



AMERICAN HOME ASSURANCE V. WCAB (WUERTZ). COURT OF APPEAL, FIFTH APPELLATE DISTRICT (2009) 37 CWCR 221, certified for non-publication. *Provided by S. Isaac Escobedo, Esq. of the Santa Rosa Office*

The Court of Appeal affirmed a Board decision that, in turn, affirmed a WCJ's finding of compensability for injuries that occurred while the applicant was engaged in a "special mission." Applicant, a machine operator, usually commuted 50 miles each way to perform his usual duties. On the date of injury, he was not scheduled to work but was instructed to attend a "stand-down meeting". Such meetings only occurred several times a year and required that all machines be shut down during the duration of the meeting. When the applicant traveled to the meeting, he did not bring his usual equipment and was not, otherwise, scheduled to work. Applicant sustained serious injuries during an accident that occurred on his way to the meeting.

Defendant insurance company denied coverage on the grounds that compensability was barred by the going and coming rule, which precludes recovery for injuries sustained in a local commute to and from a fixed place of business at fixed hours. However, the WCJ held that the injuries were compensable by concluding that the applicant was on a "special mission" to attend the meeting on his day off. The Court of Appeal affirmed the Board decision and stated that for the "special mission" exception to apply, three factors must be met: 1) the activity must be extraordinary in relation to routine duties; 2) the activity must be within the course of employment; and 3) the activity must have been undertaken at the express or implied request of the employer, and for the employer's benefit. In short, there must exist some deviation from the location, nature, or hour of the work that makes the commute a special mission.

While this is a non-published case and therefore not citable, it gives a glimpse as to how the Court of Appeal would rule on this issue. It also provides a guideline for arguments that can be made without citing the case in particular.