

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

ARTURO AGUILAR, *Applicant*

vs.

**HECTOR O. PALMA RACING STABLE, INC., permissibly self-insured, administered by
FINISH LINE SELF-INSURANCE GROUP, INC., *Defendants***

**Adjudication Number: ADJ14266971
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on June 6, 2022, wherein the WCJ found that applicant sustained injury arising out of and in the course of employment (AOE/COE) to his cervical spine, right shoulder, right elbow, right hand, right wrist, right ankle, and left leg.¹

Defendant contends that the “bunkhouse rule” should not be applied because the injury did not occur while applicant was at his bunkhouse or residence; that applicant’s injury is not compensable, because he was off duty and not engaged in an activity reasonably contemplated by the employer; that the employer’s lack of a policy prohibiting applicant from the actions causing the injury is not evidence that the actions were reasonable; and that the record does not contain substantial medical evidence to support a finding of an industrial injury to applicant’s right ankle and left leg.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be granted for the limited purpose of amending the Findings to find that applicant claims to have sustained injury AOE/COE

¹ It is important to note that various pleadings/documents identify Finish Line Self-Insurance Group, Inc. as the claims administrator and other pleadings/documents identify Post Time Self-Insurance Group, Inc. as the claims administrator. Counsel is reminded that failure to accurately identify the parties may be deemed sanctionable conduct. (*Coldiron v. Compuware Corporation* (2002) 67 Cal.Comp.Cases 289 (Appeals Board en banc); see also Appeals Board Rule 10390 (Cal. Code Regs., tit. 8, § 10390).)

to his right ankle, and left leg; and to defer the issues of injury AOE/COE to applicant's right ankle, and left leg. We received an Answer from applicant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will grant reconsideration and affirm the F&O except that we will amend the F&O to find that applicant sustained injury AOE/COE to his cervical spine, right shoulder, right elbow, right hand, and right wrist, and claims to have sustained injury AOE/COE to his right ankle, and left leg; we will amend the Order to defer the issues of injury AOE/COE to applicant's right ankle, and left leg. (Finding of Fact #1).

BACKGROUND

Applicant claimed injury to his cervical spine, right shoulder, right elbow, right hand, right wrist, right ankle, and left leg while employed by defendant as a Groom [horse groomer] on December 3, 2020.

Applicant was initially seen by orthopedic primary treating physician Khalid B. Ahmed, M.D., on March 25, 2021. (App. Exh 1, Dr. Ahmed, March 25, 2021.) Dr. Ahmed took a history and examined applicant. He diagnosed applicant as having a strain/sprain of his cervical spine, right shoulder, right elbow, right wrist, and right hand. (App. Exh 1, p. 11.) He concluded that:

In the absence of evidence to the contrary, in my medical opinion, the mechanism of injury as described by the patient is consistent with the clinical findings. As such, the patient sustained an industrial injury.
(App. Exh 1, p. 11.)

The parties proceeded to trial on December 15, 2021, and the matter was continued for further testimony. (Minutes of Hearing and Summary of Evidence (MOH/SOE), December 15, 2021.) The WCJ's summary of applicant's testimony at the February 8, 2022 trial included:

He states that, as part of his job, Grooms would assist Trainers in unloading horses. He indicates that other Grooms employed by Hector O Palma would assist with other trainers' horses. He indicated that he had previously assisted other Trainers with unloading of their horses. He states that the supervisors were aware that he had done this.
(MOH/SOE, February 8, 2022, p. 3.)

Defense witness Jose Sanchez Valdez also testified, and the matter was again continued for additional testimony. At the March 29, 2022 trial the issue submitted for decision was injury AOE/COE. (MOH/SOE, March 29, 2022; see also MOH/SOE, December 15, 2021, p. 3.)

DISCUSSION

It is well established that a WCJ's opinions regarding witness credibility are entitled to great weight. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500, 505]; *Sheffield Medical Group v. Workers' Comp. Appeals Bd. (Perez)* (1999) 70 Cal.App.4th 868 [64 Cal.Comp.Cases 358]; *Nash v. Workers' Comp. Appeals Bd.* (1994) 24 Cal.App.4th 1793 [59 Cal.Comp.Cases 324]; *Greenberg v. Workmen's Comp. Appeals Bd.* (1974) 37 Cal.App.3d 792 [39 Cal.Comp.Cases 242].)

In his Report, the WCJ stated:

Applicant's job duties also included assisting his trainer with the unloading of horses from horse trailers. Applicant credibly testified that it was also customary for grooms to help other trainers unload horses. (See Further Minutes of Hearing and Summary of Evidence dated February 8, 2022, page 4, lines 22 - 24). (Report, p. 2.)

The WCJ set forth his decision, with his reasoning thereon. We accept his determination regarding applicant's credibility and we do not disturb his decision that applicant sustained injury AOE/COE.

Also, having reviewed the entire record, we agree with the WCJ's determination that the issues of applicant's injury to his right ankle, and left leg should be deferred pending further development of the record.

Accordingly, we grant reconsideration and affirm the F&O except that we amend the F&O to find that applicant sustained injury AOE/COE to his cervical spine, right shoulder, right elbow, right hand, and right wrist, and claims to have sustained injury AOE/COE to his right ankle, and left leg; we amend the Order to defer the issues of injury AOE/COE to applicant's right ankle, and left leg.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact and Order issued by the WCJ on June 6, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the June 6, 2022 Findings of Fact and Order is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Arturo Aguilar, age 55 on the date of injury, while employed on December 3, 2020, as a Groom, Occupational Group No. 491, at Arcadia, California, by Hector O Palma Racing Stable, Inc., permissibly self-insured and administered by Finish Line Self-Insurance Group, Inc., sustained injury arising out of and in the course of employment to his cervical spine, right shoulder, right elbow, right hand, and right wrist, and claims to have sustained injury arising out of and in the course of employment to his right ankle, and left leg.

* * *

ORDERS

- a) **IT IS ORDERED** that the issues of injury arising out of and in the course of employment to applicant's right ankle, and left leg are deferred.
- b) **IT IS ORDERED** that all other issues are taken off calendar.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 18, 2022

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

ARTURO AGUILAR
GLAUBER, BERENSON, VEGO
MICHAEL SULLIVAN & ASSOCIATES

TLH/pc

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Applicant, Arturo Aguilar, age 55 on the date of injury, while employed on December 3, 2020, as a Groom, Occupational Group No. 491, at Arcadia, California, by Hector O Palma Racing Stable, Inc., claims to have sustained injury arising out of and in the course of employment to his cervical spine, right shoulder, right elbow, right hand, right wrist, right ankle, and left leg. This matter was tried and regularly submitted after which a Findings of Fact issued on June 3, 2022. It was served by mail on June 6, 2022.

Defendant filed a timely verified petition for reconsideration of the June 3, 2022 Findings of Fact. Petitioner contends the WCJ erred by: a) finding that the bunkhouse rule was applicable; b) finding applicant's injury compensable when defendant contends the injury was sustained while applicant was off duty; c) finding that applicant was making a reasonable use of his employer's premises at the time he was injured; and d) finding injury to the applicant's right ankle and left leg.

II
FACTS

At the time of the injury in this case Arturo Aguilar was employed by Hector O Palma Racing Stable, Inc. as a Groom. He was living in an apartment provided to him by his employer. The apartment was located at the Santa Anita Racetrack across from the barn where his employer's horses were kept. Mr. Aguilar's work duties included cleaning the stables, as well as feeding, watering, bathing, brushing, and saddling the horses. He would usually work from 4:00 AM to 10:00 AM, and then again from approximately 2:00 PM to 4:00 PM. However he would also check the horse's water at 6:00 or 7:00 PM and put blankets on them if the weather was cold. It is fairly common that horses are transferred between barns. Applicant's job duties also included assisting his trainer with the unloading of horses from horse trailers. Applicant credibly testified that it was also customary for grooms to help other trainers unload horses. (See Further Minutes of Hearing and Summary of Evidence dated February 8, 2022, page 4, lines 22 - 24).

Sometime between 4:00 PM and 5:00 PM on the date of applicant's injury, a trailer driver asked Mr. Aguilar to help him unload a horse. The driver had been waiting there with the horse for approximately one half hour. The horse did not belong to Hector O Palma Racing Stable, Inc. Instead, it belonged to a neighboring trainer, Sean McCarthy. The trailer was parked between Mr.

McCarthy's barn and Hector O Palma' barn. While unloading the horse Mr. Aguilar was knocked to the ground sustaining injuries.

The matter was tried on the issue of injury AOE/COE with defendant contending applicant's injuries are not compensable because they occurred after applicant's regular work hours and while he was assisting with the unloading of a horse that did not belong to his employer. This judge found that the bunkhouse rule is applicable and that applicant was making a reasonable use of his employer's premises at the time he was injured, Therefore, this judge found that applicant's injuries arose out of and occurred in the course of his employment. Defendant's Petition for Reconsideration followed.

III DISCUSSION

A Bunkhouse Rule Applicable to Injuries Occurring on Employer's Premises

Defendant contends that the bunkhouse rule does not apply to this case because the applicant was" ... not at his apartment/residence at the time of injury; he was at his workplace at the time of injury." (Defendant's Petition for Reconsideration dated June 22, 2022, page 4, line 20). This is not an accurate statement of the law. The bunkhouse rule, as simply stated in *Argonaut Ins. Co. v. Workmen's Comp. App. Bd.*, 247 Cal. App. 2d 669 at page 678, provides that:

"Where an employee is required to live on the employer's premises, an injury suffered by the employee while making a reasonable use of the employer's premises is incurred in the course of employment, although the injury is received during the employee's leisure time."

The application of the bunkhouse rule is not limited to injuries that occur within the employee's living space or sleeping quarters. It applies to injuries occurring *while making a reasonable use of the employer's premises*. In *Wright v. State of California* (2015) 233 Cal. App. 4th 1218 [80 Cal. Comp. Cases 157] the Court of Appeal discussed the application of the bunkhouse rule noting on page 1236 that" ... many cases demonstrate that it is not a requirement that the employee was injured within the confines of the bunkhouse for the rule to apply." Other cases illustrating' this principle include *Truck Ins. Exchange v. Industrial Ace, Com.*, 27 Cal.2d 813 [167 P.2d 705], where an employee was killed in an automobile accident upon a public road after his day's work as a ranch hand had been completed, and *State Comp. Ins, Fund v. Industrial Acc. Com.*, 194 Cal. 28 [227 P, 168], where a hotel maid was injured on a public sidewalk outside her employer's premises as she left those premises on a personal errand on her day off.

At the time of Mr. Aguilar's injury he was employed by Hector O Palma Racing Stable, Inc, at the Santa Anita Racetrack. There is no dispute that applicant lived at the racetrack in quarters provided to him by his employer. Thus, analysis under the bunkhouse rule is appropriate. Compensability of Mr. Aguilar's injury under the bunkhouse rule requires a determination as to whether he was making a reasonable use of his employer's premises at the time of his injury. For the reasons set forth below this judge believes he was.

B
Applicant Not off' Duty
While Making Reasonable Use of Employer's Premises

Petitioner argues that at the time of the injury applicant had finished work for the day and that assisting with the unloading of another trainer's horse from a horse trailer did not benefit defendant Hector O Palma Racing Stable, Inc. First, this argument ignores applicant's credible testimony that he would have fed, watered, and blanketed the horses at 6:00 or 7:00 PM on the date of his injury had he not been injured. (See Further Minutes of Hearing and Summary of Evidence dated February 8, 2022, page 4, lines lines 19- 21). Therefore, he had not finished work for the day. Secondly, as stated by the California Supreme Court in *State Compensation Ins. Fund v. Industrial Acci. Com.* (1924) 194 Cal. 28 at page 35:

" ... when the contract of employment contemplates that the employees shall sleep upon the premises of the employer, the employee, under such circumstances, is considered to be performing services growing out of and incidental to such employment during the time he is on the premises of the employer."

In this case applicant's contract of employment contemplated that he would sleep at his employer's premises. His injury occurred on the employer's premises. Therefore, Mr. Aguilar is considered to have been performing services incidental to such employment with Hector O Palma Racing Stable, Inc. at the time of his injury.

C
Injury Occurring While Applicant Making Reasonable
Use of Employer's Premises

Defendant argues that even if the bunkhouse rule is applicable applicant was not making a reasonable use of the premises. In support of this argument they cite the *Leffler* case in which the employee's death while diving off a third-floor balcony into a swimming pool was not compensable. (See *Leffler v. Workers' Comp. Appeals Bd.* (1981) 124 Cal.App.3d 739.) In the *Leffler* case the deceased employee was a superintendent at a refinery construction project. The court focused on the fact that:

"The conduct in question was not part of a course of ordinary frolicking conduct engaged in by Fluor employees of which Fluor was aware, nor can it be viewed as a usual form of recreational activity. It was an isolated act under extremely unique circumstances, to wit, a "daredevil performance" in a dangerous activity by a person with some skill in the field." (Id. at 743).

There is simply no comparison between the facts in the *Leffler* case and the facts in the present case. In this case, Mr. Aguilar was employed as a groom. His job involved caring for horses. The premises where he worked was the barn area of the Santa Anita Racetrack. This is an area where horses are cared for. Mr. Aguilar was injured in the barn area while caring for a horse, albeit a horse not belonging to his employer. Furthermore, Applicant credibly testified that:

"[O]ther Grooms employed by Hector O Palma would assist with other Trainers horses. He indicated that he had previously assisted other Trainers with unloading of their horses. He states that the supervisors were aware that he had done this He states it was customary for the Grooms to help other Trainers unload horses." (Further Minutes of Hearing and Summary of Evidence dated February 8, 2022, page 3, lines 10-14).

Defendant asserts that the testimony of Mr. Valdez supports their contention that applicant's action in helping another trainer unload a horse from a horse trailer was not reasonable or anticipated. Mr. Valdez testified that " ... it is never okay to assist with another trainer's horses." (Further Minutes of Hearing and Summary of Evidence dated March 29, 2022, page 2, line 23). He even testified that in order to mitigate risks "[Hector O Palma] won't allow their employees to help with other trainer's horses." However, his testimony in this regard is inconsistent with his subsequent testimony in which he admitted that " ... Hector O Palma Racing does not have a policy of prohibiting grooms from lending a helping hand to another trainer's employees." (Id. at page 3, lines 20-21). Based on this inconsistency, applicant's testimony was given greater weight than that of Mr. Valdez. On this basis it was found that Mr. Aguilar's action in assisting with the unloading of another trainer's horse was not beyond reason or could not reasonably have been contemplated by his employer.

D **Injury to Right Ankle and Left Leg**

Petitioner argues that even if this WCJ's finding of injury A OE/COE is upheld there is no substantial medical evidence to support a finding of injury to applicant's right ankle and left leg. The only medical reports in evidence are the March 25, 2021, June 17, 2021, and July 29, 2021, primary treating physician reports by Khalid B Ahmed M.D. These reports are identified and in evidence respectively as Exhibits 1, 2 and 3. In his March 25, 2021 initial comprehensive

report Dr. Ahmed discusses applicant's complaints of pain in his right ankle and left leg under the heading "PRESENT COMPLAINTS". (See Exhibit 1, Report by Khalid B Ahmed M.D. dated March 25, 2021; page 4, paragraphs 1 and 2). In his follow-up report dated July 29, 2021 Dr. Ahmed outlines treatment recommendations for various body parts under the heading "TREATMENT PLAN" and as to the right ankle and thigh states "[p]ending amended application adding right ankle and left thigh." (Exhibit 2, Report by Khalid B Ahmed M.D. dated June 17, 2021, page 6, paragraph 2). In his follow-up report dated July 29, 2021 Dr. Ahmed describes applicant's subjective complaints stating:

"The patient complains of continued pain in the cervical spine with radiating pain down the right arm, right shoulder pain, right elbow pain and right wrist and hand pain. I-le has completed physical therapy. The pain radiates to the *right thigh and left foot*." (Exhibit 3, Report by Khalid B Ahmed M.D. dated July 29, 2021, page 2, paragraph 2). (Italics added).

In this report, Dr. Ahmed again outlines a treatment plan which addresses treatment recommendations to various body parts, and includes the following:

"The patient also complains of pain in the right thigh. He was recommended to follow up with his attorney to include right thigh in the application for adjudication" (Exhibit 3, Report by Khalid B Ahmed M.D. dated July 29, 2021, page 6, paragraph 3).

Dr. Ahmed's reporting clearly includes applicant's complaints with regard to his right thigh and left foot. However, it does not appear that his opinion has been finalized as to causation for these two body parts. Therefore, defendant's Petition for Reconsideration should be granted as to the inclusion of applicant's right thigh and left foot as injured body parts, and the Findings of Fact and Order dated June 3, 2022 should be modified as set forth below.

IV **RECOMMENDATION**

It is respectfully recommended that defendant's Petition for Reconsideration be GRANTED, in part, to amend the Findings of Fact and Order dated June 3, 2022 to exclude applicant's right thigh and left foot as injured body parts in Findings of Fact No. I, and that in all other respects it be DENIED. Accordingly it is recommended that the Findings of Fact and Order be modified to read as follows:

FINDINGS OF FACT

- I. Arturo Aguilar, age 55 on the date of injury, while employed on December 3, 2020, as a Groom, Occupational Group No. 491, at Arcadia,

California, by Hector O Palma Racing Stable, Inc., permissibly self-insured and administered by Post Time Self Insurance, sustained injury arising out of and in the course of employment to his cervical spine, right shoulder, right elbow, right hand, right wrist, *and claims to have sustained injury to his right ankle, and left leg*. At the time of injury, the employer was permissibly self-insured and administered by Post Time Self Insurance.

ORDER

IT IS ORDERED that all other issues are taken off calendar.

Date: 07/07/2022

Randal Hursh

WORKERS' COMPENSATION

ADMINISTRATIVE LAW JUDGE