

## 82 Cal. Comp. Cases 1019; 2017 Cal. Wrk. Comp. LEXIS 83

Court of Appeal, Second Appellate District, Division Eight

August 18, 2017 Writ of Review Denied

Civil No. B283633

### Reporter

82 Cal. Comp. Cases 1019 \*; 2017 Cal. Wrk. Comp. LEXIS 83 \*\*

## **Illinois Midwest Insurance Agency, LLC on behalf of Star Insurance Company, Petitioner v. Workers' Compensation Appeals Board, Danielle Casarotti, Respondents**

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### Prior History:

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W.C.A.B. No. ADJ9341102—WCJ Clint Feddersen (VNO); WCAB Panel: Commissioners Razo, Brass, Zalewski

**Disposition:** Petition for writ of review denied

## **Headnotes**

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### CALIFORNIA COMPENSATION CASES HEADNOTES

**Injury AOE/COE—Intoxication—Seizures—Court of Appeal denied defendant’s Petition for Writ of Review challenging WCAB’s findings that applicant, while working as bartender on 1/28/2012, suffered compensable injury to her brain, neck, back, head, psyche, sleep, and eyes after falling off bar stool due to seizure caused by alcohol withdrawal, and held that applicant’s workers’ compensation claim was not barred by intoxication defense in [Labor Code § 3600\(a\)\(4\)](#), as asserted by defendant, when evidence at trial, including opinion of panel qualified medical evaluator Mark Pulera, M.D., established that applicant had no alcohol in her blood and was not intoxicated at time she fell, and that seizure leading to fall was due to *absence* of alcohol/alcohol withdrawal rather than alcohol intoxication, and WCAB rejected defendant’s argument that applicant’s history of alcoholism as it related to her injury was sufficient to satisfy elements of [Labor Code § 3600\(a\)\(4\)](#), even though applicant was not drinking at time injury occurred, and applied holding in [\*1020] *Employers Mut. Liability Ins. Co. v. I.A.C. (Gideon) (1953) 41 Cal. 2d 676, 263 P.2d 4, 18 Cal. Comp. Cases 286*, in which Supreme Court held that injuries suffered by employee when he fell at work after having nonindustrial, idiopathic seizure were compensable, to conclude that applicant’s injuries in present case arose out of her employment and were compensable even though they resulted from nonindustrial alcohol withdrawal seizure.**

[See generally Hanna, Cal. Law of Emp. Inj. and Workers’ Comp. 2d [§§ 4.20, 4.92](#); Rassp & Herlick, California Workers’ Compensation Law, Ch. 10, §§ 10.03[1], 10.06[2].]

### CALIFORNIA COMPENSATION CASES SUMMARY

Applicant sustained industrial brain and orthopedic injuries on 1/28/2012 while working as a bartender for Defendant Cisco’s Mexican Restaurant. The injury occurred when Applicant suffered a seizure while sitting on a barstool counting money, causing Applicant to suddenly fall from the barstool and strike her head on the floor. Defendant initially accepted Applicant’s workers’ compensation claim, but subsequently disputed liability pursuant to the intoxication defense in [Labor Code § 3600\(a\)\(4\)](#), based on the opinion of the PQME in neurology, Mark Pulera, M.D., indicating that the cause of Applicant’s fall and injury was an alcohol withdrawal seizure.

The matter proceeded to a trial on the issues of injury AOE/COE and whether Applicant's claim was barred under [Labor Code § 3600\(a\)\(4\)](#), which precludes recovery for injuries caused by alcohol intoxication. The testimony and medical evidence presented at trial showed that Applicant had a history of childhood seizures unrelated to alcohol, that Applicant also had a history of alcohol abuse but had not been drinking and was not intoxicated at the time of her injury, and that Applicant's seizure was caused by alcohol withdrawal. Surveillance video introduced at trial showing the suddenness of Applicant's fall confirmed that Applicant did not fall due to lack of coordination from intoxication, but rather from a seizure-like event.

Defendant argued that Applicant's prior use of alcohol left her prone to suffer seizures such as the one that caused her injury, and that her history of alcoholism as it related to the injury was sufficient to satisfy the elements of [Labor Code § 3600\(a\)\(4\)](#), even though Applicant was not actually intoxicated at the time the injury occurred. Applicant, however, asserted that the interpretation of [Labor Code § 3600\(a\)\(4\)](#) advocated by Defendant was broader than the legislature intended, and that Defendant was required to prove that Applicant was actually intoxicated at the time of her injury and that intoxication was the substantial cause of the injury to bar Applicant's recovery under [Labor Code § 3600\(a\)\(4\)](#).

The WCJ concluded, based on the evidence at trial, that Applicant suffered industrial injuries to her brain, neck, back, head, psyche, sleep, and eyes after having a seizure, and that Applicant's claim was not barred by the intoxication defense in [Labor Code § 3600\(a\)\(4\)](#). The WCJ explained that the reporting of Dr. Pulera coupled with authenticated surveillance video offered at trial established that Applicant did not fall as a direct result of being intoxicated, but rather had a seizure and fell due to the *absence* of alcohol in her system. Accordingly, the WCJ determined that the injury was not "caused by intoxication" for the purposes of [\*1021] proving the intoxication defense. Furthermore, the WCJ pointed out that Dr. Pulera's conclusion that Applicant's injury was nonindustrial because it was caused by nonindustrial alcohol withdrawal was inconsistent with the decision in *Employers Mut. Liability Ins. Co. v. I.A.C. (Gideon)* (1953) 41 Cal. 2d 676, 263 P.2d 4, 18 Cal. Comp. Cases 286, in which the California Supreme Court held that injuries suffered by an applicant when he fell at work after having a nonindustrial, idiopathic seizure were compensable.

Defendant petitioned for reconsideration, contending in relevant respects that the WCJ incorrectly interpreted [Labor Code § 3600\(a\)\(4\)](#) in finding that Applicant's claim was not barred by the intoxication defense, and that the holding in *Gideon* was inapplicable to the instant case. The WCJ recommended that reconsideration be denied, noting in his report that the finding of industrial causation in this case was based on application of the holding in *Gideon* to Dr. Pulera's finding that Applicant's fall was caused by a seizure related to nonindustrial alcohol withdrawal. Despite Defendant's contrary assertion, the WCJ found little distinction between the facts in the present case and those in *Gideon*:

... *Gideon* involved an applicant who, while walking down an aisle on his employer's premises, had an idiopathic seizure not connected with his employment, which caused him to fall to the concrete floor and strike his head thereon. The facts in *Gideon* are in this respect practically identical to the facts at hand, with a non-industrial seizure causing the employee to fall and strike the floor while working. The legal holding of *Gideon*, stated above, is also precisely applicable to the facts of this case, with an injury suffered from a fall on the employer's premises, in the course of employment, from a height on or against some object, which therefore arises out of the employment and is compensable, even though the fall was caused by a condition not shown to be industrial.

The WCAB denied reconsideration for the reasons set forth in the WCJ's report, which the WCAB adopted and incorporated.

Defendant filed a Petition for Writ of Review, raising the same contentions raised in its Petition for Reconsideration. Applicant filed an Answer, asserting in pertinent portion that the WCAB correctly found that Applicant's claim was not barred under [Labor Code § 3600\(a\)\(4\)](#), because Applicant was not intoxicated at the time of her injury nor did intoxication substantially cause the injury. Applicant further asserted that the decision in *Gideon* was binding in the instant case. Finally, Applicant maintained that there was no reasonable basis for Defendant's Petition for Writ of Review and requested a supplemental award of attorney's fees.

WRIT DENIED August 18, 2017. [Editor's Note: The Court of Appeal's order did not indicate whether Applicant's request for attorney's fees was denied. It is assumed that the request was denied.]

## Counsel

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For petitioner—Bradford & Barthel

For respondent employee—Odjaghian Law Group, by Tina Odjaghian and Tina Eshghieh

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