

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

CHRISTOPHER JOHNSON, *Applicant*

vs.

**LEXMAR DISTRIBUTION dba LDI TRUCKING, INC.; CLEAR SPRING PROPERTY
AND CASUALTY COMPANY administered by CANNON COCHRAN MANAGEMENT
SERVICES, INC., *Defendants***

**Adjudication Number: ADJ14203968
Anaheim District Office**

**OPINION AND DECISION
AFTER REMAND**

The following Decision after Remand is issued pursuant to the November 3, 2022 Order by the Fourth Appellate District Court of Appeals (Court), in which the Court granted the relief requested by the Workers' Compensation Appeals Board (WCAB) to remand the matter to the WCAB. (Order, p. 2.) The Court vacated the WCAB's July 1, 2022 Opinion and Decision after Reconsideration (Decision),¹ and remanded the matter to the WCAB for further proceedings consistent with the Opinion. (*Ibid.*)

Applicant contended on review that the WCAB erred in denying reconsideration of the Findings and Order issued by a workers' compensation administrative law judge (WCJ) on April 8, 2022 because Labor Code,² section 3600(a)(8) is not applicable. Section 3600(a)(8) prohibits compensation where the injury was "caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the Penal Code, by the injured worker, for which he or she has been convicted."

¹ Commissioner Sweeney, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

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

We now further analyze the meaning of section 3600(a)(8) and whether applicant's guilty plea to a misdemeanor under Arizona Statute 28-1595(b) is the equivalent of "a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the Penal Code."³

Penal Code, section 17(b), provides:

(b) When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.

(2) When the court, upon committing the defendant to the Division of Juvenile Justice, designates the offense to be a misdemeanor.

(3) When the court grants probation to a defendant and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

(4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

(5) When, at or before the preliminary examination or prior to filing an order pursuant to Section 872, the magistrate determines that the offense is a misdemeanor, in which event the case shall

³ Section 3600(a)(8) provides:

(a) Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602 , 3706 , and 4558 , 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:

...

(8) Where the injury is not caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the Penal Code, by the injured employee, for which he or she has been convicted. (§ 3600(a)(8).)

proceed as if the defendant had been arraigned on a misdemeanor complaint.

(Pen. Code, § 17(b).)

Generally, if a statute calls for imprisonment in state prison, the offense is a felony. If the statute calls for imprisonment in the county jail or a fine, it is a misdemeanor. (Pen. Code, § 17(a); *Meyer v. Superior Court of Sacramento County* (1966) 247 Cal.App.2d 133, 137.) Then there are “wobbler” offenses, which are crimes that, in the trial court's discretion, may be sentenced alternately as felonies or misdemeanors. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 974.) These “wobbler” offenses are designated felonies or misdemeanors depending on the actual punishment imposed by the court. (*Meyer*, at p. 137.)

Penal Code, section 17(b), authorizes a court to designate “wobbler” offenses to misdemeanors by imposing a punishment other than state prison or by declaration as a misdemeanor after a grant of probation. (*Alvarez, supra*, at p. 974.) The purpose of Penal Code, section 17(b) is to benefit the offender and encourage misdemeanor designations. (*Necochea v. Superior Court* (1972) 23 Cal.App.3d 1012, 1015-1016.)

Penal Code, section 1170(h), referenced in Penal Code 17(b), allows certain felonies to be punished by imprisonment in a county jail.⁴ However, Penal Code, section 17(a), states that “A felony is a crime that is punishable with death, by imprisonment in the state prison, or, notwithstanding any other law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.” In other words, even though Penal Code, section 1170(h) permits a felony crime to be served in county jail, it is still deemed a felony. Penal Code, section 17(b), authorizes a court to re-designate the felony crime to a misdemeanor offense.

Returning to the meaning of section 3600(a)(8), which prohibits compensation where the injury “was caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the Penal Code, by the injured worker, for which he or she has been convicted,” we conclude that section 3600(a)(8) prohibits compensation where the injury was caused by the commission of a felony or a misdemeanor that was re-designated as such from a felony. Here, applicant was convicted by plea deal of Arizona Statute 28-622(A), failure to obey

⁴ Penal Code, section 1170(h), is part of the 2011 Realignment Legislation addressing public safety, which changed the sentencing and supervision of lower-level felons to county jails as a way to address recidivism. (See *People v. Cruz* (2012) 207 Cal.App.4th 664.)

police officer, and Arizona Statute 28-1595(B), failure to show driver license, both class 2 misdemeanors. They are not felonious crimes that were re-designated misdemeanors. Thus, we conclude that section 3600(a)(8) does not bar applicant from workers' compensation benefits.

In addition, section 3600(a)(8) specifies that there must be a causal relationship between the injury and the crime and we are not convinced that there is one here. (§ 3600(a)(8); *Brown v. Integrity Flooring* (January 22, 2019, ADJ7551953) [2019 Cal. Wrk. Comp. P.D. LEXIS 9] [the evidence does not support a finding that the accident was the direct or proximate result of applicant's lack of a license]; *Tomatani v. City of Redondo Beach* (January 31, 2022, ADJ7239099) [2011 Cal. Wrk. Comp. P.D. LEXIS 96] [the evidence does not establish that applicant's criminal act was the sole cause of his heart trouble.]

The WCJ opined as follows:

That however is not all that is required; the defendant must also prove the crime was a contributing factor without which the injury would not have occurred. . . . Here the films show the applicant refused the legal orders of the Arizona Police officer. As evidenced by his arrest, the driver of a vehicle is required by law to provide identification, insurance card, and registration. The applicant refused to provide any of these documents. Instead, he became agitated and verbally confrontational with the officers. Had he complied with the orders then none of this would have occurred. His conduct and his refusal to provide his driver's license and to obey the police officers commands were the contributing factors to his injuries. Had he complied he would not have been forcefully removed from the truck and suffered his injuries. (Opinion on Decision dated April 4, 2022, pp. 7-8.)

The WCJ summarized the dashcam videos shown at trial as follows:

The court reviewed the three different views and video evidence offered by the defendant, after the films were allowed into evidence by stipulation of the parties. The films show the applicant in a very agitated state. He was cursing at the officers and demanding to speak to a supervisor. When this attempt failed, he called 911 demanding to speak to the sergeant. The applicant refused to identify himself or give the officers his ID, insurance card, or vehicle registration. He told the officer he was a citizen of the United States and officers worked for him. He was belligerent and refused to cooperate with any orders given by the police. Contrary to the applicant's sworn testimony, he did not appear to be in fear of the officer who was outside the passenger side of the truck talking to him through the open passenger window. Later a second officer appears in the video at the driver's side of the truck with his hands on the door. The driver's side

window was down, at that time neither he nor the applicant made any overt actions towards the other. The films show the applicant gesturing towards the front and sides of the truck with his hands pointing his fingers towards the front of the cab and not at the officer. Contrary to defendant's position, as set forth in its trial brief, the court does not view this as a threat or the attempt to show his finger as a gun. These films do show that the applicant was cursing contrary to his sworn testimony at trial, MOH/SOE page 8, lines 7-8. He testified that as a commercial truck driver he has the right to disagree with the police and not respond to their orders and requests. He felt that since he disagreed with the reason he was pulled over, he could refuse to comply with the officers orders, see MOH/SOE 6/15/21 page 12, lines 2-6. Contrary to the testimony of the applicant at trial on 6/15/21 the interaction was confrontational, see MOH/SOE 6/15/21 page 12, lines 18. The applicant's claim this was a battle of words is true but it was a heated battle of words. The films do not show the applicant making any overt actions towards the officers. They show he was not cooperative. He was cursing at the officers but never threatened them. He refused to comply with the lawful orders issued by the officer. . . . The interaction with the officers was heated, but nowhere in the film is there evidence the applicant threatened the officers or made any overt action towards the officers. He was demanding, condescending and his blatant refusal to follow the officer's orders is clearly shown on the video. He cursed at the officers and refused to comply with any directive they gave, whether by the initial officer who stopped him, the person on the phone, or the other officer who arrived and was talking to the applicant. The mere act of reaching to close his door is not an act of aggression towards the officers. (Opinion on Decision dated April 4, 2022, pp. 3-4.)

We are not convinced of the WCJ's conclusion that there is a causal relationship between the crimes for which applicant was convicted and the applicant's injuries. The WCJ found, and the parties do not appear to dispute, that applicant's injuries occurred when he was pulled from his semi-truck and thrown to the ground falling approximately seven feet. (Findings and Order dated April 8, 2022, Findings no. 1; Opinion on Decision dated April 8, 2022, pp. 1-2.) The two crimes applicant was convicted of were failure to obey a police officer (Ariz. Rev. Stat. § 28-622(A)) and failure to show his driver's license (Ariz. Rev. Stat. § 28-1595(B)). It is not axiomatic, at least it should not be, that failure to obey a police officer will result in injury. The WCJ concluded that although the interaction between applicant and the police officers was confrontational and heated, applicant never made any overt actions towards the officers and never threatened them. He stated, applicant "was argumentative, but this argument never rose to the level of 'fighting words' nor did the only physical act, closing his door, rise to the level of an aggressive position taken by applicant." (Opinion on Decision dated April 4, 2022, p. 4.) "The films do not show the applicant

fighting back. When he was pulled out of the truck by the officers the applicant was resisting but never threw any punches or made any movements the court could observe in the films towards the officers.” (*Id.* at p. 5.) “There was no physical act by the applicant towards the officer, only the reaching over and closing the driver side door. This act was not directed at one of the officers but only done to keep them out.” (*Ibid.*) The WCJ found that applicant was not the initial aggressor in this altercation with the police. (*Id.* at p. 4.) We, thus, call into question whether the officer’s decision to forcibly pull applicant out of the semi-truck’s cab, thereby causing applicant’s injuries, was necessarily a result of applicant’s confrontational and non-cooperative attitude.

Compare with intoxication cases under section 3600(a)(4), where a medical provider can opine whether an employee’s alcohol level would cause impaired judgment, impaired sensory perception and slowed reaction time, thereby contributing to the injury. (See *Hufford v. Howell’s Forest Harvesting* (April 4, 2023, ADJ6465992) [2023 Cal. Wrk. Comp. P.D. LEXIS 88].) Here, we do not see such causal relationship between applicant’s confrontational and non-cooperative attitude and his injuries.

Accordingly, it is our decision after remand to grant applicant’s Petition for Reconsideration and amend the April 8, 2022 Findings and Order to reflect that applicant’s workers’ compensation claim is not barred by section 3600(a)(8).

For the foregoing reasons,

IT IS ORDERED that applicant’s Petition for Reconsideration of the April 8, 2022 Findings and Order issued by a workers’ compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED, as the Opinion and Decision After Remand of the Workers’ Compensation Appeals Board that the April 8, 2022 Findings and Order issued by a workers’ compensation administrative law judge is **AFFIRMED**, except that is **AMENDED** as follows:

Findings of Fact

...

2. Applicant’s rights to workers’ compensation benefits are not barred by Labor Code, section 3600(a)(8).

Order

There are no orders at this time.

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

June 4, 2024

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

**CHRISTOPHER JOHNSON
LAW OFFICES OF TOUS & ASSOCIATES
MICHAEL SULLIVAN & ASSOCIATES LLP**

LSM/oo

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

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

06-04-2024

OFFICIAL ADDRESS RECORD

(DEC AFTER REMAND)

Case Number: ADJ14203968

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