

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

SHELLY REESE, *Applicant*

vs.

**COUNTY OF KERN; KERN COUNTY SHERIFF, SHERIFF'S RESERVE
ASSOCIATION; UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ9098975
Bakersfield 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 defendant, County of Kern/Kern County Sheriff's Department.¹ This is our Opinion and Decision After Reconsideration.

Defendant County of Kern seeks reconsideration of the Finding of Fact ("Finding") issued by the workers' compensation administrative law judge (WCJ) on May 18, 2020. The WCJ found that applicant was concurrently employed as a Professional Athlete, Occupational Group Number 590, at Bakersfield, California by the County of Kern ("County" or "Sheriff's Department" or "Department") and Kern County Sheriff's Reserve Association ("Reserve Association") on May 4, 2013 while performing in a motocross demonstration at the 2013 Stampede Days.

Defendant County contends that 1) applicant failed to establish the presumption of employment under Labor Code sections 3351 and 3357; 2) applicant was an excluded employee under Labor Code section 3352(a)(9); 3) applicant was not an employee under sections 3362.5 and 3364; and 4) applicant was not employed as a professional athlete at the time of her injury.

We received an Answer from applicant. We did not receive an answer from any other party.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ, recommending that we deny reconsideration.

We have considered the allegations of the Petition and the Answer and the contents of the Report with respect thereto. For the reasons discussed below, as our decision after reconsideration,

¹ Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been substituted in her place.

we will rescind the Finding and substitute a new Finding that applicant was concurrently employed as a Peace Officer, Occupational Group Number 490, by the County and the Reserve Association on May 4, 2013 while performing in a motocross demonstration at the 2013 Stampede Days.

BACKGROUND

On September 14, 2013, applicant filed an Application for Adjudication claiming injury to the shoulder, knee, and lower extremities on May 4, 2013 while allegedly employed as a Deputy Reserve by County of Kern/Kern County Sheriff's Department and/or the Kern County Sheriff's Reserve Association. Applicant claimed that she sustained industrial injury while performing in a motocross demonstration during a fundraising event known as "Stampede Days."

On March 11, 2020, the matter proceeded to trial on the sole issue of employment. According to the Minutes of Hearing and Summary of Evidence issued at trial, applicant testified as follows:

She worked as a volunteer for the Kern County Sheriff's Reserve Association for approximately 20 years. She started the testing procedure in 1998 and was serving as a sworn officer from 1999 until she retired with an application for retirement of February 15, 2019 and effective date of February 28th of 2019.

As a volunteer for the Deputy Sheriff's Reserve Association, she was helping people is (*sic*) doing what she thought was right, but she was not a full-time officer....

She went through full academy training, post-training, and firearm certification to work as a reserve deputy sheriff. Her duties were the same as a regular deputy sheriff, but she was not paid. While performing her duties, she could have a patrol vehicle but regularly would ride along with another deputy but occasionally had her own vehicle.

She viewed herself as a volunteer employee of the Kern County Sheriff's Department because she was hired by the Sheriff's Department. The Sheriff's department did her background check, psychiatric evaluation, and interview to become a reserve officer for the Sheriff's Department.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), March 11, 2020, pp. 3-4.)

Applicant also provided details of Stampede Days, where her injury occurred. Applicant testified:

Stampede Days is an annual event held by Kern County Sheriff's Reserve Association, and she participated in this annual event from May of 1999 until May

of 2018. She indicated that participation in the event was a mandatory part of her duties as a volunteer deputy sheriff, and she was informed of this event by a memo identified as a Message Letter, which came from a sergeant of the department who was an employee of the Kern County Sheriff's Department.

On May 4 of 2013, applicant was required to attend to the event as a reserve deputy. She was also part of the committee for the rodeo. Sheriff Donny Youngblood had asked Georgina Puentes, who was either the treasurer or secretary of the board, if they could do a motorcycle event at the rodeo. Applicant was asked to organize the motocross event because she has an off-road motorcycle track at her home...and she knows professional racers. It was done as part of the fund-raising event. Georgina Puentes requested the off-road demonstration at least one board meeting. The Sheriff's Reserve Association had board meetings regarding fund raising events, and it was at one of these board meetings where plans were made for a motocross demonstration. It was discussed that they would do a barrel racing event, how many participants they would want in the barrel racing event, and that the demonstration would occur on two nights with eight members per night, who were made up of regular deputies and professional racers. Applicant was asked to organize and lead the event involving the motocross demonstration.

On May 4, 2013, the motocross demonstration was performed. It had been performed on Friday, May 3rd of 2013, and applicant said she performed and led the event. The event was also performed on May 4 of 2013, and applicant performed and led the event. At the rodeo, applicant was wearing a "cops and cowboys" shirt and was in uniform while she was at the rodeo. Applicant wore motocross gear for safety during the event. The gear was protective gear that was approved by the sheriff. The event was practiced days before the event, and regular deputies and a sergeant, who was in charge of the off-road team, participated in the practice. Sergeant Leonard is head of the off-road team.

On May 4, 2013, applicant was injured while she was exiting the rodeo arena. There was supposed to be a 70-foot straight line out of the arena, and the surface would change from a dirt road to a paved road...Four deputies were keeping the lane clear, with two on each side of the lane, and they were reserve deputies. Applicant was introduced as a deputy for the event. Deputy Steve Williams and Deputy Dumas, who were regular deputies paid by the Kern County Sheriff's Office, were involved in the event. Reserve Deputy [Royce] Haislip and three professional motocross racers were involved in the event. Applicant was the first member of the demonstration team out, and then other participants raced around barrels. As applicant was exiting the arena...[t]here were two people in the exit lane. She swerved to avoid them, laid her motorcycle down, and it slid and stopped approximately 10 feet before a trailer. Applicant was given assistance by Richard Hudson, who is a deputy sheriff who was in street clothes working the event. People surrounded her at the time of the accident. It was hard for other people to get there, but Deputy Hudson took her to an ambulance that was already on site.

* * *

Applicant testified that she was leading the event on May 4, 2013 because Georgina Puentes had asked her and that she was told that Sheriff Youngblood asked her to ask applicant. She was told this by two other people.

The motorcycle she was riding at the event is one she owns, and it is a pink motorcycle. She was wearing her uniform under the protective gear for motocross riding, which included goggles, boots, knee pads, and other protective gear. Under the protective gear, she was wearing a T-shirt and black Spandex pants, which was the uniform for the event. As a reserve deputy sheriff, she had uniforms for bike patrol, for off-road patrol, which was Class C with no safety gear. As a committee member for the Stampede Days event, she wore a T-shirt that had a "Cops and Cowboys" logo on it. The committee was made up of reserve deputies and regular deputies, and they wore the T-shirts, carried their guns, and wore badges. Some of the deputies were wearing plain clothes but had their weapons and badges. There were some regular deputies in uniform, which was the standard pants, badges, and a duty holster. Applicant did not carry her firearm during the motocross demonstration. It was locked in her vehicle at that time. The reserve deputy sheriffs who were in uniform were wearing there (sic) khaki pants, tan shirt with patches, their duty belts, and boots.

During the motocross event, applicant was the first in the event, and they were competing for time. The first round included single riders going for time. The second round had three racers that were sheriff deputies competing for time. The third round had three racers that were professional motocross racers....The purpose of the event was a half time show at the rodeo done at the sheriff's request, and she was introduced as a member of the off-road team at the event.

* * *

Applicant testified that she was wearing her badge at the time she was injured, which was a metal badge. There was also a badge silk-screened onto the T-shirt she was wearing.

The off-road team is officially identified as the Off Highway Vehicle Team (OHVT). Sergeant Leonard was in charge of the OHVT. Sergeant Leonard is a full-time deputy sheriff, who was going to participate in the event, but his bike broke down. Sergeant Leonard asked her to put the demonstration team together. She spoke with other deputies, and some of them wanted to participate. Sergeant Leonard was there for the Wednesday set up and practice. He attended the Friday demonstration but did not participate. Applicant discussed the event with Sergeant Haislip at a board meeting but not with him individually. It was applicant's understanding and expectation that the Sheriff's Department wanted the event and that the reserve Deputy Sheriff's Association wanted the event.

(MOH/SOE, March 11, 2020, pp. 4-7.)

Byron Kip Williamson, a Reserve Association member for over 20 years, also testified regarding Stampede Days as follows:

Stampede Days is an event put on by the association as a fund raising event where they buy equipment for the reserve officers' used (sic) while serving as volunteer deputies and pays for their post-training when they seek training outside of the department or the association. A reserve deputy's main gear comes from the County of Kern, but things for training and specialized gear come from the association or are self funded. Volunteer deputies are required to get 24 hours of post-training every two years, and the association will pay for outside post-training. Some of the funds raised at Stampede Days are used to assist in obtaining uniforms and other gear for the volunteers to use while they are working for the Sheriff's Department. He did not witness the injury, and he was not at the event on the date of the injury.

He testified that Stampede Days is put on for the benefit of the Sheriff's Department.

(MOH/SOE, March 11, 2020, pp. 7-8.)

The WCJ also admitted a statement of Sergeant Royce Haislip, the Sheriff's Department Volunteer Reserve Coordinator. (App. Exh. 5, Statement of Sergeant Royce Haislip, October 8, 2013.) Sergeant Haislip testified that departmental policy requires reserve deputies to undergo mandatory training and perform a designated number of volunteer hours to maintain their reserve "status" and remain in "good standing" within the Department. Sergeant Haislip testified, in part:

Q: Is there any requirement that [reserves] have as far as the Sheriff's Office is concerned to go do some uh, training or to wor-uh, be assigned to specific number of hours to maintain their status?

A: Yes, actually there's P.O.S.T. - the Peace Officers Standards and Training. They are a State Agency that mandates the requirements to maintain uh, a Level - for instance in her case a Level II Certificate she's required to have 24 hours of P.O.S.T. Certified Training every two years. In addition to that the Department requires 200 hours of volunteered hours per year to be consider in good standing.

Q: The 200 hours that they get through the Sheriff's Office um, is it something that the, the Sheriff's Office oversees in terms of their assignments?

A: I'm not sure what you mean. We do keep track of their hours and, and what those hours are related to in terms of uh, which you know if they submit a time sheet that says I worked eight hours uh, riding in Metro Patrol with Deputy so-and-so then that would, that gets put into their, their uh, time.

Q: And then the only thing that counts towards is the 200 hours that they need to be in good standing with the Department, the hours that they put in the only purpose of that is to maintain a good standing with the Department?

A: Well and because they want to volunteer. I mean they - a lot of our volunteers and a lot of our reserve deputies um, are very dedicated and many of them do far more than they are required to and some do 500 hours in a year. So it – there's personal satisfaction that they get out of it, but there is that Departmental requirement uh or at least a minimum standard for the uh, for the Reserves and then Level I Reserves would have to do [] 196 hours to maintain their Level I status. And that's a P.O.S.T. requirement.

Q: Okay. The assignment of their um, volunteer activities riding along or being assigned to events, who is in charge of that?

A: Well generally they can volunteer, they can go uh, to Metro Patrol and do ride alongs with deputies and things like that uh, at, at this time they're – I'm not aware of anybody that uh, pre-approves anything that they go do. Uh, they will go out and do their ride alongs, there are scheduled events like the rodeo and the Kern County Fair uh, which they have uh, again required amount of hours that they have to participate in those events.

Q: Who establishes the required number of hours that they have to do for those events?

A: Well it's in our policy. It's in the Reserve Policy that dictates uh, the hours required for the events, for instance the Kern County Fair, if you live within 25 miles of Bakersfield you're required to do 35 hours at the Fair. Each reserve is required to do 35 hours.

* * *

Q: Beside the fair uh, you mentioned the rodeo event?

A: Yes.

Q: When does that typically take place?

A: First weekend in May I believe.

Q: And what are uh, are there any requirements as to the number of hours they have to serve in the rodeo event?

A: There is I - I - I believe it's 10, but I'm not positive on that one.

Q: Who determines the uh, mandatory requirement for the - them to either work the 10 hours for the rodeo or the 20 hours or the 35 hours for the fair?

A: It's whoever, whatever the -- it's the policy is approved by the administration, so uh, or uh, we have a Lieutenant that can and the Commander was there prior can make changes to those policies; but it would be somebody from the administration.

Q: And ---

A: Uh, a Lieutenant or higher at least.

Q: And then when you're referring to the administration you're referring to the Kern County Sheriff's Office Administration?

A: Yes.

Q: They establish the policies relating to the hours that this - the uh, Reserves have to work for the fair or the rodeo? That's your - that's your understanding?

A: That's the way it appears when you read it because the, the policies are uh, uh, signed off on by a uh, the pub--the current policy that we have was signed off by Lieutenant Barker.

(App. Exh. 5, pp. 3-6.)

Sergeant Haislip also testified that, during Stampede Days, reserve deputies were responsible for ensuring that there are "no violations of policy or violations of law in the [] performing of the rodeo itself." (App. Exh. 5, p. 8.) Sergeant Haislip also testified that, while not certain, he did not view applicant's participation in the motocross demonstration as a reserve activity covered by workers' compensation because it "had nothing to do with the Reserves itself," and a regular deputy could not have been paid for the same work. (*Id.* at pp. 14-18.)

The WCJ also admitted an email sent from Senior Deputy Steven Williams to Sergeant Haislip two days after applicant's accident. (App. Exh. 4, Email from Senior Deputy Steven Williams to Sergeant Royce Haislip, May 6, 2013.) In his email, Senior Deputy Williams expressed concern over the conduct of applicant's fellow reserve deputies after her accident. Among other concerns, Senior Deputy Williams stated that, after applicant's accident, he witnessed a reserve deputy tell applicant "I don't know why they had motorcycles out here in the first place" as she was being loaded into the ambulance. Senior Deputy Williams stated, "It would be unprofessional and unacceptable to act this way toward a member of the public, but it is even

more offensive to believe he would act this way to another Deputy who was injured participating in an event not only sanctioned by the Sheriff, but for the benefit of the department.” (*Id.* at p. 2.)

The WCJ also admitted a Volunteer Hours Statement containing a log of applicant’s reserve hours performed between January 14, 2011 and May 30, 2013. (App. Exh. 1, Volunteer Hours Statement.) Applicant’s hours on May 4, 2013 were identified as “Reserve – Special Events.” (*Id.* at p. 1.)

On May 18, 2020, the WCJ issued the Finding. In his Opinion on Decision, the WCJ explained that applicant established the presumption of employment under Labor Code sections 3351 and 3357,² and that the County failed to rebut the presumption using the public agency volunteer exclusion set forth in section 3352(a)(9). The WCJ also stated that:

Applicant proved by a preponderance of the evidence that she is a presumed employee without the application of Labor Code Section 3362.5 because she was performing a motocross demonstration at the request of both defendants. Her performance of a motocross demonstration involving professional motocross racers appropriately falls within the job description of a Professional Athlete, Occupational Group Number 590, rather than those of a Peace Officer.

(Opinion on Decision, p. 3.)

The County filed a timely Petition for Reconsideration. The Reserve Association did not seek reconsideration.

DISCUSSION

The sole question presented in this case is whether applicant was an employee under one or more provisions of the Workers’ Compensation Act (“Act”).

I. Applicant’s Status as an Employee Under Labor Code sections 3351 and 3357

The WCJ found that applicant established the presumption of employment under sections 3351 and 3357.

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.) 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.) Thus, unless it can be

² All further statutory references are to the Labor Code unless otherwise noted.

demonstrated that a worker meets specific criteria to be considered an independent contractor or fits within one of the several narrowly defined categories as an excluded employee, *all workers are presumed to be employees*.

The applicant bears the burden of proof on employment. (Lab. Code, § 5705(a) [burden of proof rests upon the party holding the affirmative of the issue].) Once the presumption of employment is established, the burden shifts to the employer to establish that the injured worker was an independent contractor or otherwise excluded from protection under the 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.)

Upon review, we agree with the WCJ that, while performing in the Stampede Days motocross demonstration on May 4, 2013, applicant was in service of the County, as well as the Reserve Association, such that a prima facie case of employment was established.

The evidence shows that Stampede Days is an annual fundraiser held by the Reserve Association for the benefit of the Sheriff's Department and that the Sheriff's Department sanctions the event. Additionally, applicant was required to participate in Stampede Days as part of her mandatory reserve duties; she performed in the Stampede Days motocross demonstration on May 4, 2013 at the request of both the Reserve Association and the Sheriff's Department; and funds raised during Stampede Days are used to purchase gear and training for reserve deputies' use while working for the Sheriff's Department. (MOH/SOE, March 11, 2020, pp. 7-8; App. Exh. 4, p. 2.)

We conclude that this evidence demonstrates that, while performing in the motocross demonstration on May 4, 2013, applicant was acting in service of the County and the Reserve Association, such that the presumption of employment was established under sections 3351 and 3357.

Once the presumption of employment was established, the burden shifted to the County to affirmatively prove that applicant was performing this service as an independent contractor or was otherwise excluded from protection under the Act. (*Johnson, supra*, 41 Cal.App.3d at p. 321; see also *Castroll v. County of Los Angeles Sheriff's Department, PSI* [June 1, 2023, ADJ11603234] 2023 Cal. Wrk. Comp. P.D. LEXIS 134; Lab. Code, §§ 3202.5, 3352, 5705(a).)

II. The County's Assertion that Applicant is an Excluded Employee Under Labor Code section 3352(a)(9)

The County does not contend that applicant was acting as an independent contractor while performing in the motocross demonstration on May 4, 2013. Instead, it contends that applicant is expressly excluded from “employee” status under section 3352(a)(9), which excludes from the definition of “employee” for the purposes of workers’ compensation any “person performing voluntary service for a public agency or a private, nonprofit organization who does not receive remuneration for the services, other than meals, transportation, lodging, or reimbursement for incidental expenses.” (Lab. Code, § 3352(a)(9).)

In the Opinion on Decision, the WCJ rejected the County’s argument, concluding that applicant received sufficient remuneration in the form of gear and training and was therefore outside the scope of 3352(a)(9). (Opinion on Decision, p. 3.)

In its Petition, the County contends that the WCJ erred because remuneration *only* means “money paid for work or a service.” (Petition, p. 4.) Thus, according to the County, because gear and training are not money, applicant did not receive remuneration and was therefore excluded under section 3352(a)(9). We disagree with the County.

In *Barragan v. Workers’ Comp. Appeals Bd. (Barragan)* (1987) 195 Cal.App.3d 637 [52 Cal.Comp.Cases 467], the Court of Appeal explicitly held that “there is a long line of case law establishing the rule that one need not receive actual payment of money or wages in order to be an employee for purposes of the Workers Compensation Act.” (*Id.* at p. 649.)³ In that case, the court found that a nursing student providing unpaid services to a hospital as part of a college externship received sufficient remuneration in the form of training and instruction, and that, as a result, she was not excluded under section 3352(a)(9). (*Id.* at p. 650, citing Lab. Code, § 3352(i), now Lab. Code, § 3352(a)(9), Stats. 2017, ch. 770, § 4, hereinafter “section 3352(a)(9)”.) The Court explained that, had the Legislature intended to add training and instruction to the list of excluded remuneration, it knew how to do so. (*Id.* at p. 650.) The Court thus declined to add training and instruction to section 3352(a)(9)’s exclusionary list, given the Legislature’s decision not to. (*Id.* at pp. 649-650.)

³ Cf. *Pruitt v. Workmen’s Comp. Appeals Bd.* (1968) 261 Cal.App.2d 546 [33 Cal.Comp.Cases 225] (“payment of monetary wages is not a *sine qua non* of employment under workmen’s compensation law.”); *Chavez v. Sprague* (1962) 209 Cal.App.2d 101, 111 (“The fact that a person is not paid monetary compensation for his services does not prevent him from occupying the status of an employee.”)

In *Arriaga v. County of Alameda (Arriaga)* (1995) 9 Cal.4th 1055 [60 Cal.Comp.Cases 316], the California Supreme Court also addressed the definition of remuneration under section 3352(a)(9). In that case, the Court held that a person injured while performing community service in lieu of paying a court-imposed fine was not excluded under section 3352(a)(9). (*Id.* at p. 1059.) The Court stated that, for the purposes of section 3352(a)(9), remuneration “need not be in monetary form.” (*Id.* at pp. 1064-1065.) The Court explained that, “[i]f in exchange for her work, Arriaga had received money with which to pay her fine, she unquestionably would have received sufficient remuneration. The same result must obtain in this case, where Arriaga simply received credit against the fine instead.” (*Id.* at pp. 1064-1065, fn. 7.) The Court concluded that its interpretation of section 3352(a)(9) also complied with the Legislature’s command that the Act be liberally construed in favor of awarding workers’ compensation. (*Id.* at pp. 1064-1065, citing Lab. Code, § 3202.)

Barragan, Arriaga, and its progeny clearly establish that remuneration may take many forms, including, but not limited to, money. Thus, contrary to the County’s belief, the simple fact that applicant was not paid to perform in the motocross demonstration does not demonstrate that she was excluded under section 3352(a)(9). As explained below, we conclude that applicant received multiple types of remuneration sufficient to render section 3352(a)(9) inapplicable.

First, like the applicant in *Barrigan*, applicant received remuneration in the form of training and instruction outside the scope of section 3352(a)(9). Specifically, in the days leading up to the event, applicant practiced the motocross demonstration with Sergeant Leonard, a full-time deputy sheriff and the departmental head of the Off Highway Vehicle Team. This training exercise was clearly designed to ensure that applicant had the skills necessary to perform in the motocross demonstration and thus constitutes remuneration sufficient to render section 3352(a)(9) inapplicable.

We also conclude that department-issued uniforms constitute remuneration outside the scope of section 3352(a)(9). During trial, applicant testified that, as a reserve deputy, she was issued various department uniforms, including a “Class C” off-road uniform, which she wore during the motocross demonstration. (MOH/SOE, March 11, 2020, p. 6.) Like the Court in *Barragan*, we believe that, had the Legislature intended to add uniforms to the types of excluded remuneration in section 3352(a)(9), it knew how to do so. In fact, uniforms are among the types

of excluded remuneration in sections 3352(a)(10) and (a)(11). (Lab. Code, §§ 3352(a)(10)-(11).)⁴ When reading a statute, “our office is simply to ascertain and declare what the statute contains, not to change its scope by reading into it language it does not contain or by reading out of it language it does. We may not rewrite the statute to conform to an assumed intention that does not appear in its language.” (*Niedermeier v. FCA US LLC (Niedermeier)* (2024) 15 Cal.5th 792, 807, citing *Figueroa v. FCA US, LLC* (2022) 84 Cal.App.5th 708, 712 [“We cannot add words to a clear and unequivocal statute”].) We decline to add uniforms to the list of excluded remuneration in section 3352(a)(9), given the Legislature’s clear decision not to do so. Our decision comports with the principles of statutory construction discussed above, as well as the command of liberal construction. (*Niedermeier, supra*, 15 Cal.5th at p. 807; *Barragan, supra*, 195 Cal.App.3d. at p. 650; *Arriaga, supra*, 9 Cal.4th at pp. 1064-1065; Lab. Code, § 3202.)

Based on the foregoing, we conclude that the County failed to demonstrate that applicant was excluded from employee status under section 3352(a)(9). As a result, it failed to rebut the presumption of employment, and we will uphold the WCJ’s finding that applicant was an employee under sections 3351 and 3357.⁵

⁴ Section 3352(a)(10) states:

- (a) “Employee” excludes the following: ¶...¶ (10) A person, other than a regular employee, performing officiating services relating to amateur sporting events sponsored by a public agency or private, nonprofit organization, who does not receive remuneration for these services, other than a stipend for each day of service no greater than the amount established by the Department of Human Resources as a per diem expense for employees or officers of the state. The stipend shall be presumed to cover incidental expenses involved in officiating, including, but not limited to, meals, transportation, lodging, rule books and courses, uniforms, and appropriate equipment.

Section 3352(a)(11) states:

- (a) “Employee” excludes the following: ¶...¶ (11) A student participating as an athlete in amateur sporting events sponsored by a public agency or public or private nonprofit college, university, or school, who does not receive remuneration for the participation, other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

⁵ We note that the County asserts that a finding of employment in this case would “greatly expand” its exposure to workers’ compensation claims filed by reserve deputies injured during fundraisers such as Stampede Days. In so arguing, the County makes sweeping statements, including: “Each and every member is asked to provide a service of some kind to this event in order for it to be successful, so each and every member is now an employee of the County of Kern throughout the entire planning, preparation and hosting of the Stampede Days Rodeo, because the County receives a benefit for this event? Stampede Days Rodeo is only one of many fundraising activities sponsored by the Reserve. Are their members now covered for all of these fundraising activities because they provide an indirect benefit to the County of Kern?” (Petition, pp. 7-8.) The County’s broad-sweeping assertions about potential liability are marked by a level of grandiosity that borders on the absurd. We remind the County that each workers’ compensation

III. Applicant's Status as an Employee Under Labor Code section 3362.5

The County also argues that applicant was not an employee under section 3362.5. Section 3362.5 is an exception to the exclusion set forth in section 3352(a)(9), which states:

Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a deputy sheriff, or a reserve police officer of a regional park district or a transit district, and is assigned specific police functions by that authority, the person is an employee of the county, city, city and county, town, or district for the purposes of this division while performing duties as a peace officer....

(Lab. Code, § 3362.5.)

The County contends that applicant was not an employee under this section because “[c]ompeting in a motorcycle barrel racing event at a rodeo is not performing duties as a peace officer assigned specific police functions.” (Post-Trial Brief, April 3, 2020, p. 4; Petition, p. 5.) We disagree with the County.

Upon review, we conclude that substantial evidence supports a finding that applicant was an employee under section 3362.5 during the May 4, 2013 motocross demonstration. (Lab. Code, § 5952; *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280-281 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635-637 [35 Cal.Comp.Cases 16]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500].)

First, the evidence shows that applicant was a deputized reserve officer with the Sheriff's Department and that she served in this capacity between 1999 and 2018; because the motocross demonstration was held in 2013, applicant was clearly a reserve deputy at the time of her injury. (MOH/SOE, March 11, 2020, p. 3.) The evidence also shows that applicant was assigned “specific police functions” as a reserve deputy. Applicant testified that her reserve duties were “the same as a regular deputy sheriff, but she was not paid.” (MOH/SOE, March 11, 2020, p. 3.) Additionally, as a reserve deputy, she had to complete police academy training, obtain a firearm certification, and be POST-compliant. Applicant was also issued a metal badge and a department firearm and was authorized to drive a Metro patrol vehicle or go on patrol with a regular deputy. (MOH/SOE, March 11, 2020, p. 3; App. Exh. 5, pp. 3-4, 6.) The WCAB has consistently found that police

claim is considered on its own merits, and it may rest assured that it will have the opportunity to dispute claims of employment and workers' compensation coverage on a case-by-case basis.

officer training, patrol duties, and the possession of a badge or service weapon constitute specific police functions, and we see no reason to deviate from this position in this case. (*Hill v. County of San Bernardino* [January 24, 2020, ADJ2581463] 2012 Cal. Wrk. Comp. P.D. LEXIS 74; *Phipps v. County of San Bernardino* [September 30, 2016, ADJ10058728] 2016 Cal. Wrk. Comp. LEXIS 141; *Chavez v. City of Los Angeles* [November 6, 2008, ADJ2899088] 2008 Cal. Wrk. Comp. P.D. LEXIS 709.)

Lastly, the evidence supports a finding that applicant was performing “peace officer” duties during the motocross demonstration. As an initial matter, the fact that applicant was deputized, trained, and equipped with a department uniform and badge during the motocross demonstration indicates that she was qualified and intended to act in a law enforcement, or peace officer, capacity when needed. Moreover, participation at Stampede Days was part of applicant’s mandatory duties as a reserve officer, and the fact that the Sheriff’s Department asked applicant to perform in the 2013 motocross demonstration shows that her performance was authorized and pursuant to her role a reserve deputy. Because applicant’s injury occurred in the course of this service, she was acting as a “peace officer” at that time.

Based on the foregoing, we conclude that applicant was an employee under section 3362.5 while performing in the Stampede Days motocross demonstration on May 4, 2013.

IV. Applicant’s Status as an Employee Under Labor Code section 3364

Applicant asserts employee status under section 3364, which, like section 3362.5, is an exception to the volunteer exclusion in section 3352(a)(9). Section 3364 states:

A volunteer, unsalaried member of a sheriff’s reserve in any county who is not deemed an employee of the county under Section 3362.5, shall, upon the adoption of a resolution of the board of supervisors declaring that the member is deemed an employee of the county for the purposes of this division, be entitled to the workers’ compensation benefits provided by this division for any injury sustained by him or her while engaged in the performance of any active law enforcement service under the direction and control of the sheriff.

(Lab. Code, § 3364.)

Applicant argues that, during the motocross demonstration, she was under the Sheriff Department’s “direction and control,” where 1) she was advised that the sheriff wanted the motocross demonstration; 2) she practiced the demonstration with Sergeant Leonard, the departmental head of the Off Highway Vehicle Team; 3) she was introduced as a deputy during the event; and 4) she was wearing her metal badge at the time of injury. (Pre-Trial Brief, January

9, 2019, pp. 1-2; Pre-Trial Brief, January 21, 2020, pp. 3-4; Post-Trial Brief, April 10, 2020, pp. 3-4; Answer, July 7, 2020, pp. 3-4.)

The County responds that applicant's performance in the motocross demonstration was a fundraising activity performed in service to the Reserve Association, rather than an active law enforcement activity performed under the sheriff's direction and control. (Post-Trial Brief, April 3, 2020, p. 4; Petition, pp. 5-6.) The County also asserts that applicant failed to present evidence of a board resolution designating volunteers as County employees, as required by the statute. (Petition, p. 6.)

As pointed out by the County, applicant did not provide evidence of a board resolution designating volunteers as County employees. However, section 3364 states that it applies to "[a] volunteer, unsalaried member of a sheriff's reserve in any county who is not deemed an employee of the county under Section 3362.5. . . ." Consequently, as discussed above, since we have concluded that applicant is deemed to be an employee under section 3362.5, section 3364 does not apply.

V. Applicant's Occupational Group Number

In the Findings of Fact, the WCJ assigned Occupational Group Number 590 (professional athlete) to applicant's activities during the motocross demonstration on the grounds that professional motocross riders performed in the event. (Finding of Fact No. 1; Opinion on Decision, p. 3.)

Occupational Group Number 590 mostly applies to professional athletes and stunt performers who engage in activities involving "[p]eak athletic performance requiring whole body strength and specialized training and skills[.]" (2005 Permanent Disability Rating Schedule ("PDRS"), p. 3-37.) The County argues that the WCJ erred in finding that applicant was employed as a professional athlete during the motocross demonstration. The County concedes in its Petition that, "to the extent Applicant is found to be an employee....her performance during the motocross demonstration was consistent with those of a peace officer proficient with a motocross bike, rather than that of the superior professional athletes who were also part of the demonstration." (Petition, p. 8.)

We have already concluded that applicant is an employee under sections 3351, 3357, and 3362.5, and we agree with the County that the WCJ erred in finding that applicant was employed as a professional athlete under Occupational Group Number 590 during the motocross

demonstration. Upon review, we conclude that the most appropriate Occupational Group Number in this case is 490, which generally applies to police officers and firefighters “called upon to perform demanding activities in unpredictable and dangerous circumstances[.]” (PDRS, p. 3-36.) Here, applicant testified that she had the same duties as regular deputies, i.e., police officers, and the fact that she wore department-approved protective gear during the motocross demonstration shows that the event placed her in an unpredictable and dangerous situation. As a result, applicant takes a 490, rather than 590, Occupational Group Number.

VI. Conclusion

For the reasons stated herein, as our Decision After Reconsideration, we rescind the WCJ’s Finding of Fact, substitute new Findings of Fact, that find that applicant was concurrently employed as a Peace Officer, Occupational Group Number 490, by the County and the Reserve Association on May 4, 2013 while performing in a motocross demonstration at the 2013 Stampede Days and defer all remaining issues.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 18, 2020 Finding of Fact is **RESCINDED** and **SUBSTITUTED** with new Findings of Fact, as provided below.

FINDINGS OF FACT

1. Applicant was concurrently employed as a Reserve Deputy, Occupational Group Number 490, at Bakersfield, California by the County of Kern and Kern County Sheriff's Reserve Association on May 4, 2013 while performing in a motocross demonstration at the 2013 Stampede Days.
2. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 16, 2025

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

**SHELLY REESE
COUNTY CONSEL BAKERSFIELD
J SMITH BAKERSFIELD
OD LEGAL OAKLAND
UEBTF OAKLAND
YRULEGUIE & ROBERTS**

AC/md

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