

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

JACOB CASTROLL (Deceased), RODY CASTROLL (Widow), *Applicant*

vs.

**COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT,
permissibly self-insured, *Defendant***

Adjudication Number: ADJ11603234

Van Nuys District Office

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings & Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on May 15, 2024, wherein the WCJ found that while employed as a Reserve Part-time Sworn Sheriff's Deputy by the County of Los Angeles Sheriff's Department, Jacob Castroll did not sustain injury arising out of and in the course of employment (AOE/COE) resulting in his death on August 11, 2017; that decedent's status as an employee was not barred by Labor Code section 3352(a)(3)¹; that decedent's injury was proximately caused by his participation in a voluntary off-duty athletic activity; that defendant did not expressly or impliedly require decedent's participation in the athletic event; and that applicant's claim is barred by section 3600(a)(9).

Applicant contends that the evidence demonstrates that decedent subjectively believed that his participation in off-duty exercise was expected by his employer, and that this belief was objectively reasonable as set forth in *Ezzy v. Workers' Comp. Appeals Bd.* (1983) 146 Cal.App.3d 252, 259 [48 Cal.Comp.Cases 611] (*Ezzy*) so that compensation is not barred by section 3600(a)(9).

We did not receive an answer from defendant.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ, which recommends that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration. Our order granting the Petition is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

Preliminarily, we note the following in our review:

On July 30, 2020, the parties proceeded to trial on the issues of decedent's employment and injury AOE/COE. During trial, applicant testified that decedent was a Reserve Officer with the County of Los Angeles Sheriff's Department who was paid one dollar per year in addition to several hundred dollars for "special events." (Minutes of Hearing and Summary of Evidence (MOH/SOE), July 13, 2020, p. 4; see also Exh. 5, Deposition of Rody Castroll, January 15, 2019, pp. 18-19.) When decedent died, he was participating in the August 2017 World Police & Fire Games at or around Castaic Lake. Applicant described decedent's duties as a Reserve Officer as, "he wore a bicycle helmet for his duties which was the same as he wore when he died," and that decedent was representing his department during the event. (MOH/SOE, July 13, 2020, p. 4; see also Exh. 5, p. 21.)

Commander Scott Gage, a deputy sheriff for defendant, also testified during trial. Commander Gage was unaware of decedent's training and had no personal knowledge of decedent's participation in the event where he died. (MOH/SOE, July 13, 2020, p. 6.) However, Commander Gage did testify that "[t]he event in which [decedent] died was an event wherein he was participating on behalf of the Sheriff's Department and that winning the competition was not only on his own behalf, but on behalf of Sheriff's Department as well." (MOH/SOE, July 13, 2020, p. 5.)

At the conclusion of trial, the WCJ ordered the parties to further develop the record to address the issue of “employment under Labor Code Section[s] 3352(a)(3), 3362.5, and 3364 and any other Labor Code Sections applicable to the question of whether or not this employee was an employee under the Labor Code.” (MOH/SOE, July 13, 2020, p. 2.)

Pursuant to the WCJ’s order, on August 24, 2020, applicant submitted a brief and requested leave to supplement the record with a document showing that decedent was enrolled in defendant’s pension plan, which was granted by the WCJ. Defendant did not submit any pleadings or documents in response to the WCJ’s order.

On August 26, 2020, the WCJ issued a decision. Therein, the WCJ found that, at the time of his injury and death, decedent was not defendant’s employee under sections 3352(a)(3) and 3362.5, and did not sustain injury AOE/COE under section 3600(a)(9).

On June 1, 2023, we issued our Opinion and Decision After Reconsideration, wherein we rescinded the August 26, 2020 Findings and Order. We concluded that:

[T]here was insufficient evidence to support the WCJ’s findings regarding employment under sections 3352(a)(3), 3362.5, and 3364. Furthermore, without a determination on employment that is supported by substantial evidence, we must also rescind the WCJ’s finding that Mr. Castroll did not sustain injury AOE/COE under section 3600(a)(9). A finding that an employer-employee relationship existed at the time of injury is a prerequisite to the issuance of a finding on injury AOE/COE. Until the issue of employment has been resolved, a finding on injury AOE/COE is premature.

We observe that defendant produced limited evidence to determine the issue of whether applicant’s participation in the 2017 World Police & Fire games met the exclusion in section 3600(a)(9). Commander Gage was the department’s athletic commander from April 2018 through July 2019, and he was presented as a witness with respect to the documentation that was usually provided to the Sheriff’s Department at the time of an athletic event. (Exhibit 6, Deposition of Commander Scott Gage, July 19, 2019, pp. 9-10.) While it is not clear, it appears from some of the deposition testimony provided by Commander Gage that participation in some activities was approved as on behalf of defendant, but that he was not the individual who would approve participation. Moreover, Commander Gage also testified at his deposition that the Reserve Forces Bureau is under the Emergency Operations Bureau and is commanded by Captain Leonard McCray, and that he had no knowledge of or supervision of Mr. Castroll, and that he was not independently aware of any events that Mr. Castroll participated in, including the 2017 World Police & Fire games. (*Id.*) As noted above, according to the MOH from trial, Commander Gage testified that: “The event in which the decedent died was an event wherein he was participating on behalf of the Sheriff’s Department and that winning the competition was not only on his own behalf, but on behalf of the Sheriff’s

Department as well.” Thus, it appears that the record also requires further development on the issue of whether the exclusion in section 3600(a)(9) applies.

(Opinion and Decision After Reconsideration, June 1, 2023, pp. 5-6.)

On May 1, 2024, the parties returned to trial. Tui Wright and Skye Shaw testified on behalf of defendant, and applicant testified. No new evidence was submitted.

Tui Wright testified in relevant part as follows:

He is retired with the Sheriff's Department. He worked at the Lost Hills Sheriff's Station. He knew the decedent and was his supervisor. . . .

The applicant was a volunteer reserve deputy sheriff. The witness was the reserve coordinator in charge of these types of employees. There are three different types of volunteer reserve deputies. . . . Level III is an officer with the least amount of training. He cannot work in the field and does not experience criminal confrontation. He cannot arrest. They are used primarily for public relations, background checks, and things of that nature. *These are standards set forth by guidelines in the Sheriff's manual and by the State of California.*

The applicant was a Level III volunteer with minimal training and minimal powers. They are paid \$1 per year. . . . Basically, the witness would issue e-mails looking for volunteers for certain assignments. Those volunteers would simply come forward. The witness would then approve their work.

He is familiar with the World Police and Fire Games. It's a voluntary athletic event every four years, so it's often called "Police Olympics." *It is for full-time police and firemen. It is not for volunteers or part-time employees.* . . . In fact, he indicates that volunteers are actually banned from the World Police and Fire Games since there was a tendency to hire volunteers on a last-minute basis to produce ringers for the athletic events. One would have to sign up for this event. . . . This witness did not receive a request, nor did he issue an approval, for the decedent to participate in the World Police and Fire Games. . . .

He is aware that the decedent participated in other athletic events such as the Baker to Vegas Race, which is annual. There would be a form submitted to the witness who would then approve it. The approval goes to the athletic director for final approval. He definitely recalls the decedent participating in that manner in the past. After the accident herein, the witness did go through the decedent's personnel file seeking the appropriate forms. He found none.

There are certain events for which a volunteer reserve officer can be paid. . . . The existence of this account in Exhibit 11 shows that in fact the decedent did volunteer and received overtime pay for certain events in the past.

Wright testified on cross examination in pertinent part that:

The witness did review the decedent's personnel file. There were various forms there. He believes that there were forms for the Police Unity Tour and the Baker to Vegas Race in there. There were none for this particular event. He doesn't know how many of those he saw. It's always a possibility that these forms may not make it into the personnel file. . . .

He believes *the "\$1 per year" is necessary so that the employee will be covered by the employer, which includes workers' compensation.* . . .

Skye Shaw testified in relevant part that:

She is the Administrative Services Manager I. She processes paperwork for employees, which includes benefits, payroll, and the like. She reviewed records on this decedent. There was no pay for the applicant in August of 2017. . . . She is familiar with Exhibit 11, which is the L.A. Pension Savings Plan. This is a specific plan for part-time and volunteer employees only. Regular employees have a different plan. She does not believe that the employees are paid to participate in the World Police and Fire event, and it is strictly a voluntary athletic event.

She testified on cross-examination in pertinent part that:

She is aware that there is a "\$1 per year" policy. She is not sure why. She believes that in all likelihood the \$1 per year allows the County to set up payroll for the volunteers. . . .

Applicant testified in relevant part that:

She believes he underwent strenuous training for this job. She was informed he was a Level II.

He participated in the Baker to Vegas event at least six times as well as the Unity event. This was his first time participating in the World Police and Fire event.

II.

First, we agree with the WCJ's determination that decedent was defendant's employee and was not excluded by section 3352(a)(3), which states that:

A person holding an appointment as deputy clerk or deputy sheriff appointed for his or her own convenience, and who does not receive compensation from the county or municipal corporation or from the citizens of that county or municipal corporation for his or her services as the deputy.

(Lab. Code, § 3352(a)(3).)

Pursuant to section 3600,

(a) Liability for the compensation provided by this division . . . shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:

(9) Where the injury does not arise out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, **except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment.** ...

(Lab. Code, § 3600(a)(9), emphasis added.)

With respect to injuries sustained during voluntary participation in off-duty athletic activities, section 3600, subdivision (a)(9) states the rule -- recovery may be had for injuries arising out of and in the course of employment if those injuries do not arise out of voluntary participation in off-duty athletic activities. The section then states exceptions to the rule of noncompensability. Where off-duty athletic activities are a “reasonable expectancy of, or are expressly or impliedly required by, the employment” injuries arising therefrom *are compensable*. (*Ezzy v. Workers' Comp. Appeals Bd.* (1983) 146 Cal.App.3d 252, 259 [48 Cal.Comp.Cases 611], emphasis in original.)

As set forth in *Ezzy*, the test of “reasonable expectancy of employment” in this context consists of two elements: (1) whether the employee subjectively believes their participation in an activity is expected by the employer, and (2) whether that belief is objectively reasonable. (*Ezzy*, *supra*, at 260.) Based on the record before us, it is not clear whether applicant established both elements.

We note that decedent's personnel file has not been submitted, despite testimony from defendant's witness Wright that he examined it. Wright testified that decedent was a Level III and that the standards were set forth by guidelines in the Sheriff's manual and by the State of California. Applicant testified that she believed decedent was a Level II and had undergone training for the job. This missing evidence as to the guidelines, decedent's personnel file, decedent's training, and his assigned position may be significant in determining whether participation was a reasonable expectancy of decedent's job. It is disconcerting at best that Wright admitted that the payment of \$1.00 was so that the employee could obtain workers' compensation; an admission that comes

almost seven years after defendant denied and has continued to deny that decedent was entitled to workers' compensation benefits.

Wright testified that the Police Olympics “is for full-time police and firemen. It is not for volunteers or part-time employees. . . .” Wright then indicated that volunteers were “banned” but sometimes brought in as “ringers.” Yet, decedent was a participant, and it is not clear how he was able to participate. Again, this missing evidence could be significant in determining whether participation was a reasonable expectancy of decedent’s job. We also note that Commander Gage testified at the previous trial that: “The event in which the decedent died was an event wherein he was participating on behalf of the Sheriff’s Department and that winning the competition was not only on his own behalf, but on behalf of the Sheriff’s Department as well.”

All findings of the Appeals Board must be based on substantial evidence. (*Le Vesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 [Appeals Bd. en banc].) Section 5906 specifically empowers the Appeals Board to take additional evidence upon the filing or granting of a petition for reconsideration. (Lab. Code, § 5906.) Independently of a petition for reconsideration, section 5701 empowers the Board to, among other things, cause testimony to be taken. (Lab. Code, § 5701.) The Board’s power to take additional evidence is well-established and has enjoyed continuing support. (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264] [“it is well established that the WCJ or the Board may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence.”]; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In fact, it has been held that a full development of the record to enable a “complete adjudication [on the merits]” is an employee’s due process right. (*Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924].)

Here, it is unclear from our preliminary review whether the existing record is sufficient to support the order and decision of the WCJ, as well as whether further development of the record may be necessary with respect to the issues noted above.

III.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal. 2d 360, 364.) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [62 Cal.Rptr. 757, 432 P.2d 365]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000)

81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Labor Code section 5901 states in relevant part that:

“No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...”

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

IV.

Accordingly, we grant applicant’s Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board’s voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Order issued on May 15, 2024 by a workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 2, 2024

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

**JACOB CASTROLL (DECEASED), RODY CASTROLL (WIDOW)
THE LAW OFFICES OF ROBERT OZERAN
LAW OFFICES OF SOBELSOHN & JOHNSON, LLP**

AS/mc

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