

**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 DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration to further study the legal and factual issues raised in the Petition for Reconsideration filed by Rody Castroll, widow of the deceased applicant, Jacob Castroll. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings & Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on August 26, 2020. By the F&O, the WCJ found that, at the time of his injury and death, Mr. Castroll: 1) was not an employee of defendant, the County of Los Angeles, under Labor Code sections 3352(a)(3) and 3362.5<sup>1</sup>, and 2) did not sustain injury arising out of or occurring in the course of employment (AOE/COE) under section 3600(a)(9) and issued a take-nothing order.

In the Petition, applicant claims that the WCJ erred in denying the workers' compensation claim, where the evidence shows that Mr. Castroll was defendant's employee at the time of his death, and that he sustained injury AOE/COE.

We did not receive an Answer from defendant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ, recommending that we deny reconsideration.

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

We have considered the allegations of the Petition and the contents of the Report with respect thereto. For the reasons discussed below, we will rescind the F&O and return the matter to the trial level for further proceedings and a new decision consistent with this opinion.

### **BACKGROUND**

On July 30, 2020, the parties proceeded to trial on the issues of Mr. Castroll's employment and injury AOE/COE. During trial, applicant testified that Mr. Castroll 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 Mr. Castroll died, he was participating in the August 2017 World Police & Fire Games at or around Castaic Lake. Applicant described Mr. Castroll'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 Mr. Castroll 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 Mr. Castroll's training and had no personal knowledge of Mr. Castroll'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 [Mr. Castroll] 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 Mr. Castroll was enrolled in defendant's pension plan, which was granted by the WCJ. (App. Petition, August 24, 2020; App. Exh. 11.) Defendant did not submit any pleadings or documents in response to the WCJ's order.

On August 26, 2020, the WCJ issued the contested F&O. Therein, the WCJ found that, at the time of his injury and death, Mr. Castroll: 1) was not defendant's employee under sections

3352(a)(3) and 3362.5, and 2) did not sustain injury AOE/COE under section 3600(a)(9). (F&O, August 26, 2020, p. 1.)

## DISCUSSION

### 1. *Employment*

Section 3351 defines “employee” as “every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed...” (Lab. Code, § 3351.) Under section 3357, “[a]ny person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.” (Lab. Code, § 3357.) Once a prima facie case of “employee” status is established, the burden shifts to the employer to affirmatively prove that the worker was “an independent contractor or otherwise excluded from protection under the [Workers’] Compensation Act.” (*Johnson v. Workmen’s Comp. Appeals Bd. (Johnson)* (1974) 41 Cal.App.3d 318, 321 [39 Cal.Comp.Cases 565]; Lab. Code, §§ 3202.5, 5705(a).)

At trial, applicant testified that Mr. Castroll was “representing his [d]epartment” during the August 2017 World Police & Fire Games, where he was wearing his sheriff’s helmet and riding a bicycle, which was a “talent” required for the job. (MOH/SOE, July 13, 2020, p. 4; see also Exh. 5, p. 21.) Additionally, Commander Gage testified that Mr. Castroll was participating in the event on behalf of the Sheriff’s Department as well as himself, and that winning the competition was on behalf of both. (MOH/SOE, July 13, 2020, p. 5.) We conclude that this evidence shows that, by participating in the August 2017 World Police & Fire Games, Mr. Castroll was rendering services to defendant, such that a prima facie case of employee status was established. (Lab. Code, §§ 3351, 3357.) As a result, the burden shifted to defendant to affirmatively prove that Mr. Castroll was instead performing these services as an independent contractor or was expressly excluded from coverage under the Workers’ Compensation Act. (*Johnson, supra*, 41 Cal.App.3d at p. 321; Lab. Code, §§ 3202.5, 3352, 5705(a) [burden of proof rests upon the party holding the affirmative of the issue].)

In this case, the WCJ ordered the parties to develop the record to determine the issue of employment under sections 3352(a)(3), 3362.5, and 3364. (MOH/SOE, July 13, 2020, p. 2.) As noted above, in response to the WCJ’s order, applicant submitted one document showing that Mr. Castroll was enrolled in defendant’s pension plan, while defendant failed to submit any documents.

Thereafter, the WCJ determined that Mr. Castroll was not an employee under section 3352(a)(3), that sections 3362.5 and 3364 were inapplicable, and that Mr. Castroll did not sustain injury AOE/COE. (F&O, p. 1; Opinion on Decision, pp. 2-4.)

Upon review, we conclude that the record was insufficient for the WCJ to have made any of these determinations.

First, as to the WCJ's determination that Mr. Castroll was not defendant's employee pursuant to section 3352(a)(3), this section excludes from the statutory definition of employee:

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).)

As explained above, defendant bore the burden to demonstrate that this exclusion applied to Mr. Castroll. (Lab. Code, § 5705(a).) However, defendant presented no evidence that Mr. Castroll was appointed for his "own convenience" as required by the statute, and wholly failed to address whether the payments made to Mr. Castroll, as described by Rody Castroll during trial, constituted "compensation" under the statute. Absent such evidence, it is not possible to determine whether defendant satisfied its burden to demonstrate that the statute applied to Mr. Castroll. The matter will thus be returned to the trial level for further development of the record on this issue.

We reach a similar conclusion regarding the application of sections 3362.5 and 3364, which present exceptions to the exclusion set forth in section 3352(a)(3) if: 1) the reserve officer is "assigned specific police functions" and the injury occurs "while performing duties as a peace officer" (Lab. Code, § 3362.5), and 2) the Board of Supervisors passes a resolution declaring the officer an employee for purposes of workers' compensation and the injury occurs while the officer is performing "active law enforcement" duties (Lab. Code, § 3364). Here again, the record is devoid of evidence as to what specific "functions" Mr. Castroll was assigned, whether he was performing duties as a "peace officer" and/or "active law enforcement" when he died, and whether a resolution was passed by the Board of Supervisors (or if such a Board even existed). In other words, the record does not contain any evidence that would provide us with insight into the essential elements of *either* statute.

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].)

The record in this case has serious flaws that we have a responsibility to cure. Again, there is 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 Mr. Castroll'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. (Exh. 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 on behalf of defendant was sometimes approved, but that he was not the individual who would approve that 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.

Based on the foregoing, we will rescind the F&O and return this matter to the trial level for further proceedings consistent with this decision, including development of the record and a decision based upon substantial evidence on the issues of: 1) employment under sections 3352(a)(3), 3362.5, and 3364, and 2) injury AOE/COE. We express no opinion on the ultimate resolution of these issues.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration, that the August 26, 2020 F&O is **RESCINDED**, and the matter is **RETURNED** to the trial level for further proceedings and a new decision consistent with this opinion.

**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**

**JUNE 1, 2023**

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

**RODY CASTROLL  
LAW OFFICES OF ROBERT OZERAN  
SOBELSOHN & JOHNSON**

**AH/cs**

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