

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

3  
4 **KATIA HADDAD,**

5 *Applicant,*

6 **vs.**

7 **BATH & BODY WORKS; GALLAGHER**  
8 **BASSETT on behalf of SAFETY NATIONAL,**

9 *Defendants.*

**Case No. ADJ8266153**  
**(Santa Ana District Office)**

**ORDER DENYING**  
**PETITION FOR**  
**RECONSIDERATION**

10  
11 We have considered the allegations of the Petition for Reconsideration and the contents of the  
12 report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our  
13 review of the record, and for the reasons stated in said report which we adopt and incorporate, we will  
14 deny reconsideration.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///


1 For the foregoing reasons,

2 **IT IS ORDERED** that said Petition for Reconsideration be, and it hereby is, **DENIED**.

3  
4 **WORKERS' COMPENSATION APPEALS BOARD**

5  
6   
7 **KATHERINE ZALEWSKI**

8 I CONCUR,

9  
10   
11 **FRANK M. BRASS**

12  
13   
14 **MARGUERITE SWEENEY**



15 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

16 **MAY 30 2014**

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

19 **KATIA HADDAD**  
20 **WENDEROFF SOLOMON, LLP**  
21 **MEHR & ASSOCIATES**

22 **ebc**

23  
24  
25  
26  
27 **HADDAD, Katia**

**STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board**

**CASE NUMBER: ADJ8266153**

**KATIA HADDAD**

**-vs.-**

**BATH AND BODY WORKS;  
GALLAGHER BASSETT  
RANCHO CUCAMONGA;**

**WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE: Donna David**

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION**

**I  
INTRODUCTION**

Defendant, Bath and Body Works, by and through their attorneys of record Wenderoff Solomon has filed a timely petition for reconsideration from the portion of a decision, dated March 18, 2014, which found the going and coming rule would not apply to bar applicant's right to workers compensation benefits. It was found Applicant is entitled to a reasonable margin of time and space necessary, to reach or leave employment. During her walk through the mall, she had not reached her regular commute when the slip and fall injury occurred.

**II  
FACTS**

Applicant was employed as the manager of the Bath and Body Works located within the Northridge Mall. The only means of ingress and egress from the store premises are through the mall. February 18, 2012 applicant with two other employees had closed the store and left the Bath and Body Works premises at 10:30 P.M. After leaving the store, but still within the confines of the mall Ms. Haddad slipped and fell as the three were walking towards the parking structure.

Petitioner contends the going and coming rule would bar applicant's entitlement to benefits since applicant had left the premises of her employer for the day, her employment had ended. Petitioner asserts the walk through the mall is part of applicant regular commute.

Applicant contends she is entitled to a reasonable margin of time and space necessary to pass to and from the actual work place where her duties are performed.

### **III DISCUSSION**

#### **Going and Coming**

The general rule, if an injury occurs during a commute is not compensable; the rule however is subject to exceptions. The theory behind the rule is simple, the employment relation is suspended during the regular commute.

Applicant contends she is entitled to a reasonable margin of time and space necessary to be used in passing to and from the employer's premises.

Petitioner contends that once applicant leaves the actual location of her employer, her commute begins, therefore the going and coming rules would bar benefits as there are no exceptions that apply to the facts in Ms. Haddad case.

This court disagrees.

In California Casualty Indemnity Exchange v. IAC (Cooper) (1943) 21 Cal. 2d 751, it was found that a necessary part of the applicant's employment required that she cross the grounds after leaving the public street. It was found that an employee leaving the premises of her employer in the usual and customary way after her work is ended is within the course of her employment within the meaning of the workmen's compensation law. Walking to and from the street and a building where one is employed is a necessary incident of the employment and an injury sustained in so doing is compensable.

Injuries will be compensable even though the property is not owned or maintained by the employer. The California Supreme Court has stated that "an employee ... comes under the protection of the Workers' Compensation Act when he enters the employer's premises or upon means provided for access thereto, though the premises and such means of access are not wholly under the employer's control or management".

In Freire v. Matson Navigation Co. (1941) 6 CCC 302, it was found that an injury on a public bulkhead was compensable when it was the only practical means of access to the employer's premises. The bulkhead was a strip of concrete that the employee was required to walk the plank; therefore the Court reasoned that the employer's premises should be considered extended to the bulkhead.

Petitioner's reliance on the holding of General Insurance v. WCAB (Chairez) 41 CCC 162 (1976) is misplaced. In this case, the employer did not furnish employee parking, the employees parked on public streets. All employees had keys to the premises with the first person to arrive customarily making coffee using supplies provided by the employer.

Benefits had been awarded to the widow of an employee who was struck and killed by a passing motorist as he was getting out of his car in front of the employer's premises on a public street. The decedent's work day commenced at 8 a.m. and he customarily departed from his residence at 7:30 a.m. On the morning of his death, however, he left home at 6:15 a.m., he advised his wife he intended to purchase gas and to stop for coffee at the business. The accident occurred at approximately 7:15 a.m.

The Supreme Court annulled the Award of benefits by the WCAB finding the going and coming rule applied. The facts did not support any of the exceptions. It was found applicant was not subject to a special risk nor was he on a special mission. The Court held that being struck by a passing motorist was a type of risk the public is subject to daily and that nothing in the facts indicated that the deceased was exposed to a greater risk from motorists than was anyone else on the street that morning. Preparing coffee was, at most, part of the routine duties of the first arriving employee, and that the mere fact that the decedent chose to go to work early, without request, for the purpose of preparing coffee did not turn the ordinary commute into a special mission warranting exception from the going and coming rule.

Although applicant was injured in an area that is not owned or controlled by her employer, the mall is the only practical means of access to the employer's premises. Applicant was required to use the mall as it was the only practical means of access to the employer's premises.

Ms. Haddad was within the reasonable margin of time and space necessary to pass to and from the location where the actual work is completed.

The only means of ingress and egress by employees of Bath and Body Works was by using the mall. Applicant's employment relationship had not been suspended during her walk through the mall. Applicant is entitled to a reasonable margin of time and space necessary, to reach or leave employment. During her walk through the mall, she had not reached her regular commute.

The going and coming rule does not bar applicant's right to workers compensation benefits.

#### **IV RECOMMENDATION**

It is respectfully recommended the petition for Reconsideration be denied for the reasons stated above.

Date: April 25, 2014



---

**DONNA DAVID**

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE  
SANTA ANA DISTRICT OFFICE

DD:df