

Case No. S282013

**In The Supreme Court
State of California**

MICHAEL AYALA,
Petitioner,

vs.

STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS
AND REHABILITATION, Legally Uninsured, and STATE
COMPENSATION INSURANCE FUND, Adjusting Agency, and
THE WORKERS' COMPENSATION APPEALS BOARD OF THE
STATE OF CALIFORNIA,
Respondents.

WCAB Case No. ADJ71360597
Civil Case No. E079076
Hon. Michael J. Raphael;
In The Court of Appeal of the State of California
Fourth Appellate District, Division Two

**ANSWER BRIEF ON THE MERITS OF THE CALIFORNIA
DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

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INTRODUCTION

This workers' compensation matter involves a legal question based on undisputed facts, which may be reviewed de novo by this Honorable Court: whether "serious and willful" benefits under Labor Code Section 4553¹, consisting of a one-half increase of "compensation otherwise recoverable" under Division 4 of the Labor Code, should be awarded based on Temporary Disability ("TD") amounts conferred by the Labor Code, as opposed to Enhanced Industrial Disability Benefits ("EIDL") benefits conferred by the Government Code.

The WCAB erroneously awarded EIDL as the basis of a "serious and willful" award under Section 4553, although the WCAB also conceded that it had no jurisdiction to award EIDL benefits. By doing so, the Board exceeded its own limited jurisdiction and encroached upon the jurisdiction of the Department of Personnel Administration ("DPA").

The Fourth District Court of Appeal, Division Two, annulled the Board's decision and remanded to the Board. The Court reasoned that since IDL/EIDL benefits are not conferred by Division 4 of the Labor Code, as required by Labor Code Section 3207, the one-half increase of "compensation otherwise recoverable" in Section 4553 cannot be based on IDL/EIDL, but should instead be based on TD. *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd. (Ayala)* (2023) 94 Cal. App. 5th 464, 468. (Review granted/pending.)

¹ All further statutory references are to the California Labor Code, unless otherwise specified.

The Court of Appeal has also previously ruled that Temporary Disability, and not EIDL, should be the measure of unreasonable delay penalties under Labor Code Section 5814. *Cal. v. Workers' Comp. Appeals Bd. (Ellison)* (1996) 44 Cal. App. 4th 128, 136-138.

The Court's decision in this case is based on well-established legal principles, including the Plain Meaning Rule and case law precedents excluding IDL benefits from similar penalty provisions in the Labor Code, as discussed below. Accordingly, the California Department of Corrections & Rehabilitation ("CDCR") respectfully requests this Honorable Court to affirm the sound decision of the Court of Appeal.

QUESTIONS PRESENTED

1. Did the Court of Appeal correctly rule that IDL/EIDL may not be used to calculate S & W benefits under Section 4553? Alternatively, was the WCAB's interpretation of Labor Code Section 4553 based on IDL/EIDL benefits erroneous and unauthorized by law?
2. Did the Board exceed its jurisdiction in this case?

STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

On August 12, 2002, Respondent Michael Ayala sustained injuries as a result of an attack by prison inmates, while Mr. Ayala was employed as a correctional officer at Petitioner's Lancaster facility. (Exh. 1, Opinion and Decision after Reconsideration, p. 5, Par. 3). Thereafter, Mr. Ayala filed a claim for industrial injuries

with the Workers' Compensation Appeals Board ("WCAB" or "the Board").

Mr. Ayala also filed a petition for increased compensation for serious and willful misconduct pursuant to Labor Code Section 4553. (Exh. 1, Opinion and Decision after Reconsideration, p. 5, Par. 4). On April 27, 2020, the Workers' Compensation Judge found that Mr. Ayala was entitled to Serious and Willful benefits, with the amount to be adjusted by the parties and jurisdiction of the Board reserved in the event of a dispute. (Exh. 1, p. 5, par. 5). The parties disagreed as to whether the 50% increase of compensation under Section 4553 should be based on temporary disability ("TD") compensation benefits or enhanced industrial disability leave benefits ("EIDL").

The issue was tried on July 29, 2021. (Exh. 1, p. 5, par. 5). Trial briefs were submitted by both parties. (Exhs. 8 and 9, pp. 56 – 71). On November 8, 2021, Workers' Compensation Judge ("WCJ") Tracy Hughes ruled that the WCAB lacked jurisdiction to award EIDL benefits, but that Board had jurisdiction to award TD, and based thereon, ruled that applicant was entitled to 50% increase in compensation based on TD under Section 4553. (Exh. 6, Findings of Fact, p. 49, Findings of Fact No. 2 and 3.)

Judge Hughes explained that IDL/EIDL benefits are not included within the definition of "compensation" under Section 3207, as they are not among the categories of "compensation" conferred in Division 4 of the Labor Code. (Exh. 7, pp. 52-53). Judge Hughes also emphasized that, "Labor Code section 4553 specifically uses the word compensation, not benefits." (Exh. 7, p.

53, par. 2). Finally, Judge Hughes ruled that the WCAB does not have jurisdiction to award IDL or EIDL benefits. (Exh. 7, pp. 53-54.)

Mr. Ayala filed a Petition for Reconsideration of the WCJ's decision with the WCAB (Exh.5, pp. 39-47), and defendant filed a timely Answer to the petition for reconsideration. (Exh. 4, pp. 27-37). Thereafter, Judge Hughes issued a Report and Recommendation, recommending that the Board deny applicant's petition for reconsideration. (Exh. 3 pp. 22-26).

After granting the Petition for further study and consideration, (Exh. 2, pp. 19-21) the Board issued its Opinion and Decision After Reconsideration (Exh. 1, pp. 4-18) on April 13, 2022, with the following Findings of Fact:

1. Michael Ayala, while employed on August 12, 2002, as correctional officer at Lancaster, California by Department of Corrections & Rehabilitation sustained injuries caused by the serious and willful misconduct of his employer.
2. The WCAB does not have jurisdiction to award IDL benefits.
3. Applicant is entitled to a 50% increase in compensation per Labor Code section 4553 to be calculated based on the enhanced IDL payments he received from his employer.

(Exh. 1, Opinion and Decision after Reconsideration, p. 16).

Thereafter, CDCR/State Fund filed a timely Petition for Writ of Review to the Court of Appeal under Labor Code Section 5950. After granting review, the Fourth District Court of Appeal, Division 2, ruled that IDL/EIDL benefits are not conferred by

Division 4 of the Labor Code as required by Section 3207, and as such, cannot be the basis of “serious and willful” awards under Section 4553. *Department of Corrections & Rehabilitation v. Workers’ Comp. Appeals Bd. (Ayala)* (2023) 94 Cal. App. 5th 464, 468.

Mr. Ayala then filed a Petition for Review to this Honorable Court.

ARGUMENT

THE PLAIN MEANING RULE CONTROLS THE OUTCOME IN THIS CASE

In interpreting a statute, courts and administrative tribunals must adhere to the plain meaning of the statute in order to carry out the intent of the legislators as closely as possible. See e.g., *Equillon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal. 4th 53. In doing so, Courts must use the common English dictionary meanings of the words in the statute. Courts may not ignore a definition expressly provided in the statutory scheme, or arbitrarily adopt other definitions located outside the particular statutory scheme, unless the statute expressly adopts such definitions. The Board in this case impermissibly did both – AYALA is asking this Honorable Court to do the same.

"Interpretation of governing statutes or application of law to undisputed facts is a question of law that we decide de novo." *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Garcia)* (2012) 204 Cal.App.4th 766, 771. “[W]e give weight to [the Board's] interpretation of workers’ compensation statutes unless they are

clearly erroneous or unauthorized.” *Brodie v. Workers’ Comp. Appeals Bd.* (2007) 40 Cal. 4th 1313, 1331.

ENHANCED INDUSTRIAL DISABILITY LEAVE BENEFITS DO NOT CONSTITUTE “COMPENSATION OTHERWISE RECOVERABLE” WITHIN THE MEANING OF SECTION 4553.

Labor Code Section 4553 provides, in relevant part:

The amount of compensation otherwise recoverable shall be *increased one-half, together* with costs and expenses not to exceed two hundred fifty dollars (\$250), where the employee is injured by reason of the serious and willful misconduct of any of the following:

(a) The employer, or his managing representative ...

Section 4553 (Emphasis Added.)

Labor Code Section 3207 defines the term “compensation” as follows:

“Compensation” means *compensation under this division* [i.e. Division 4, “Workers Compensation Insurance”] and includes every benefit or payment *conferred by this division* upon an injured employee, or in the event of his or her death, upon his or her dependents, without regard to negligence.

Section 3207 (Emphasis Added.)

“Section 4553 cannot be read without reference to section 3207, which defines ‘compensation.’” *Ferguson v. Workers’ Comp. Appeals Bd.* (1995) 33 Cal.App.4th 1613, 1619. In *Ferguson*, the Court of Appeal held that the 50% increase of “compensation otherwise recoverable” for serious and willful misconduct must be based on the entire compensation award as defined in Section 3207

based on all Division 4 categories of “compensation,” provided that the total amount does not exceed the amount necessary to fully compensate the worker. *Id.* at 1616. The Court held that “compensation” included indemnity and non-indemnity compensation (such as medical benefits). *Ferguson*, 33 Cal. App. 4th 1613, 1616. See also *Adams v. Workers’ Comp. Appeals Bd.* (1976) 18 Cal. 3d 226, 231 [medical-legal fees are “compensation” for purposes of calculating Labor Code Sec. 5814 penalties.]

EIDL v. TD

Industrial Disability Benefits (“IDL”) and Enhanced Industrial Disability Leave (“EIDL”) benefits are not conferred by the Labor Code; they are conferred by the Government Code. See Gov. Code Secs. 19870 et seq.² Labor Code Sections 4800 et seq., which provide enhanced payments in lieu of temporary disability for specified law enforcement officers (such as local police and California Highway Patrol officers), do not expressly include correctional officers, such as Mr. Ayala here, among the officers specified in the Labor Code. See Labor Code Secs. 4800 – 4850.

² As Judge Hughes noted in the Report and Recommendation, “The legislature considered and provided enhanced payments in lieu of temporary disability for specified employees in Division Four. (See Labor Code section 4800 – 4850). *The legislature did not include correctional officers in the enumerated categories of employees that were entitled to enhanced salary in lieu of temporary disability in Division Four. There is no specific reference to compensation or benefits provided under the Government Code, for correctional officers included in Labor Code section 3207.*” See Exh. 4, p.3, Par. 2. (Emphasis Added.)

Nor is there anything in Labor Code Section 4553, or elsewhere in the Labor Code, that includes EIDL benefits within the definition of the term “compensation” for purposes of the Labor Code.

Government Code Sec. 19871 provides that except in certain situations not applicable here:

... when a state officer or employee is temporarily disabled by illness or injury arising out of and in the course of state employment, he or she shall become entitled, regardless of his or her period of service, to receive industrial disability leave and payments for a period *not exceeding 52 weeks* within two years from the first day of disability. These payments *shall be in the amount of the employees (sic.) full pay less withholding* based on his or her exemptions in effect on the date of his or her disability for federal income taxes, state income taxes, and social security taxes not to exceed 2 working days of disability subject to Section 19875. *Thereafter, the payment shall be two-thirds of full pay. ...”*

Gov. Code Sec. 19871 (Emphasis Added.)

Thus, the amount of EIDL benefits is the amount of the applicant’s net salary after taxes for the statutory period, and two-thirds of full pay thereafter. By contrast, temporary disability (TD) is two-thirds of applicant’s average weekly earnings subject to maximum TD limits. Labor Code Secs. 4653-4654 and 4453. When the temporary disability is partial (rather than total), and the applicant is able to work a compatible job and/or fewer hours, TD is calculated based on a wage-loss basis, compared to applicant’s regular salary. Secs. 4654 and 4453.

NO LEGAL AUTHORITY PERMITS A LEAP FROM THE LABOR CODE TO THE GOVERNMENT CODE TO CREATE A CONTRARY DEFINITION OF “COMPENSATION.”

The central flaw in the Board’s decision in this case was that the Board ignored the existing definition of “compensation” in the Labor Code and made an unsupported leap from the Labor Code to the Government Code to adopt a contrary definition of “compensation” into the Labor Code. This is what AYALA is asking this Court to do. This is completely contrary to well-established rules of statutory interpretation, the plain meaning rule, as well as case law precedents interpreting the same Labor Code sections at issue here.

The Labor Code section 3207 expressly states – *not once, but twice*, that “compensation” must be conferred by Division 4 of the Labor Code:

“Compensation” means *compensation under this division* and includes every benefit or payment *conferred by this division...*”

Labor Code Sec. 3207 (Emphasis Added.)

If the form of payment is not in Division 4, then it is not “compensation” within the meaning of Sections 4553 and 3207. Both the statutory scheme, and the existing case law interpreting it, make this point abundantly clear.

Had the Legislature intended to include EIDL benefits in the definition of “compensation” in Labor Code Sec. 3207, it certainly could have done so – but clearly chose NOT to do so. Similarly, had the Legislature intended to include EIDL benefits in Section 4553 pertaining to the 50% increase of “compensation” for Serious

and Willful Misconduct increase, the Legislature could have done so – but here again, chose not to do so.

Applicant is asking this Honorable Court to ignore the expressly stated legislative definitions in the Labor Code, and to legislate a new definition by arbitrarily adopting a special class of benefits conferred by the Government Code into the existing definition of “compensation” in the Labor Code. Applicant is essentially asking this Honorable Court to legislate from the bench. Separation of powers constitutionally prohibits such an action.

APPLICANT’S RELIANCE ON BROOKS V. WCAB IS MISPLACED.

Brooks v. Workers’ Comp. Appeals Bd. (2008) 161 Cal.App.4th 1522, on which applicant heavily relies, involved a completely different legal issue: namely, whether the maximum 1-year IDL period should be included in, or be additional to, the 2-year limit for aggregate TD benefits. *Id.* at 1536. The Court in *Brooks* concluded that “the two-year limitation under section 4656 incorporates benefits paid under the IDL provisions,” and that “a state employee is entitled to only 104 weeks of temporary disability indemnity, whether consisting of IDL, enhanced IDL, or TD...” *Brooks*, 161 Cal.App.4th at 1536-1537. (Citations Omitted.) Note that there is no such incorporation of IDL here, in addition to a completely different Labor Code section and legal issue being addressed by the *Brooks* court.

Significantly, Labor Code Section 4656, which is the subject of interpretation by the *Brooks* court, addresses the total duration

of “aggregate disability” – *not* “aggregate compensation.” Indeed, Section 4656 is entitled, “Aggregate disability payments for single injury causing temporary disability; number of compensable weeks,” and provides for a different maximum period for Temporary Disability payments based on date of injury (240 weeks versus 104 weeks). See Labor Code Sec. 4656 (a) – (c).

As such, the *Brooks* court was not limited by Section 3207’s definition of “compensation” as conferred by Division 4 of the Labor Code, and was free to include the one year of IDL benefits applicant received in the aggregate disability period of 104 weeks for TD. *Brooks*, 161 Cal.App.4th at 1536-1537.

Therefore, *Brooks* does not lend support to applicant’s argument that S & W benefits under Section 4553 should be based on IDL, as opposed to TD.

Finally, contrary to AYALA’s claim, *Brooks* did not hold that IDL was “compensation” under Division 4 of the Labor Code, or for purposes of Section 4553. (p. 11, Respondent’s Opening Brief on the Merits: “If IDL is deemed compensation under Division 4, *as Brooks has declared ...*”). This is clearly a misstatement of the holding in *Brooks*. Rather, as Mr. **Ayala clearly concedes**, “IDL is not conferred by Division 4, so it does not meet the strict definition of ‘compensation’ under section 3207. Therefore, IDL cannot be said to be included in the meaning of ‘aggregate disability benefits.’” (p. 11, Respondent’s Opening Brief on the Merits.)

As applicant has conceded the issue, the decision of the Court of Appeal should be affirmed as is.

THE WCAB HAS NO JURISDICTION TO AWARD IDL/EIDL BENEFITS.

In its decision on reconsideration, the Board in this case conceded that it lacks jurisdiction to award EIDL benefits. (Exhibit 1, p. 13, Finding of Fact No. 2). Yet the Board then awarded applicant a 50% increase in “compensation” per Section 4553 “to be calculated based on the enhanced IDL (Exhibit 1, p. 13, Finding of Fact No. 3). The Board’s decision is internally inconsistent and logically flawed – for how could the Board award a 50% increase based on EIDL when it conceded that it has no jurisdiction to award EIDL?

The proposition that the Board lacks jurisdiction to award EIDL benefits is black letter law. See *Cal. v. Workers’ Comp. Appeals Bd. (Ellison)* (1996) 44 Cal. App. 4th 128, 136-138. The California Supreme Court has repeatedly stated that ***the WCAB “is a tribunal of limited jurisdiction, with no powers beyond those conferred upon it*** by section 21 of article XX of the state Constitution and the provisions of the Workmen’s Compensation, Insurance and Safety Act, now codified in the Labor Code (§§3201 et seq.)” *State Comp. Ins. Fund v. Industrial Accident Commission (Hansen)* (1942) 20 Cal. 2d 264, 266. (Emphasis Added.) See also *Horst v. Industrial Accident Commission* (1920) 184 Cal. 180, 192.

The California Constitution enabled legislation to create a “no-fault liability” on the part of employers to compensate their employees for any injury arising out of, and sustained during the course of their employment. However, that liability does not authorize the creation of a liability for anything other than

compensation. *Horst v. Industrial Accident Commission* (1920) 184 Cal. 180, 192. For instance, the WCAB does not have jurisdiction to award punitive damages or general damages for pain and suffering. *Horst*, 184 Cal. at 192. These damages are reserved to courts of general jurisdiction, and are not included in the definition of “compensation” in the Labor Code.

Turning to IDL benefits specifically, IDL is a statutorily created alternative to temporary disability indemnity for a select group of state employees pursuant to Government Code Sections 19869 – 19877.1. To qualify for IDL benefits, an employee must be eligible for workers’ compensation benefits and be an active member of the California Public Employees’ Retirement System (CalPERS) or the California State Teachers’ Retirement System (CALTRS).

Nothing in the Labor Code adopts these benefits as a category of “compensation” that the WCAB is permitted to award. Rather, a qualifying employee’s first level of administrative remedy for claims involving IDL benefits lies with the employing State Department (or agency). Thereafter, complaints involving IDL or other benefits involving leave administration under the Government Code, **must be appealed to the Department of Personnel Administration (“DPA).** *Brooks v. Workers’ Comp. Appeals Bd.* (2008) 161 Cal. App. 4th 1522, 1529. (Citing to Cal. Code Regs., tit. 2, §599.768.) See also *Cal. v. Workers’ Comp. Appeals Bd. (Ellison)* (1996) 44 Cal. App. 4th 128, 136-138.

Indeed, the Board has previously held in other panel decisions that it does not have the power to award IDL benefits.

See e.g. *Blankenship v. Workers' Comp. Appeals Bd.* (1986) 51 Cal. Comp. Cases 38, 39.³

Thus, an additional problem with interpreting the term “compensation otherwise recoverable” under Section 4553 so as to include IDL/EIDL benefits conferred by the Government Code, is that doing so creates another contradictory and absurd result: namely, that the WCAB, which has no jurisdiction to award IDL/EIDL benefits, would be able to adjudicate (and in this case,

³ Although panel decisions of the WCAB are not binding precedent, the Fourth District in *Ellison* found the Board’s interpretation persuasive in *Blankenship*, and adopted it as part of its rationale for the holding . *Ellison*, 44 Cal. App. 4th at 140-141. In *Blankenship*, the Board held that it had “no jurisdiction to award [IDL] benefits, which are governed by the Government Code, other than to find that the applicant is entitled to indemnity during a period of temporary disability ...; there would be jurisdiction to impose an unreasonable delay penalty if the applicant is not receiving any indemnity ...; [and] jurisdiction over state employees’ [IDL] program rests with the Department of Personnel Administration under Government Code section 19849.11.” *Ellison*, 44 Cal. App. 4th at 140-141 (Citing to *Blankenship*, 51 Cal. Comp. Cases 38.)

did adjudicate) such benefits, thereby encroaching upon the powers of the Department of Personnel Administration, among other incongruous and absurd results.

In sum, the Petitioner in this case is asking this Court to contradict existing precedents on all of these issues, as discussed above (*Ellison, Ferguson and Brooks*, among others), as well as to overlook the Constitutionally circumscribed jurisdiction of the Workers' Compensation Appeals Board.

The sound decision of the Court of Appeal should thus be affirmed by this Court in toto.

INTERPRETING “COMPENSATION” TO INCLUDE EIDL BENEFITS WOULD BE TANTAMOUNT TO AWARDED PUNITIVE DAMAGES AGAINST A STATE AGENCY, WHICH IS PROHIBITED.

“The workers’ compensation system only authorizes payment of ‘compensation’ for work-related injuries and does not authorize punitive damages.” *Ferguson*, 33 Cal. App. 4th at 1621 (citing *State Dept. of Corrections v. Workmen’s Comp. Appeals Bd. (Jensen)* (1971) 5 Cal. 3d 885, 888-889).

Additionally, Government Code Section 818 provides:

Notwithstanding any other provision of law, a public entity is not liable for damages awarded under Section 3294 of the Civil Code *or other damages imposed primarily for the sake of example and by way of punishing the defendant.*

Gov. Code Sec. 818 (Emphasis Added.)

In *Jensen*, supra, the California Supreme Court held that serious and willful benefits under Section 4553 are not intended to

punish the defendant, but to compensate the applicant more fully. *Id.* at 891. However, the High Court in *Jensen* was not faced with the issue of awarding EIDL as the measure of the 50% increase of compensation, unlike in this case.

CDCR respectfully submits that awarding EIDL as the measure of serious and willful benefits would be tantamount to awarding punitive damages against defendant. The workers' compensation system is the "grand bargain" that is intended to compensate workers for on-the-job injuries, without consideration of fault, as a matter of public policy. As the Supreme Court stated in *Jensen*, the intent behind Section 4553 is to fully compensate applicant, not to punish defendant. *Jensen*, 5 Cal. 3d at 891.

Given the differences between EIDL and TD, using EIDL as the measure of the 50% increase of "compensation" would result in an unwarranted windfall to the applicant and would punish the defendant, as doing so would award applicant much more than the amount needed to compensate applicant fully within the meaning of *Jensen*. As the High Court stated in *Jensen*:

Punitive damages are by definition in addition to actual damages and *beyond the equivalent of harm done*. ... [Citations] In view of these well-settled propositions and the long prevailing rationale of *Horst* that *the increased award provided by section 4553 contemplates more fully compensating the plaintiff for an industrial injury rather than penalizing the employer*, we hold that *the award [contemplating a TD/non-IDL measure for the 50% increase] made here does not violate section 818 of the Government Code*.

Jensen, 5 Cal. 3d at 891. (Citing to *Horst*, supra.)

Even where the class of benefits is named a “penalty” against the employer, such as for instance the penalty imposed by Labor Code Section 5814 for unreasonably delayed or refused benefits to applicant, the Court of Appeal has held that such a penalty must be calculated using the TD amount –not IDL//EIDL.

Ellison, 44 Cal. App. 4th 128, 136-138.

“[W]hile WCAB does not have jurisdiction to award IDL, since jurisdiction to make such an award lies with the state’s Department of Personnel Administration (DPA), it does have jurisdiction to award a penalty based on the lesser amount of TD (§ 3201-6002, 6100-6149) ...” for the compensation unreasonably delayed by defendant. *Ellison*, supra, 44 Cal. App. 4th at 130-131.

To preserve consistency and uniformity in the decisional law of this state, “[s]ection 4553 cannot be read without reference to section 3207, which defines ‘compensation.’” *Ferguson v. Workers’ Comp. Appeals Bd.* (1995) 33 Cal.App.4th 1613, 1619.

**APPLICANT’S PROPOSED INTERPRETATION OF
“COMPENSATION” WOULD ALSO RESULT IN REDUCED
BENEFITS TO EMPLOYEES CHARGED WITH SERIOUS
AND WILLFUL MISCONDUCT.**

Labor Code Section 4553 has a counterpart for “serious and willful misconduct” **by the employee/applicant**, which reduces compensation otherwise recoverable by the employee by half.

Labor Code Sec. 4551. Section 4551 provides:

Where the injury is caused by the serious and willful misconduct of the injured employee, ***the compensation otherwise recoverable therefor shall be reduced one-half***, except:

- (a) Where the injury results in death.
- (b) Where the injury results in a permanent disability of 70 percent or over.
- (c) Where the injury is caused by the failure of the employer to comply with any provision of law, or any safety order of the Division of Occupational Safety and Health, with reference to the safety of places of employment.
- (d) Where the injured employee is under 16 years of age at the time of injury.

Labor Code Sec. 4551 (Emphasis Added.)

Thus, in a scenario where an applicant is found to have committed a serious and willful misconduct in a workers' compensation matter, the amount of the reduction using Mr. Ayala's proposed interpretation would be a 50 per cent reduction using IDL/EIDL benefits – rendering an award that is significantly lower than applicant would have recovered using a Temporary Disability (TD) measure of reduction.

Mr. Ayala argues in this case that Labor Code Section 3202 requires any controversy or ambiguity to be resolved in favor of applicants generally, and that as such, Section 3202 compels the inclusion of IDL/EIDL as the base amount of the increased award in Section 4553.

Labor Code Sec. 3202 provides:

This division and Division 5 (commencing with Section 6300) shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment.

First, Labor Code Section 3202 cannot trump a more specific statutory provision on point. See, e.g. *Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal. App.4th 1535, emphasizing that courts cannot rely on Labor Code Sec. 3202 to defeat the clear legislative intent expressed in a statute (in that case, the apportionment statutes, Labor Code Sections 4663 and 4664.) Section 3202 “cannot supplant the intent of the legislature as expressed in a particular statute.” *Benson*, 170 Cal. App.4th at 1158.

Rather, when a worker’s compensation statute is ***equally susceptible to more than one interpretation***, it is to be construed favorably to the employee. *Amborn v. Workmen’s Comp. Appeals Board* (1971) 19 Cal.App.3d 953, 959. (Citations omitted.) As this Court put it, “Section 3202 is a tool for resolving statutory ambiguity where it is not possible through other means to discern the Legislature’s actual intent.” *Brodie v. Workers’ Comp. Appeals Bd.* (2007) 40 Cal. 4th 1313, 1332.

Second, the clear and unambiguous language of the statutes in this case removes any claim of ambiguity needing resolution. It also removes any claim of Sections 4553 and 3207 being susceptible to more than one interpretation -- particularly in view of the **twice-repeated language that compensation must be conferred by Division 4 of the Labor Code.** Section 3207.

Third, if Mr. Ayala’s proposed IDL measure were to be used as the basis of the 50% increase of the award for an employer’s serious and willful misconduct, **the same definition would have to be applied for the 50% decrease of the award** for an employee’s serious and willful misconduct – resulting in a

significantly lower award to the employee than a reduction based on TD.

In other words, to have a consistent interpretation of the statutory scheme, the phrase “compensation otherwise recoverable must mean the same thing in Section 4551, as it does in Section 4553. If so, and using Mr. Ayala’s own reasoning in this case at page 8 of his Opening Brief on the Merits, the ultimate result/award would be a lower S & W award to applicant under Section 4551, when applicant’s injury is found to have been caused by applicant’s serious and willful misconduct. Indeed, as Mr. Ayala argues:

The difference in value for the relevant TD period is significant. E-IDL is equivalent to the injured employee’s net take home salary on the date of occurrence of injury, whereas TD is payable at two-thirds salary with a statutory cap based on date of injury. See Gov. Code section 19871.2 and Labor Code section 4453, respectively.

The statutory cap on TD reduces high-wage earner’s TD benefits below two-thirds (e.g. at the statutory cap of \$490/wk (sic.) for a date of injury in 2002, any wage earner making above \$735/wk (sic.) will end up with less than 2/3 wages). In comparison, E-IDL remains at the injured worker’s net take home salary. Therefore, the 4553 increase will be affected depending on what benefit is chosen to increase.”

AYALA Opening Brief on the Merits, p. 8.

By the same token, the amount of a Section 4551 **decrease** in the event of an employee’s serious and willful misconduct would also be significant if IDL/EIDL is the amount of the reduction under Section 4551.

Thus, Mr. Ayala’s proposed interpretation of the term “compensation” to include IDL/EIDL would lead to contradictory and absurd results, operating not only in contravention of the Board’s limited jurisdiction, but the entire statutory scheme in the Labor Code. It would also work to the disadvantage of injured workers charged with serious and willful misconduct, contrary to Mr. Ayala’s arguments based on Section 3202.

In sum, rather than resolving any theoretical inconsistency in existing case law, Mr. Ayala’s proposed interpretation of the term “compensation” would create actual conflict and confusion between statutory provisions and case law precedents in this state. This Honorable Court should, therefore, affirm the sound decision of the Court of Appeal in this case.

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CONCLUSION

For all of the foregoing reasons, the Department of Corrections and Rehabilitation respectfully requests this Court to affirm the decision of the Fourth District, Division 2, of the Court of Appeal.

Dated: February 23, 2024

Respectfully submitted,

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VERIFICATION

Under penalty of perjury, I declare the truth of the following:

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- That the matters so stated are believed by me to be true and correct; and
- That I make this verification because the facts set forth in said document are within my knowledge and because, as attorney for California Department of Corrections and Rehabilitation by and through State Compensation Insurance Fund, I am more familiar with such facts than are the officers of State Fund.

Dated: February 23, 2024

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WORD COUNT CERTIFICATION

Pursuant to California Rules of Court, Rule 8.520(c), I certify that the foregoing brief contains less than 14,000 words. According to that word count program, this brief contains 6,258 words.

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Supreme Court of California

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Case Number: **S282013**

Lower Court Case Number: **E079076**

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