

**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 ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant Christopher Johnson seeks reconsideration of the April 8, 2022 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained injury arising out of and occurring in the course of employment to his lumbar spine, bilateral knees, bilateral wrists, and left ankle, but that applicant's rights to workers' compensation benefits are barred as defendants are entitled to a defense under Labor Code,¹ section 3600(a)(8).

Applicant contends that section 3600(a)(8) is not applicable because he was arrested for a misdemeanor, not a felony. He contends that under section 3600(a)(8), compensability is not allowed where the injury is caused by the commission of a felony or a crime which is punishable under Penal Code, section 17(b). According to applicant, Penal Code, section 17(b), gives a judge discretion to reduce a felony offence to a misdemeanor. Applicant then reasons that because he pled guilty to a misdemeanor, not a felony, there is no felony from which a judge can reduce to a misdemeanor, making Penal Code, section 17(b) inapplicable.

We received an answer from defendant LDI Trucking, Inc. In its answer, defendant raises new issues for the Appeals Board. We will treat this as an untimely Petition for Reconsideration.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration

¹ All subsequent statutory references are to the Labor Code unless otherwise indicated.

(Report), recommending that the Petition be denied.

We have considered applicant's Petition for Reconsideration, the Answer (which is also a Petition for Reconsideration by defendant) and the contents of the Report, and we have reviewed the record in this matter. Based on the WCJ's Report, which we adopt and incorporate, except for the sections where the WCJ addresses the new issues raised in defendant's answer starting on page 6, last paragraph, to the end of page 8, and for the reasons discussed below, we deny applicant's Petition for Reconsideration. Furthermore, we also deny defendant's Petition for Reconsideration as untimely (§ 5903; Cal. Code. Regs., tit. 8, § 10605.)

We note that 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).)

Furthermore, 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 (Pen. Code, § 17(b); emphasis added.)

Applicant fails to consider that he pled guilty to a crime that was punishable by a "fine or imprisonment in the county jail" as specified in Penal Code, section 17(b). Accordingly, section 3600(a)(8) applies and applicant's rights to workers' compensation is barred.

For the foregoing reasons,

IT IS ORDERED that applicant Christopher Johnson's Petition for Reconsideration of the April 8, 2022 Findings and Order is **DENIED**.

IT IS FURTHER ORDERED that defendant LDI Trucking, Inc.'s Petition for Reconsideration of the April 8, 2022 Findings and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 1, 2022

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/pc

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

JOINT REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I INTRODUCTION

The applicant, by and through his attorney of record, filed a timely, properly verified Petition for Reconsideration to this Court's Opinion on Decision and Findings and Order served 4/13/22 on 5/2/22. On 5/11/22 defendant filed an Answer to the petition for reconsideration, in defendant's Answer they raised issues that this court will treat as a petition for reconsideration even though it is not timely filed and address them for the Board.

II BACKGROUND

This case began with the filing of an Application for Adjudication of Claim by the applicant for a 1/3/21 specific date of injury in ADJ14203968. A Declaration of Readiness was filed and the matter was ultimately set for trial on 6/15/21. Trial went forward that day and a dispute arose over the admissibility of the films, see MOH/SOE dated 6/15/21, EAMS doc. ID #74332741. A Petition for Disqualification was filed on 6/25/21 by defendant, EAMS doc. ID #37216873. On 10/19/21, the Board granted the defendant's petition and sent the matter to the trial level to address the admissibility of the films and ordered it to a different trial judge, EAMS doc. ID #74778770. The matter was reset for trial on 2/2/22 before the undersigned. At the trial, the parties stipulated to the admissibility of the films. The parties began with the cross-examination of the applicant when an issue arose as to whether or not the applicant's attorney had been served with some impeachment evidence. The court continued the matter for 1 week to allow applicant's attorney to review the records, MOH/SOE dated 2/2/22 EAMS doc. ID #75150577. On 2/9/22, the defendant made a motion to augment the record with newly discovered evidence, the Quartzsite Justice Court records, Def Exh. B, which the court granted. The testimony concluded and the court granted leave to file post trial briefs on the newly discovered evidence and issues it raised, MOH/SOE dated 2/9/22 EAMS ID #75178205. The matter stood submitted on 3/10/22. Following submission, the court found that the applicant did in fact sustain an injury during this physical altercation with the Arizona Police, that the defendant did not meet its burden to prove up an initial aggressor defense nor did they submit any evidence that the applicant's injury did not arise out of or in the course of his employment with the defendant. The court found and granted a Labor Code §3600(a)(8)¹ defense based upon on the altercation that occurred and applicant's pleading guilty to two misdemeanor charges. It is from this finding applicant seeks reconsideration contending the court erred in granted the §3600(a)(8) defense. Defendant filed an Answer to the petition for

¹ All further references are to the California Labor Code unless otherwise stated

reconsideration supporting this court's finding of the §3600(a)(8) defense. In addition, they are requesting the Board reconsider the courts findings on injury AOE/COE, based on the lack of substantial medical evidence and that the applicant was not acting within the course and scope of his employment, that he made a deviation of his work duties. At the time of preparing this report and recommendation on reconsideration, the applicant has not filed a response to defendant's petition for reconsideration.

III DISCUSSION

The first issue the court will address is the court's finding of injury and the defense under 3600(a)(8). This issue involves a truck driver who was stopped for an illegal U-turn by the Arizona State Police. The applicant is a driver for the defendant making runs from California to Arizona. The court watched the video footage taken from inside the cab of the truck. It shows the applicant arguing with the officers, refusing to identify himself, provide his driver's license, registration or insurance cards. He was argumentative with the officers and refused to comply with any of their instructions or orders. He was forcibly removed from the cab of the semi-truck and pulled to the ground. The court did not find the initial aggressor defense under §3600(a)(7) as the applicant never made any overt moves or threatening gestures to the officers to warrant this finding. The court reviewed the medical record and found when taken as a whole with the video evidence its supports the fact the applicant sustained an injury as a result of being forcibly thrown to the ground. Once the finding of injury is made then the court can apply the defenses. The court must view the evidence in a light most favorable to the applicant §3202, §3202.5. In doing so the court found that he is substantial medical and demonstrative video evidence to support the finding of injury.

As set forth in the Opinion on Decision on page 6, the applicant was not truthful in responding to the questions presented to him about the criminal charges at trial. He denied there were any charges pending or that he had been convicted of any crimes as a result of this interaction with the police, see MOH/SOE 6/15/21 page 9, lines 2-5, MOH/SOE 2/2/22 page 4, lines 5-8 and MOH/SOE 2/9/22 page 2, line 21 through page 3, line 9. The Quartzsite Court records, Def. Exh. B, show the applicant was arrested and taken to jail on 1/3/21 for 5 misdemeanor infractions, Arizona Traffic Ticket and Complaint #913541221003005, showing the applicant was in custody. Bates page stamp #000001. In the Quartzsite records on Bates stamped page #000003, it shows the applicant pled out on two of the five charges pending against him, Count 1 Ariz. Statute 28-622A a misdemeanor 2nd degree and Count 2, 281595B, Failure to Show Driver License or Identification Misdemeanor 2nd degree. This is contrary to what applicant argues in his petition for reconsideration. He argues that the applicant only plead guilty to one misdemeanor. That is incorrect. There was an original plea agreement but that was never finalized and was not

accepted. Applicant's position is that the defense will only succeed if the applicant was convicted of a felony. The defense to a claim under §3600(a)(8) is applicable to either a felony or a misdemeanor. As set forth in the statute, it states a claim is not compensable if it is "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."(emphasis added). Penal Code §17(b) is a separate and distinct charging offense. It is not a "wobbler" as characterized by the applicant's attorney or that it is a felony pled down to a misdemeanor. Penal Code §17(b) states,

"When a crime is punishable, in the discretion of the court, either, by imprisonment in the state prison or imprisonment in the county jail under the provisions of subdivision (h) of Section 1170, *or* by a fine or imprisonment in the county jail, it is a misdemeanor for all purposes..."(emphasis added)

The applicant pled guilty to two misdemeanors in Arizona, both of which were classified as misdemeanors carrying the potential of jail time and fines. Arizona Statute 28-1595(B) marked for identification, which the court will take judicial notice thereof, states,

"B. After stopping as required by subsection A of this section, the operator of a motor vehicle who fails or refuses to exhibit the operator's driver license as required by section 28-3169 or a driver who is not licensed and who fails or refuses to provide evidence of the driver's identity on request is guilty of a class 2 misdemeanor. The evidence of identity that is presented shall contain all of the following information:..."

The applicant also plead guilty to a violation of Arizona Revised Statute 22-622A which states in the relevant part,

A person shall not willfully fail or refuse to comply with the lawful order or direction of a police officer invested by law with the authority to direct, control or regulate traffic."

The applicant was seen and heard in the video to state that he did not have to comply with officers requests as he is a United States Citizen and the officers work for him and that since he did not think the stop was lawful and had no duty to comply with their requests. The injury occurred during the commission of these crimes. Had the applicant cooperated with the officers he might have received a ticket or a warning, but do to his resistance and refusal to cooperate and exit his vehicle he was forcefully removed and taken to jail and charges with five misdemeanors. The applicant's conduct was the main contributing factor to

his injuries, without his unreasonable conduct the injuries would not have occurred.

The court must compare the Arizona Statutes to California Penal Code §17(b) to see if the Arizona statute will qualify as a defense. Both states statutes are misdemeanor punishable by jail time and fines. The plea agreement specifically states that the crimes he was convicted of, the two counts set forth above, Def. Exh. B Bates stamped pages #000002 and #000003. Page #000003, specifically states that the applicant plead guilty to a class three misdemeanor to include a range of sentencing to include up to a fine of \$500.00, surcharges and fees, **30 days in jail**, and/or 1 year probation(emphasis added). For the defense to be applicable, it does not require the applicant serve any jail time just that it is punishable by jail time. Here though the applicant was arrested and taken to jail. He refused to answer questions on the Defendant's Financial Statement including his name, Def. Exh. B Quartzsite Justice Records, Bates stamped pages #000038-000040, which was to be used to determine bail and the right to counsel. Quartzsite records page #000033 is the Determination of Release Conditions of Release Order or Commit before Conviction. This document shows the applicant spent at least one night in jail as a result of these charges. As both the California and Arizona statutes include misdemeanor charges and jail time they are equal under the law for the applicability of the defense. The Court requests the Board uphold this court's Findings and Order find that though an injury occurred the defense under §3600(a)(8) is applicable and find the applicant shall take nothing by way of his claim.

Applicant contends that there was insufficient evidence to support the applicant contributed to his own injuries thereby negating the defense. The record was very clear nor further evidence or testimony was needed to establish the applicant contribute to his injuries by his refusal to cooperate and resist the officers command which resulted in him being forcibly removed from the truck. Had he complied there would have been no injury. The court did not speculate to arrive at its decision. The court viewed the contemporaneous video evidence including the actual visual and oral recordings of the applicant's and officer's comments during this process and his forcefully being removed from the truck. There is no need or duty to develop the record, the record is sufficient and clear.

The court requests that the Board deny Applicant's petition for reconsideration and uphold its finding that the applicant take nothing by way of his claim against the defendant.

IV
CONCLUSION

Therefore, this court requests the Board deny the Petitions for Reconsideration in their entirety.

Dated: 5/13/22
Alan L. Skelly
Workers' Compensation Judge