

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

TALIBAH COFFEE, *Applicant*

vs.

**COUNTY OF LOS ANGELES, permissibly self-insured,
administered by SEDGWICK, *Defendants***

**Adjudication Number: ADJ15544152
Marina del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the December 4, 2024 Findings of Fact and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a Deputy Probation Officer II on September 6, 2021, claims to have sustained industrial injury to her neck, right arm, both hands, right shoulder, knee, and psyche. The WCJ found that applicant's claimed injury arose out of an altercation in which applicant was the initial physical aggressor, rendering applicant's claim non-compensable.

Applicant contends that the defendant has not met its affirmative burden of proving she was the initial physical aggressor because a reasonable person would not have perceived her actions as posing a real, present, and apparent threat of bodily harm.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

FACTS

Applicant claimed injury to her neck, right arm, both hands, right shoulder, knee and psyche while employed as a Deputy Probation Officer II, by defendant County of Los Angeles, on September 6, 2021. Defendant contends compensation is barred under Labor Code¹ section 3600(a)(7).

The WCJ's Report describes the relevant facts as follows:

The only issue before the court at trial was injury AOE/COE with the defendant raising the defense of initial physical aggressor. The incident that gave rise to the applicant's claim of injuries occurred on 09/06/2021 when the applicant, age 46, was employed as a Probation Officer by the County of Los Angeles but was assigned that day, due to COVID, at a polling site as an assistant lead. Mr. Steve Medina, age 63, was at that site in his capacity as a staff photographer employed by KCAL Channel 9 CBS News, a position he has held for 32 years. Mr. Medina, upon arriving at the polling site, set up his camera and tripod and began filming background video known as B-roll for the news. He was approximately 50 feet from the entry of the polling site. The applicant and Mr. Medina had a heated verbal confrontation about Mr. Medina's permission to film the polling site. The applicant then went back into the polling site to retrieve her cell phone and call the registrar's office. When she returned outside the polling site the verbal confrontation with Mr. Medina continued. The applicant attempted to get Mr. Medina to stop filming and approached Mr. Medina's camera and when Mr. Medina refused to stop filming the applicant put her hands on the camera lens and moved it. Thereafter the confrontation continued to escalate, and the applicant was injured.

(Report, at p. 2.)

The parties proceeded to trial on June 3, 2024, at which time the only issue framed for decision was injury arising out of and in the course of employment, with defendant raising the defense of initial physical aggressor. (Minutes of Hearing and Summary of Evidence, dated June 3, 2024, at p. 2:15.) The WCJ heard testimony from applicant and from witness Stephen Medina, and ordered the matter continued.

On November 18, 2024, the WCJ heard additional testimony from the applicant and witnesses Sumeira Khan and Stephen Medina, and ordered the matter submitted for decision. (Minutes of Hearing and Summary of Evidence, dated November 18, 2024, at p. 1:25.)

¹ All further references are to the Labor Code unless otherwise noted.

On December 4, 2024, the WCJ issued the F&O, determining in relevant part that applicant was the initial physical aggressor, barring compensation. (Finding of Fact No. 1.) The WCJ observed that the testimonial and video evidence supported the conclusion that applicant was the first to physically touch the other party to the altercation, and that a reasonable person would perceive that contact to be a real and present threat of bodily harm. (Opinion on Decision, at p. 2.)

Applicant's Petition avers that Mr. Medina aggressively positioned his camera to record applicant, and her "simple act of moving the camera away from her person and personal space did not constitute an instance of physical violence against Medina nor did it create a reasonable fear of imminent bodily harm to him." (Petition, at p. 6:9.) Applicant contends that at no point did she "touch or attempt to touch Medina," and that "she was not the initial physical aggressor in either the original interaction or in the distinct and separate altercation that caused her injuries." (*Id.* at p. 11:7.)

Defendant's Answer observes that per case law authority, "a person can be found to be the initial physical aggressor simply by acting in a threatening and intimidating manner and not actually making first contact." (Answer, at p. 3:27.)

The WCJ's Report reviews the evidentiary record, and concludes, "a reasonable person in Mr. Medina's position based on the apparent aggressive actions by the applicant and the totality of the circumstances would have perceived that applicant's actions posed a real, present and apparent threat of bodily harm." (Report, at p. 3.) Accordingly, the WCJ recommends we deny applicant's petition.

DISCUSSION

I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on March 3, 2025, and 60 days from the date of transmission is May 2, 2025. This decision is issued by or on May 2, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on March 3, 2025, and the case was transmitted to the Appeals Board on March 3, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 3, 2025.

II.

Section 3600(a) sets forth the “conditions essential” to compensation, providing that “[l]iability for the compensation ... 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....” (Lab. Code, § 3600(a).) The injured worker bears the initial burden of proving

injury arising out of and in the course of employment by a preponderance of the evidence. (Lab. Code, § 3202.5.)

However, the legislature has also enacted section 3600(a)(7), which bars an employee's claim for compensation where the injury arises out of an altercation in which the injured employee is the initial physical aggressor. This section is to be narrowly and strictly construed in light of the statutory policy of liberal construction in favor of the injured worker pursuant to section 3202. (*Mathews v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 719, 726 [37 Cal.Comp.Cases 124] (*Mathews*).)

To "arise out of an altercation," as required by section 3600(a)(7), an injury must result from an exchange between two or more persons characterized by an atmosphere of animosity and a willingness to inflict bodily harm. Section 3600(a)(7) also imposes the necessity of selecting one overt act out of a series of hostile verbal, psychological, and physical acts as the one that, for compensation purposes, caused the quarrel and elicited the ultimate injury. (*Mathews, supra*, 6 Cal.3d at p. 726.)

Here, the WCJ found that the "initial physical aggressor is the one who first engages in physical conduct which a reasonable man would perceive to be a real and present and apparent threat of bodily harm." (Opinion on Decision, at p. 2, citing *Mathews, supra*, 6 Cal.3d at p. 726.) The WCJ determined that "the applicant's act of putting her hand on Medina's camera and moving it, while he was filming, was the act that first introduced physical violence into the confrontation, and therefore the court finds that the applicant was the initial physical aggressor." (*Id.* at p. 3.)

Applicant disagrees with the WCJ's characterization of the act as introducing "physical violence" into the confrontation. Applicant avers, "there is little, if any, credible evidence suggesting that Mr. Medina perceived that action as a true, immediate, and evident threat of bodily harm to himself, nor would a reasonable person ... [t]he simple act of moving the camera away from her person and personal space did not constitute an instance of physical violence against Medina nor did it create a reasonable fear of imminent bodily harm to him." (Petition, at p. 6:5.)

In *Mathews, supra*, our Supreme Court observed:

The Legislature's use of the word "physical" indicates that it was primarily concerned with the increased risk of injury which arises when a quarrel moves from an exchange of hostile words and nonviolent gestures to a trading of physical blows. Thus, one is not an "initial physical aggressor" so long as he confines his antagonism to arguments, epithets, obscenities or insults. Instead,

an “initial physical aggressor” is one who first engages in physical conduct which a reasonable man would perceive to be a ‘real, present and apparent threat of bodily harm. . . .’ (*Briglia v. Industrial Accident Commission* (1962) 27 Cal.Comp.Cases 217, 218.)

(*Mathews, supra*, 6 Cal. 3d at pp. 726-727.)

The WCJ has reviewed the witness testimony and video evidence and considered whether applicant’s initial act of putting her hand on Mr. Medina’s video camera and moving it to the side while filming would result in a fear of imminent bodily harm in a reasonable person. The WCJ writes in his report:

The credible evidence in this case is the testimony of Mr. Medina and the video and audio of the altercation which was summarized by this WCJ in which the applicant is heard telling Mr. Medina that he can’t film me, and that the camera does appear to jerk slightly, and Mr. Medina is heard saying “don’t touch the camera”. As the altercation continues the applicant is heard yelling “I’m going to kill him” several times. Mr. Medina is heard to say that the applicant attacked him. (See MOH 11/18/24 at page 6-7). The video/audio and testimony does confirm that Mr. Medina, after the initial moving of the camera by the applicant, does escalate the physical altercation however, the cases have determined that later acts of an opponent which unjustifiably increase the level of violence does not absolve the initial physical aggressor.

(Report, at pp. 2-3.)

We concur with the WCJ’s analysis and conclusion that the act of physically touching and pushing aside Mr. Medina’s camera while he was filming was the initial escalation from hostile words and nonviolent gestures into physical acts which Mr. Medina testified credibly were perceived as a real, present and apparent threat of bodily harm. We also observe that the WCJ had the opportunity to view and question applicant in trial proceedings and found the testimony of Mr. Medina to be the more credible and convincing evidence. We accord to the WCJ’s credibility determinations the great weight to which they are entitled. (*Garza v. Workmen’s Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

Because the WCJ appropriately concluded that applicant’s claimed injury arose out of an altercation in which applicant was the initial physical aggressor, compensation is barred under section 3600(a)(7). We will deny reconsideration, accordingly.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 2, 2025

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

**TALIBAH COFFEE
OZUROVICH, SCHWARTZ & BROWN
VEATCH CARLSON
LAW OFFICES OF HALEH SHEKARCHIAN**

SAR/abs

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

CS