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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COUNTY OF RIVERSIDE,

Petitioner,

v.

THE WORKERS' COMPENSATION
APPEALS BOARD and SANDIE
TAYLOR,

Respondents.

E055965

OPINION

ORIGINAL PROCEEDINGS; writ of review. Order annulled.

Law Office of Louis D. Seaman and Louis D. Seaman for Petitioner.

Law Office of Don Featherstone and Don Featherstone for Respondent Sandie
Taylor.

No appearance for Respondent Workers' Compensation Appeals Board.

Petitioner, the County of Riverside (Employer), filed this petition seeking a writ of review pursuant to Labor Code section 5950¹ of an order awarding workers' compensation benefits to respondent Sandie Taylor (Applicant). We conclude that the Workers' Compensation Appeals Board (Board) erred in finding either that Applicant was an "employee" covered by the workers' compensation laws or that she was entitled to benefits as a member of the "posse comitatus." Accordingly, we issued a writ of review and now annul the order.

STATEMENT OF FACTS

Applicant was a member of a group known as the "Mounted Posse Program" established by the Sheriff of Riverside County. Membership in, and the duties of, the posse are extensively prescribed in a manual prepared by the County. The mission of the posse is to "assist the Department [i.e., the sheriff] in its mission and operations." Prospective members are required to undergo and pass a "Live Scan" background check. Once accepted, they are trained in such functions as traffic control and crowd management, crime scene protection, dealing with the public, and first aid. Possible "deployments" include "eyes and ears" patrols at shopping centers, special events, in parks, and on trails, as well as search and recovery and appearances at parades or recruiting events.

The manual also prescribes appropriate tack and rider uniforms or other permitted clothing. (Logoed shirts and caps were provided by the County, but members otherwise

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

provided their own clothing and tack.) Finally, all riders and their horses must regularly be tested for “qualification” skills, which measure the suitability of both horse and rider. One of the “mandatory pass” elements is exposure to simulated gunfire.² Applicant testified that it was usual for the County to pay for training, although this was not universal. She also testified that meals were provided during periods of deployment.

On July 30, 2010, the date she was injured, Applicant and her horse were undergoing additional training, although the horse had recently been formally qualified. The training course was a three-day event, and Applicant and her horse had already gone through two days that included such horse-stressors as smoke bombs, firecrackers, and walking a seesaw. Applicant felt that her horse was becoming upset and attempted to position him away from the activity so that he could recover his equanimity. The trainer³ instructed Applicant to rejoin the group with her horse for more firecracker training. She complied, her horse spooked at the firecrackers, and Applicant was thrown and suffered injuries.

The workers’ compensation judge found that Applicant was not a covered employee. However, Applicant petitioned for reconsideration (§ 5900), and the Board

² Overall, the horse and rider must receive an 80 percent score, but exposure to gunfire and the rider’s ability to mount from ground level from both sides are “mandatory pass” elements.

³ The training was conducted in Santa Monica and was apparently not run by the County; the trainer is described as a member of the “California Mounted Officers Association.”

ruled that she was entitled to benefits as a covered person. We conclude that the Board was wrong and will annul the decision.

DISCUSSION

Although the applicant employee has the burden of proof in establishing the existence of an employment relationship, it is well established both by statute and case law that issues of compensability and the governing statutes shall be liberally construed in favor of the claimant. (§§ 3202, 3202.5; *Matea v. Workers' Comp. Appeals Bd.* (2006) 144 Cal.App.4th 1435, 1443.) However, in this case, neither the facts nor the law are subject to a construction that supports the Board's finding of compensability.

The Board relied chiefly upon section 3366, which *does* provide for "employee" status to persons "engaged in the performance of active law enforcement service as part of the posse comitatus or power of the county" ⁴ The Board's error in this regard was equating Applicant's membership in the "Mounted Posse" with the "posse comitatus." We explain.

The concept of the "posse comitatus" is an ancient one and in its simplest common law formulation reflects "the duty, of every citizen, when called upon by the proper officer, to act as part of the posse comitatus in upholding the laws of his country." (*In re Quarles* (1895) 158 U.S. 532, 535-536.) In California, the significance of the concept is

⁴ The statute goes on to spell out what the posse comitatus is: ". . . and each person (other than an independent contractor or an employee of an independent contractor) engaged in assisting any peace officer in active law enforcement service at the request of such peace officer, is deemed to be an employee of the public entity that he or she is serving or assisting" (§ 3366.)

reflected in the criminal provisions of Penal Code section 150, which provides that “[e]very able-bodied person above 18 years of age who neglects or refuses to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any break of the peace, or the commission of any criminal offense, being thereto lawfully required by any uniformed peace officer . . . is punishable by a fine”⁵

We think it is obvious that membership in an auxiliary group, which exists at least in part for ceremonial and publicity purposes, is not the same as being engaged in assisting law enforcement in an evolving, and possibly precarious, situation. The Board appears to have been misled by the fact that the group of which Applicant was a member was called a “posse,” no doubt because members rode horses and the Board was influenced by the connection of the term to myriad Western movies.⁶ But the concept of the posse comitatus does not depend on whether the members are mounted; as noted *ante*, the phrase simply translates as “power of the county” and may be exercised on foot, in

⁵ A related common law public duty is that of any citizen to join in the “hue and cry” in pursuit of a wrongdoer. (See *People v. Sandoval* (1966) 65 Cal.2d 303, 312, fn. 6.)

⁶ In that usage, of course, “posse,” as in “round up the posse!” is simply short for posse comitatus, as it typically reflects the sheriff or marshal’s call to local citizens to aid in the pursuit or capture of a bad guy.

vehicles, and in any other manner as well as on horseback. By the Board's apparent logic, a volunteer assisting the sheriff by doing citizen car patrols would not be covered because he or she was not part of a "posse," even though the patrol duties were indistinguishable from those sometimes performed by Applicant.⁷

Nor can it be argued that, at the time of her accident, Applicant was performing "active law enforcement service as part of the posse comitatus." (Lab. Code, § 3366.) She was training her horse to cope with stressful situations so that she might serve in the mounted posse in its various assignments.⁸ She was *not* providing any "active law enforcement services," let alone any of those traditionally assumed by the posse comitatus, such as aiding in the apprehension of criminals. (See Pen. Code, § 150.)⁹

We therefore reject the Board's reliance on section 3366. Instead, Applicant's situation is governed by section 3352, subdivision (i), which *excludes* from the definition

⁷ If a person is formally deputized or appointed as a reserve or auxiliary deputy or police officer, that person is considered an employee if he or she is "assigned specific police functions" so long as he or she is performing such functions. No contention is made that Applicant had been so deputized. (§ 3362.5.)

⁸ We express no opinion as to which of the potential services might fall within the scope of the "posse comitatus."

⁹ An interesting application of section 3366 is described in *Page v. City of Montebello* (1980) 112 Cal.App.3d 658, 662-665 and footnote 1. That case was a civil action in which Page's survivors attempted to recover death and retirement payments based on an alleged promise by a law enforcement officer to Page that if he assisted in narcotics investigations as an informant, his family would be compensated if anything happened to him in the same manner as if he had been a police officer. Page was shot to death in an incident related to his undercover activity and reports to police. Although the court held that his family could not enforce this alleged promise, it noted that the family had received workers' compensation benefits, with the Board expressly relying on section 3366.

of “employee” “[a]ny person performing voluntary service for a public agency . . . who receives no remuneration for the services other than meals, transportation, lodging, or reimbursement for incidental expenses.” This precisely describes Applicant’s position.

We are not persuaded by Applicant’s stress on the valuable services that the mounted posse arguably provided to the sheriff’s department. All volunteers providing assistance to public entities, whether shelving books at the library or pulling weeds in the park, provide valuable services in supplementing the work of public employees without cost. The statutes simply provide no basis for treating a volunteer to the sheriff’s department different from a volunteer at a school or public hospital.

Nor is it legally significant that her training was essential to her participation in the mounted posse. If membership in the mounted posse was not in and of itself sufficient to qualify her as an employee under section 3366 (and it was not), a fortiori training activities were irrelevant to her status as employee *vel non*.

The Board also felt that *Laeng v. Workmen’s Comp. Appeals Bd.* (1972) 6 Cal.3d 771 (*Laeng*) supported Applicant’s claim, but again we disagree. In that case, the claimant had applied for a position with the City of Covina and had successfully completed a written test. He was then called back for a physical agility test and was injured attempting to complete an “obstacle course.”¹⁰ (*Id.* at p. 774.) In finding the injury compensable, the Supreme Court held that a “tryout” in which the employment

¹⁰ Interestingly, only applicants for positions as police officers, firemen/women, and refuse collectors were required to take agility tests. The applicant had applied for the latter position. (*Laeng, supra*, 6 Cal.3d at p. 774 & fn. 2.)

applicant attempts to demonstrate particular skills constitutes a “‘benefit’ or ‘service’” to the employer. (*Id.* at p. 781; see also § 3357.)¹¹ It also noted the extent to which the applying employee submitted to the control of the prospective employer, and the corresponding extent to which the prospective employer assumed the responsibility for directing the activities of the applicant during the test. (*Laeng, supra*, at pp. 781-782.)

To apply *Laeng* here, would eviscerate the clear provisions of section 3352, subdivision (i), with respect to volunteers, and it is clearly distinguishable. Applicant was not applying for a regular position as a sheriff’s deputy; she was training her horse in order to maximize its performance in a volunteer auxiliary group. It is true that Applicant testified that she felt that she “had to” obey what she (correctly) believed to be the unwise order to position her horse closer to the firecrackers, and was therefore submitting to control of a County representative.¹² All volunteers are to a greater or lesser extent subject to the direction and control of the regular employees whom they assist. Applicant testified that she felt that if she did not obey the “order” she might be “fired” from the posse, but even if this belief was correct, Applicant was in no different situation from that of any recalcitrant volunteer. Nothing in *Laeng* suggests that the court intended to fix a rule governing a true volunteer as well as a job applicant.

¹¹ “Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.” (§ 3357.) In this case, section 3352, subdivision (i), *does* expressly exclude Applicant.

¹² In fact, the trainer’s status is unclear, but we will assume that she carried the force of County authority.

DISPOSITION

Accordingly, the order under review is annulled. In the interests of justice, the parties shall bear their own costs.

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KING
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.