of the incident], Breanna, a coworker, had taken a phone order where the caller wanted to know whether applicant worked there. The order that was placed ... was never picked up. [Applicant's coworker] Breanna told [the caller] that applicant was working that day.
> (MOH/SOE, at 3:17-19.)
>
> ***
> Breanna told [applicant] that the conversation involved the caller asking if Eiren Bradford worked there.
> (MOH/SOE, at 3:19-21.)

The police report from the incident states in pertinent part that as applicant was taking her break, an assailant "suddenly approach[ed] [applicant] from a group of four other individuals and began repeatedly punching [applicant] in the face for approximately 45 seconds. During this time [applicant] fell to the ground which caused her wrist watch to break and the [assailant] began

kicking [applicant] in the back." (Exhibit 100, March 27, 2019 police report, p. 2, MOH/SOE, p. 2.) As a result, applicant "suffered an approximate two inch bruise, swelling and contusion to her left eye." (*Id*.)

Applicant was the only witness at trial.

On January 23, 2020, the WCJ made the following finding: "Eiren Bradford, born [], while employed as a cashier on March 27, 2019, did not sustain injury arising out of her employment by R & D Westwing, Inc., insured by Travelers Property Casualty Co. of America." (F&O, p. 1.)

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 [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 [68 Cal.Comp.Cases 831]; *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274, 280 [39 Cal.Comp.Cases 310]; *Lundberg v. Workers' Comp. Appeals Bd*. (1968) 69 Cal.2d 436, 439 [33 Cal.Comp.Cases 656].) As the California Supreme Court discussed in *Lauher*, Labor Code section[1] 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 in the course 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 arose out of 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 [63 Cal.Comp.Cases 253].) First, the injury must occur "in the course of employment," which

[1] All statutory references are to the Labor Code, unless otherwise noted.

ordinarily "refers to the time, place, and circumstances under which the injury occurs." (*LaTourette, supra*, at 645.) Here, applicant was attacked while taking an authorized break on her employer's premises and it is undisputed that she was injured in the course of her employment. (Defendant's trial brief, dated January 10, 2020, at 7:5-7; January 23, 2020 Opinion on Decision, p. 3.)

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 [48 Cal.Comp.Cases 326]; *Madin v. Industrial Acc. Com*. (1956) 46 Cal.2d 90, 92-93 [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." (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd*. (2015) 61 Cal.4th 291, 297-298 [80 Cal.Comp.Cases 489], 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 [33 Cal.Comp.Cases 38].)

Applicant testified that a co-worker took a phone order on the day of the incident, wherein the caller asked about applicant by name, e.g., asked if Eiren Bradford worked there. Applicant's co-worker confirmed that applicant worked there and also told the caller that applicant was working that day. (MOH/SOE, November 21, 2019 trial, at 3:17-19.) Defendant does not dispute the veracity of applicant's testimony. Moreover, defendant called no witnesses at trial, so applicant's testimony is uncontradicted. If, as here, an injury occurs on the employer's premises while the worker is in the course of their employment, it is presumed that the injury also arises out of the employment where the employment is a contributory cause. (*Schick, supra*, at 160.)

California has a no-fault workers' compensation system. With a few exceptions, all California employers are liable for the compensation provided by the workers' compensation 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; see *Claxton v. Waters* (2004) 34 Cal.4th 367, 373 [69 Cal.Comp.Cases 895].) An employer is liable for workers' compensation benefits, where, at the time of the injury, an employee is "performing service growing out of and incidental to his or her employment and is acting within the course of employment." (Lab. Code, § 3600(a)(2).) Based on the record before us, a connection was created when a co-worker disclosed applicant's whereabouts to an unknown caller and thus applicant's employment was a contributing cause of applicant's injuries. As such, we need not speculate about the identity of the attacker(s) or the motivation for the attack. (*State Compensation Ins. Fund v. Workers' Comp. Appeals Bd. (Vasquez de Vargas)* (1982) 133 Cal.App.3d 643, 654 [47 Cal.Comp.Cases 729].)

We turn now to the stipulations at trial. "Stipulations are designed to expedite trials and hearings and their use in workers' compensation cases should be encouraged." (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1120 [65 Cal.Comp.Cases 1], quoting *Robinson v. Workers' Comp. Appeals Bd*. (1987) 194 Cal.App.3d 784, 791 [52 Cal.Comp.Cases 419].) A stipulation is "'An agreement between opposing counsel … ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*Weatherall, supra*, at 1118.) Although parties may stipulate to the facts in controversy, the WCJ is not bound by the parties' stipulations and may make further inquiry into the matter. (Lab. Code, § 5702; Cal. Code Regs., tit. 8, § 10835; see also *Turner Gas Co. v. Workers' Comp. Appeals Bd. (Kinney)* (1975) 47 Cal.App.3d 286 [40 Cal.Comp.Cases 253].)

Here, the parties stipulated that applicant sustained injury AOE/COE to her left eye, back, and psyche. (Amended pre-trial conference statement, dated November 21, 2019, p. 2; MOH/SOE, p. 2.) Based on the police report, wherein the officer notes a bruise, swelling, and contusion to the left eye, we will find injury AOE/COE to applicant's eye. (Exhibit 100, March 27, 2019 police

report, p. 2, MOH/SOE, p. 2.) While applicant may have sustained injury to other body parts, no medical evidence was admitted[2] and as such we are unable to evaluate injuries to other body parts.

The Appeals Board must accept as true the intended meaning of testimony both uncontradicted and unimpeached. (*LeVesque v. Workers' Comp. Appeals Bd*. (1970) 1 Cal.3d 627, 639 [35 Cal.Comp.Cases 16]; *McAllister v. Workers' Comp. Appeals Bd*. (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) The WCJ found that "applicant's testimony was inconsistent, self-serving and lacked credibility." (Opinion on Decision, filed January 23, 2020, p. 5.) We afford the WCJ's determination regarding applicant's credibility great weight. (*Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) However, the WCJ's determination regarding applicant's credibility notwithstanding, inconsistencies regarding the identity or motivation of applicant's attacker(s) are not germane to the ultimate issue of causation. It is undisputed that applicant was injured in the course of her employment, while on her employer's premises, and applicant's testimony that a co-worker confirmed applicant's whereabouts to an unknown caller on the day in question is uncontradicted. Where, as here, the trial record demonstrates that a worker was harmed while in the course of employment, the private intent or motivation of the assailant is not determinative. (*Liberty Mut. Ins. Co. v. Workers Compensation Appeals Bd. (Solano)* (1996) 61 Cal.Comp.Cases 720, 721-722 (writ den.).)

Accordingly, we rescind the January 23, 2020 F&O, substitute new Findings of Fact 1) that applicant sustained injury arising out of and in the course of employment to her left eye, the issue of injury to all other body parts is deferred, 2) all other issues are deferred, and return the matter to the trial level for further proceedings consistent with this decision.

[2] The Appeals Board's record of proceedings is maintained in the adjudication file and includes: the pleadings, minutes of hearing, summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits identified but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. "Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings." (Cal. Code Regs., tit. 8, § 10803.)

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued on January 23, 2020 is **RESCINDED** and the following is **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Eiren Bradford sustained injury arising out of and in the course of employment to her left eye while employed as a cashier on March 27, 2019, by R & D Westwing, Inc., insured by Travelers Property Casualty Co. of America. The issue of injury to all other body parts is deferred.

2. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 28, 2023

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

EIREN BRADFORD
OZUROVICH & SCHWARTZ
DIMACULANGAN & ASSOCIATES
SOUTHERN CA MENTAL HEALTH

JB/abs

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