

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

RAHMATOLAH YAGHOUBI (dec.), *Applicant*

vs.

**CALTRANS, legally uninsured;
administered by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ16236352
Santa Ana District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

I.

Former Labor Code¹ 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, 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.

¹ All further statutory references are to the Labor Code unless otherwise noted.

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 February 7, 2025, and 60 days from the date of transmission is April 8, 2025. This decision is issued by or on April 8, 2025, 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 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 7, 2025, and the case was transmitted to the Appeals Board on February 7, 2025. 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 February 7, 2025.

II.

Section 3600(a) provides for liability for injuries sustained “arising out of and in the course of the employment.” An employer is liable for workers’ compensation benefits “without regard to negligence.” (Lab. Code, § 3600(a).) The course of employment ordinarily refers to the time, place, and circumstances under which the injury occurs. (*Latourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644, 651 [63 Cal.Comp.Cases 253].) Arising out of employment means that it must occur as a reason of a condition or incident of the employment; the employment and the injury must be linked in some causal fashion. (*Id.*) An employee bears the burden of proving the injury arose out of and in the course of the employment (AOE/COE) by a preponderance of the evidence. (*South Coast Framing, Inc. 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.) 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, 353 [67 Cal.Comp.Cases 51].)

Further, “[a]cts of ‘personal convenience’ are within the course of employment if they are ‘reasonably contemplated by the employment [citations].’” (*Price v. Workers’ Comp. Appeals Bd.* (1984) 37 Cal.3d 559, 568 [49 Cal.Comp.Cases 773]; see also *DeMirjian v. Ideal Heating Corp.* (1954) 129 Cal.App.2d 758, 765-767 [“Cessation of work for eating, drinking, warming himself, and similar necessities are necessary incidents of employment“].) “[A]cts as are necessary to the life, comfort and convenience of the servant while at work, though strictly personal to himself, and not acts of service, are incidental to the service, and injury sustained in the performance thereof is deemed to have arisen out of the employment. [citations].” (*Price, supra*, at pp. 567-568.) Thus, even if an employee is engaged in doing something purely personal at the time of injury, the employee may be considered to be performing services incidental to employment within the meaning of section 3600. Here, it is reasonably contemplated that applicant would eat lunch or take a break and therefore the injury the worker sustained would be AOE/COE.

Additionally, we have given the WCJ's credibility determination(s) great weight because the WCJ had the opportunity to observe the demeanor of the witness(es). (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination(s). (*Id.*) Therefore, we will not disturb the WCJ's finding that the injury was AOE/COE.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 8, 2025

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

**ESHRAT YAGHOUBI
GUERRA & CASILLAS
STATE COMPENSATION INSURANCE FUND**

JMR/abs

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

REPORT AND RECOMMENDATION ON DEFENDANT'S PETITION FOR RECONSIDERATION

I INTRODUCTION

1. Date of Injury : May 31, 2021.
2. Identity of Petitioner : Defendant filed the Petition.
Timeliness : The Petition is timely filed.
Verification : The Petition is verified.
3. Date of Findings of Fact : 1/3/2025.
4. Petitioner's contentions:
 - a) The evidence does not justify the findings of fact.
 - b) The findings of fact does not support the Order, Decision or Award.
 - c) By Order, Decision and Award the Appeals Board has acted without or in excess of its power.

II FACTS

Rahmatolah Yaghoubi hereinafter ("Yaghoubi") was attacked on May 31, 2021, by a stranger D. Abbott ("Abbott") on a public sidewalk adjacent to his home encapsulated by a hedge. (Minutes of Hearing Summary of Evidence (MOH/SOE 8/1/2024 at p. 2:10-11). Yaghoubi succumbed to his injuries from this attack at 2:45 PM the same day and cause of death was blunt force traumatic injuries and manual strangulation. (Defense Exhibit F, Death Certificate). Abbott was released on bail on charges of an unrelated attempted murder on May 15, 2021. (Defense Exhibit N. at p. 000165). The Anaheim Police Department ("APD") obtained a surveillance footage and provided the following summary:

The footage captured Rahmatolah Yaghoubi (V- Yaghoubi) walking out of his home (1158 North Catalpa Avenue), and walking to the northeast corner of Catalpa Avenue and Falmouth Avenue. A short time later, David Abbott (S-Abbott) can be seen approaching V- Yaghoubi. Without warning, S-Abbott can be seen punching V-Yaghoubi. While V-Yaghoubi laid on the ground motionless, S-Abbott could be seen repeatedly kicking and stomping V-Yaghoubi's head. The attack on V-Yaghoubi lasted for approximately 7 minutes.

(*Id.* at p. 000234).

On the video, Abbott was heard saying "Get the good lord in your heart!" and Yaghoubi was heard saying "I'm sorry man." (*Id.* at p. 000242). John Trevathan a witness in Abbott's neighborhood described Abbott as a crazy person who screamed and yelled unintelligible words at imaginary people. (*Id.* at p. 000227). Abbott's mother, Lauren Wilson, testified that he had mental health problems, was diagnosed as bi-polar and used illegal drugs. (*Id.* at p. 000300). His

mother described an incident a week prior where Abbott put his “face in front of his dog’s face and said that he could see if the dog had God or demons inside of him.” (*Id.* at p. 000303). Through the course of the investigation, the police determined at least three additional victims assaulted by Abbott in May 2021. (*Id.* at p. 000342).

Police interviewed Abbott on June 7, 2021, and he told the police that Yaghoubi “was listening to bird’s chirp and then . . . I saw the look in his eyes.” (*Id.* at p. 000249). He believed he had a spiritual awakening that people chasing birds were looking for him and that the look in Yaghoubi’s eyes told him he was a bad person. (*Id.*). Abbott also admitted to slapping another man before he attacked Yaghoubi. (*Id.*).

The case is denied AOE/COE. (Defense Exhibit G, Denial 7/11/2022). The denial reason states, “Monday May 31, 2021, was a paid holiday and we have verified Mr. Yaghoubi was not working on this date. As such, the injury which resulted in death did not arise or occur within the course of employment.” (*Id.*).

California Transportation Foundation (“CTF”) a separate and distinct non-profit organization from the employer herein, California Transportation (“CalTrans”), provides emergency relief funds to help CalTrans employees and their families in need of financial assistance due to death, injury and natural disaster. (Applicant Exhibit 3 at p.14). Two of the funds CTF provides are the (Fallen Workers Grant) which provides up to \$2,500 to defray immediate expenses as a result of employees who die accidentally in the line of duty. (*Id.*). The other program is (The Temporary Injured and Fallen Worker Matching Fund) applicable to employees who are injured or die while on the job. (*Id.*). CTF administers, collects, and matches contributions up to \$7,500 if the death or injury occurred on the job. (*Id.*).

A huge point of contention at trial was that the employer, CalTrans, communicated to CTF that Yaghoubi was working on the day he died resulting in payment of benefits but later changed its position when a claim form was filed. On June 3, 2021, Marnie Primmer, Interim Executive Director of CTF at the time, emailed Chris Flynn,¹ giving him information about their program. (Defense Exhibit M at pp. 824-825). Related to these programs, the additional emails below transpired:

June 3, 2021, 12:10 PM Chris Flynn email to Reza Aurasteh² and Ryan Chamberlain:

“Reza could you convey this information to the family asap? One detail I notice there is that the matching funds we discussed only apply if the incident occurs while at work, which clearly David was not”

(*Id.* page 000824).

¹ Chris Flynn is the (CalTrans Deputy District Director and Division Chief of Environmental Analysis District 12, Orange County). Also copied in this email were Ryan Chamberlain (CalTrans District Director).

June 4, 2021, 10:59AM email from Reza Aurasteh² to Chris Flynn:

“Hi Chris:

I read the qualification.

It looks they [sic] apply

1. – in the line of duty
2. If the injury or death occurs to a transportation industry employee while on the job”

(*Id.*).

June 8, 2021, 8:52 AM email from Reza Aurasteh to John Yaghoubi³

Dear Mr. Yaghoubi:

The attachment explains some financial assistance that may apply ...

(*Id.* page 000378).

July 8 2021 9:57 PM email from Dianne Steinhauser⁴ to Marnie Primmer:

Marnie [sic]

I have no issue with granting the \$2,500 grant as, I believe you are saying, he went out for a walk/fresh air during regular work hours, such as a break. Breaks are considered part of regular work hours...”

(*Id.* at p. 000819).

July 19, 2021 at 2:19PM Chris Flynn wrote to Marnie Primmer:

“Marine, I don’t know if Ryan Chamberlain responded yet, but I can attest that yes, we are classifying this as a job incident as I was informed by his supervisor that David was on a break from work at the time of this incident”

(*Id.* at p. 000828).

Jahangir Yaghoubi (Yaghoubi’s brother) received a check for \$2,500 dated August 3, 2021, for the Fallen Workers Grant, and Violette Faminfard (Yaghoubi’s sister) received a check or \$1,250 dated October 1, 2021 for donations and CTF Injured and Fallen Worker Match. (Defense Exhibit I). The Application in this matter was filed on May 31, 2022. (EAMS Doc. ID# 41679007).

² Reza Aurasteh was Yaghoubi’s immediate supervisor.

³ In addition, copied in this email was Chris Flynn and attached was the “Injured & Fallen Emergency Relief Policy Request Form [90]”

⁴ Dianne Steinhauser’s role is unknown.

The case was denied on July 11, 2022. (Defense Exhibit G, SCIF Denial). Subsequent to the denial, the following email was sent:

July 29, 2022 9:43AM email from Stephanie Tucker to Chris Flynn:

“Good Morning,

We received an inquiry from State Fund regarding the email attached that was sent to both of you on July 19, 2021. In the email Marie Primmer, CTF Executive Director, states she received confirmation from Caltrans that Mr. Yaghoubi’s passing was work related. Kindly advise if anyone in District 12 sent correspondence and/or confirmation to CTF related to Mr. Rahmatolah Yaghoubi’s passing. This is a time sensitive matter and your immediate response is appreciated.”

(*Id.* at p. 000033).

The matter proceeded to evidentiary hearing before the undersigned on August 1, 2024, September 24, 2024, and November 13, 2024, on the issue of AOE/COE only.

Yaghoubi’s brother Dariush Yaghoubi (“Dariush”) testified that he was at a gathering on May 31, 2021, for Memorial Day and Yaghoubi declined to attend because he had a project. (MOH/SOE 8/1/24 at p. 6:8-10). Yaghoubi was a civil engineer, (*Id.* at p.6:2-3) and was scheduled to retire in three months. (*Id.* at p. 7:24-25). Yaghoubi kept saying he had so much work to do and so many projects to complete before retirement. (*Id.*). Yaghoubi visited his mother’s home the morning he was murdered but left indicating he had to finish paperwork and a project. (*Id.* at p.8:6-7). The day after Yaghoubi was murdered, Dariush returned to Yaghoubi’s apartment. (*Id.* at p. 7:10-11). Dariush testified that Yaghoubi was very organized and wrote notes about everything he did. (*Id.* at p. 7:13-15). When he returned to the house, he found a notepad filled with dates on every single page and folded with an entry for May 30 and May 31. (*Id.* at p. 7:12-18). The entry on May 31, 2021, reads as follows: “CalTrans Equity Statement. Again talks about underserved communities specially [sic] colored people so we have to do more to create a [sic] equity in our black & brown neighborhood. So I say Amen.” (Applicant Exhibit 7). Dariush testified that Yaghoubi had a practice of working all weekends and every opportunity he had. (*Id.* at p. 8:2-4).

Yaghoubi’s brother Jahangir Yaghoubi (“John”) testified that he saw Yaghoubi the morning he was killed at their mother’s house between 8:30 and 9:00 AM. (*Id.* at p. 10:13-14). Yaghoubi visited his mother two to three times a day. (*Id.* at p. 10:14-15). John asked Yaghoubi to accompany them to visit their father’s grave but he declined and said he had to go by his wife’s grave and then work on a project. (*Id.* at p.10:14-17). He testified that Yaghoubi worked many extended hours to complete his projects. (*Id.* at p. 10:21-22). He went to Yaghoubi’s house the day he was murdered and he saw a teacup about 90% empty and a half-eaten apple on the table. (*Id.* at p. 11:2-4). The following day when John returned to Yaghoubi’s house, he touched his keyboard and the computer was still on and had a Caltrans project on the screen. (*Id.* at p. 11:14-18). Yaghoubi talked about a major project he was working on for Caltrans that was a water project in Laguna and as an engineer himself, John recognized the screen was part of the section for the water system in Laguna. (*Id.* at p. 12:1-4). John testified that Yaghoubi had three monitors at work but at home used his personal computer with a 14-inch monitor and a tiny printer. (*Id.* at p. 11:20-21). John helped Yaghoubi set up his home office and computer and knew that Yaghoubi always turned

off his computer before ending work. (*Id.* at p. 11:17-24). On the day Yaghoubi was murdered, his co-worker Mitch visited the Yaghoubi's home and left with Yaghoubi's work laptop. (*Id.* at p. 12:3-4). John testified that Yaghoubi predominantly worked on his personal laptop and had used it for many years. (*Id.* at p. 16:1-8). Yaghoubi had informed John that use of a personal laptop was authorized by CalTrans because they had not issued laptops for the pandemic. (*Id.*) John also knows that Yaghoubi's CalTrans emails were going to his personal computer. (*Id.*).

Yaghoubi's immediate supervisor Fariborz Aurasteh ("Reza") also testified at trial. He testified that Yaghoubi worked all the time beyond expectations. (MOH/SOE 9/24/24 at p. 6:2-6). According to Reza, many times Yaghoubi talked about his work after hours and weekends. (*Id.* at p. 6:5-6). Reza, himself, admitted to sometimes *working on holidays but not as much as Yaghoubi*. (*Id.* at p. 6:7-8). He initially believed Yaghoubi was working the day he was killed because a coworker, Mitch, had called Reza asking if he had heard from Yaghoubi, (*Id.* at p.6:8-10) and he knew that Yaghoubi was helping Mitch on a large complicated project, possibly the 405, but was not sure. (*Id.* at 6:12-13). Yaghoubi was a rank and file employee with a set salary and filled a daily timesheet. (*Id.* at p. 8:10-11). CalTrans had a policy that overtime had to be approved but he did not get a request from Yaghoubi to work overtime the day he was killed. (*Id.* at p. 8:6-8). During the pandemic, everyone worked *outside their normal schedule*. (*Id.* at p. 8:19-20). He was sure Yaghoubi worked overtime hours he did not track in his timesheet *many times*. (*Id.* at pp. 8:25; 9:1-2). Any prior statements he made about Yaghoubi working the day of his attack was based on what he knew about Yaghoubi's *work habit and practice*. (*Id.* at p. 7:14-16).

Mitch Khalilifar ("Mitch"), Yaghoubi's coworker and one of his best friends testified at trial. (MOH/SOE 11/13/24 at p. 2:21-22). Yaghoubi had been helping Mitch with projects. (*Id.* at p. 3:11). He does not know why Yaghoubi called him the morning of the day he was murdered, but he did not think it was work related. (*Id.* at p. 4:11-12). However, ninety percent of the time, their talks were work related. (*Id.* at p. 3: 3-14). He does not know if Yaghoubi was working the day he was murdered, (*Id.* at p. 3:17-18) but Yaghoubi was a workaholic, (*Id.* at p. 3:25), and usually worked off the clock. (*Id.* at p. 3:1-3).

Arman Behtash ("Arman") worked and sat next to Yaghoubi for twenty years and was one of his best friends. (*Id.* at p. 5:19-21). He considered Yaghoubi a workaholic because after his wife died, he was mostly alone at home. (*Id.* at p. 6:15-16). He would call Yaghoubi on the weekends and he was working on a project. (*Id.* at p. 6:17-18). He also knew Yaghoubi worked on *holidays* and recalls speaking to Yaghoubi a Friday after thanksgiving and asking him why he was working. (*Id.* at p. 6:20-21).

Jason MacDonald, Deputy District Director of Administration, testified that overtime is for emergency or urgent work and has to be signed off before payroll. (*Id.* at pp.6-7; 9:18-19). During the pandemic, it was common for employees to work outside regular hours to deal with the challenges of home/work life issues such as child care or senior care. (*Id.* at p. 10:4-8). Yaghoubi signed a staff expectation memorandum acknowledging his normal hours were 7- 3:30PM with lunch from 11:30-12 PM. (*Id.* at p. 10:8-9). However, employees could still do things other than work during those hours but would pay back the hours. (*Id.* at 14-15). Yaghoubi's lunch hour was paid. (*Id.* at p.10:14-25).

Chris Flynn, Deputy District Director and Division Chief of Environmental Analysis District 12, testified that if an employee were working outside regular hours it did not mean they were working overtime. (*Id.* at p. 12:14-17). When questioned why he changed his position from Yaghoubi working on July 19, 2021 to not working in 2022 and what conversations were held, he testified that he had no recollection. (*Id.* at p. 14:15-17).

III DISCUSSION:

Whether an injury arises out of and in the course of employment is a two-prong analysis. First, the injury must arise out of the employment, that is, occur by reason of a condition or incident of employment. *Employers Mutual Liab. Ins. Co. v. Industrial Acc. Com. (Gideon)* (1953) 41 Cal.2d 676, 679. Second, the injury must occur ‘in the course of employment’ which ordinarily refers to the time, place, and circumstances under which the injury occurs. *LaTourette v. Workers’ Comp. Appeals Bd.* (1998) 17 Cal.4th 644, 651. The undersigned found that Yaghoubi met both prongs of the test. In its Petition for Reconsideration Defendant argues that Yaghoubi’s injury did not arise out of employment because the nature of the attack was personal, the court failed to establish a connection between the attack and CalTrans, and the court erred in relying on a non-binding panel decision and its application of the personal comfort doctrine.⁵ Defendant further notes that the undersigned relied on certain pieces of evidence over others and failed to address the OC Register Article and “glaring inconsistency” wherein John admitted to making all the statements to the reporter except the statement about a stray cat.

An employee is “in the ‘course of employment’ when he does those reasonable things which his contract with his employment expressly or *impliedly* permits him to do.” (*LaTourette supra* at 651.) Here, even if not expressly asked to work on Memorial Day, an abundance of evidence from Yaghoubi’s family, peers and his supervisor at work confirmed that Yaghoubi had a pattern of working evenings, weekends, and holidays and off the clock and this was permitted. Yaghoubi worked with nominal oversight related to his schedule and projects. This was evident when Reza testified that he knew Yaghoubi was helping Mitch with a complicated project but was not entirely sure what project they were working on. Defendant’s reliance on the staff expectation memo for support of the hours Yaghoubi was permitted to work was rebutted at trial. The employer’s witnesses established that these schedules were not adhered to and people were allowed to work as they deemed fit to accommodate their personal schedules provided the time was paid back. Yaghoubi was three months shy of retirement from service with CalTrans. Yaghoubi’s brothers testified that he always talked about how he had so much to do before retirement. When a person does those reasonable things, which his contract with his employment impliedly permit him to do, as here, he works in the course of employment. Defendant’s suggestion that Yaghoubi was working on any projects beyond work projects is a red herring. It was clear that all the witnesses at trial were referring to Yaghoubi’s work projects.

The OC Register article was published after an interview with John the day after Yaghoubi was murdered. This article was admitted and given its due weight. (Defense Exhibit D). The article

⁵ The personal comfort doctrine was applied to the analysis of whether Yaghoubi was in the course of employment not as to whether the injury arose out of employment

had multiple statements about Yaghoubi, but particularly Defendant points to a statement allegedly given by John to a reporter that Yaghoubi was chasing a stray cat when he was attacked. (*Id.*). This statement was not corroborated by John, who this court found credible. At trial, John remembered sharing many statements in the article but denied making the statement about a stray cat. What's more, this allegation is simply not corroborated by the evidentiary record. APD interviewed at least seven neighbors who witnessed the attack on Yaghoubi and not one of them mentioned a stray cat. APD summary of the surveillance video of Yaghoubi's attack from the moment he walked out of his house to when he was attacked also fails to mention anything about a stray cat.

The fact that Yaghoubi went to his mother's house the morning of his attack, possibly to his wife's gave site,⁶ or made several personal phone calls is also not dispositive of whether he was working, as Yaghoubi worked a flexible schedule and was known to visit his mother 2- 3 times daily. The undersigned relied on an accumulation of circumstantial evidence to find that Yaghoubi was working on May 31, 2021 to wit: 1) Yaghoubi declined attending a Memorial Day gathering to work on a project; 2) Yaghoubi called his co-worker Mitch the morning of Memorial Day⁷; 3) Yaghoubi had a notepad with an entry on the day he was attacked regarding CalTran's Diversity statement; 4) Yaghoubi's personal computer⁸ was on and on the screen was a CalTrans Laguna Water Project; 5) Yaghoubi's supervisor initially believed he was working on Memorial Day based on his custom and practice; 6) Yaghoubi's employer offered a flexible work schedule; 7) CalTrans' inability to explain what conversations or evidence was presented to change its position. In light of all this circumstantial evidence and the mandate pursuant to Labor Code §3202.2 to construe the provisions of the Workers' Compensation Act liberally for the purpose of extending benefits to injured workers, the undersigned found Yaghoubi was in the course of his employment. Further, any reasonable doubts as to whether an injury is compensable are to be resolved in favor of the employee. *See e.g., Truck Ins. Exch. v. Industrial Acc. Com.*, 27 Cal.2d 813, 816; *Lumbermen's Mut. Cas. Co. v. Industrial Acc. Com.*, 29 Cal.2d 492,496; *Industrial Indem. Exch. v. Industrial Acc. Com.*, 26 Cal.2d 130,137.

This court found that the personal comfort doctrine did not take Applicant out of the course of employment. Defendant argues that the personal comfort doctrine does not apply on a holiday but cites no support for this proposition. There is no law exempting doctrines such as personal comfort based on the day of the week or calendar event. Defendant cites to *County of L.A.* for support; however, that case is factually distinct. *County of L.A. v. Workers' Comp. Appeals Bd.*, 145 Cal. App. 3d 418. In *County of L.A.*, the applicant was away from the employer premises at a restaurant on an *unpaid* lunch. Had Yaghoubi been on the sidewalk at the employer's worksite on Memorial Day, Defendant may have taken a different position. However, when an employee has a regular pattern of work at home, that renders the employee's residence a 'place of employment' as much as any traditional workplace maintained by the employer. Here, based on the circumstantial evidence, coupled with the time of the day, and the presence of the apple and cup of tea, the undersigned found it reasonable to infer that Yaghoubi was likely on a paid break/lunch and as Defendant also pointed out, he was paid for the entire day workday of May 31, 2021.

⁶ There is no evidence definitively placing Yaghoubi at the cemetery.

⁷ Ninety percent of the time their talks were work related and he was helping Mitch on a complicated project.

⁸ Yaghoubi predominately worked on his personal laptop and this fact was not rebutted by Defendant.

As to whether the injury arose out of employment, the *Clemmens* case discusses the types of risk as follows:

Larson classifies the risks in three categories, industrial, personal, and neutral, and suggests that the source of injury may be classified as neutral either when the nature of the harm is *not related to the employment or to the employee personally* or when the nature of the harm may be simply unknown.

Clemmens v. Workers' Comp. Appeals Bd., 261 Cal. App. 2d 1.

Industrial and neutral risks are compensable but personal risks are not. Defendant argues that Yaghoubi's risk was personal and not neutral because the cause of harm is *known*. Put differently, Defendant argues that a neutral risk must be *unknown* and that this court failed to establish any connection between CalTrans and the injury. This argument does not comport with many cases finding a neutral risk even when the cause of harm was known⁹. See, e.g., *Clay Co. v. Workers' Comp. Appeals Bd. (Robledo)* (1995) 60 Cal. Comp. Cases 425 (injured worker shot in employer parking lot by unknown assailant); *LaCrosse, LTD v. Workers' Comp. Appeals Bd. (Silber)* (1982) 47 Cal. Comp. Cases 1151 (writ denied) (employees shot and killed by unknown assailant in employer parking lot). For other cases where the cause of the harm is known but the injury was found neutral see *Pacific Indem. Co. V. Industrial Acc. Comm.*, 86 Cal.App.2d 726 (explosion); *Madin v. Industrial Acc. Comm.*, 46 Cal.2d 90 (bulldozer); *Truck Insurance Exchange v. Industrial Acc. Comm.*, 147 Cal.App.2d 460 (stray bullet). The Court of Appeals in *Vasquez de Vargas* discussed in-depth when third-party assault cases arise out of employment. The court summarized the law regarding third-party assault occurring during the course of employment as follows:

Generally, an injury which grows out of a personal grievance between the injured employee and a third party does not arise out of the employment if the assault occurred merely by chance during working hours at the place of employment, or if the employer's premises do not place the injured employee in a peculiarly dangerous position. . . Thus, when a third party intentionally injures the employee and there is some personal motivation or grievance, there has to be some work connection to establish compensability. . . . However, if the assault is not personally motivated then the injury is compensable. This would comport with the general rule that an injury may *still arise out of employment even if the cause of injury is unconnected with the employment* in the sense that the employer neither anticipated nor had control over the cause of the [sic] injury.

Vasquez de Vargas, 133 Cal.App.3d 643, 653–655 (emphasis added).

The Court of Appeals in *Vasquez de Vargas* went on to say that if the third party's assault causing the injury occurs in the course of employment and is committed for *unknown motives or no motive at all*, i.e. for nonpersonal motives, the injury is compensable. *Id.* at 655 (emphasis added).

⁹ The standard is the 'cause of harm' not the perpetrator.

No one knows why Abbott attacked Yaghoubi. His motive is unknown and/or arguably, he had no motive at all. Abbott had attacked several other people the same month including on the same day. Witnesses and family member who spoke to APD suggest that Abbott may have been mentally unstable and there was suggestion of substance abuse. This Court cannot go as far as to conclude that Abbott was mentally incompetent without supporting medical support. During off the record discussions, it was clear that Abbott was charged in a criminal court but the outcome or evidence of the case is unknown to this court. Defendant relies predominantly on the case of *Western* and *Rogers* to support that Yaghoubi's attack was unconnected to CalTrans and hence not compensable. *Rogers v. Workers' Comp. Appeals Bd.*, 172 Cal. App. 3d 1195; *Western Airlines v. Workers' Comp. Appeals Bd.*, 155 Cal. App. 3d 366. In *Rogers*, the applicant left her employment and drove three to four blocks away to cash a paycheck. *Rogers supra* at 1196. The applicant in *Rogers* testified that she believed her attacker followed her from the bank. *Id.* The Court of Appeals affirmed the Board that the injury was nonindustrial since the assailant had formed the intent to rob the applicant at the bank making the place of employment merely a stage. *Id.* at 1198. See also *Super Mercado v. Workers' Comp. Appeals Bd.*, 71 Cal. Comp. Cases 103, 105 distinguishing *Rogers* (finding that the robbery was occasioned by applicant's personal business and the employment only provided a stage for the attack to occur), see also *Ibanez v. Golden Den Corp.*, 2013 Cal. Wrk. Comp. P.D. Lexis 377 also distinguishing *Rogers* (unlike the present case, the assailant developed a personal motive to assault the applicant while the applicant was not in the course of employment).

Western Airlines involved a flight attendant who was paid a salary during a twenty-six hour layover. See *Western Airlines supra* at 368. She was approached by a man she never met and agreed to meet him for a bike ride. *Id.* She went to his apartment, changed clothes, and accompanied him for a bike ride. *Id.* Upon returning from the date to his apartment, she was raped. *Id.* The Applicant in *Western Airlines* was a commercial traveler whose conduct was so unconnected to employment and took her outside the course of employment. Alternatively, the *Western Airline* case of the First Appellate District is an aberration and stands in opposition to the Fifth Appellate District in *Vasquez de Vargas*.

Here, Yaghoubi was at his work location. The preponderance of the evidence supports that he was working on May 31, 2021, and was paid that day. Yaghoubi stepping outside briefly did not take him so far beyond the course of employment as in *Western Airlines* or *Rogers*.

Defendant's raises the policy implications of this case. The reality of work from home arrangements undoubtedly opens up the employer's liability to injuries at home. Yet it does not appear that there is an abundance of cases on this issue and employers are not without benefit or remedy. Work from home arrangements provide employers with significant costs savings in overhead and office space, access to global talent, enhanced retention, higher employee wellness and lower absences amongst a few. Cases are very factually sensitive. A finding that Yaghoubi was working does not stand for the proposition and any injury occurring at home at any time is industrial. Instead, the finding was made based on the abundance of evidence presented at trial by many witnesses.

IV.

RECOMMENDATION

For the reasons stated above, it is respectfully requested that the decision not be disturbed, and Defendant's Petition for Reconsideration be denied.

Notice is hereby given that this matter was transmitted to the Reconsideration Unit on the below date.

DATE: 2/7/2025

Josephine Broussard
WORKERS' COMPENSATION JUDGE