

Claimant filed a claim petition on December 17, 2008, (WCJ's Op. at 1), and testified on his own behalf at a hearing before the WCJ. The WCJ accepted Claimant's testimony as credible and adopted it as fact. Claimant agreed that his benefits could be terminated as of October 27, 2008, and the WCJ found Claimant to be disabled from September 13, 2008, through October 27, 2008. (WCJ's Findings of Fact, No. 2.)

The WCJ concluded that, although Claimant had sustained his burden of proving that he suffered a work-related injury, Claimant was not entitled to benefits under Section 306(a.1) of the Workers' Compensation Act,² which provides that "[n]othing in this act shall require payment of compensation . . . for any period during which the employe is incarcerated after a conviction. . . ." (WCJ's Conclusions of Law, No. 2.) The WCJ thus denied Claimant benefits. On appeal, the WCAB affirmed.

On appeal here, Claimant questions whether the WCAB erred in affirming the WCJ's denial of his benefits because there is no proof that Claimant was incarcerated after a conviction.³ In this regard, Claimant asserts:

² Act of June 2, 1915, P.L. 736, *as amended*, added by section 4 of the Act of June 24, 1996, P.L. 350, 77 P.S. §511.1.

³ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

There is no evidence in the record that [Claimant] was incarcerated after a conviction. Mere incarceration is not enough. As there is no evidence or proof that [Claimant] was ever convicted, the [WCJ] clearly erred as a matter of law in failing to award total disability benefits to [Claimant] for the duration of his disability.

(Claimant’s Br. at 8-9) (emphasis in original).⁴ Having considered the record, we are satisfied that Claimant’s argument that there is no proof he was incarcerated after a conviction lacks merit.⁵

Although there is no direct proof that he was convicted, Claimant nevertheless credibly testified that he obtained his job with Employer by way of “a work release program from Montgomery County Correctional Facility.” (N.T., 1/27/09, at 4.) A work release program is a “county intermediate punishment program” under the County Intermediate Punishment Act (Act), 42 Pa. C.S. §§9801—9813.

Section 9802 of the Act defines “county intermediate punishment program” as “[a] residential or nonresidential program provided in a community for

⁴ Claimant further argues that it is unfair that he should injure himself in a work release program, yet be ineligible for benefits due to his incarceration. However, Claimant’s policy argument is properly addressed to the General Assembly, not this court. *VFW Post 1989 v. Indiana County Board of Assessment Appeals*, 954 A.2d 100, 106 (Pa. Cmwlth. 2008).

⁵ Claimant does not argue that, because he was on work release, he was not incarcerated, and the law is clear that a claimant on work release is considered incarcerated for purposes of the Act. *Henkels & McCoy, Inc. v. Workers’ Compensation Appeal Board (Hendrie)*, 565 Pa. 493, 499, 776 A.2d 951, 955 (2001); *Flynn v. Workers’ Compensation Appeal Board (Sovereign Staffing Source, Inc.)*, 776 A.2d 1043, 1045 (Pa. Cmwlth. 2001); *Brinker’s International, Inc. v. Workers’ Compensation Appeal Board (Weissenstein)*, 721 A.2d 406, 410 (Pa. Cmwlth. 1998).

eligible offenders.” 42 Pa. C.S. §9802. That section also defines “eligible offender” in part as follows:

Subject to section 9721(a.1) (relating to sentencing generally), a person convicted of an offense who would otherwise be sentenced to a county correctional facility, who does not demonstrate a present or past pattern of violent behavior and who would otherwise be sentenced to partial confinement pursuant to section 9724 (relating to partial confinement) or total confinement pursuant to section 9725 (relating to total confinement).

Id. (emphasis added).

Moreover, section 9804(b) of the Act, regarding “eligibility” for “county intermediate punishment programs,” provides that “(1) No person other than the eligible offender shall be *sentenced* to a county intermediate punishment program” and “(2) *The Pennsylvania Commission on Sentencing* shall employ the term “eligible offender” to further identify offenders who would be appropriate for participation in county intermediate punishment programs.” 42 Pa. C.S. §9804(b) (emphasis added).

Finally, Section 9813(a) of the Act, regarding “work release or other court order and purposes,” provides:

(a) Generally.—Notwithstanding any provision of law, *if any offender has been sentenced* to undergo imprisonment in a county jail for a term of less than five years, the court, *at the time of sentence* or at any time thereafter upon application made in accordance with this section, may enter an order making the offender eligible to leave the jail during necessary and reasonable hours *for the purpose of working at his employment*, conducting his own business or other self-employed occupation, including housekeeping and

attending to the needs of family, *seeking employment*, attending an educational institution, securing medical treatment or for other lawful purposes as the court shall consider necessary and appropriate.

42 Pa. C.S. §9813(a).

Because work release is, itself, a sentence under the Act, it necessarily follows a conviction.⁶ Thus, there can be no real question on this record whether, by virtue of Claimant’s participation in the Montgomery County Correctional Facility work release program, Claimant was “incarcerated after a conviction” within the meaning of Section 306(a.1) of the Workers’ Compensation Act. Clearly, Claimant was incarcerated after a conviction, and the workers’ compensation authorities did not err in denying his claim for benefits.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

⁶ Moreover, “sentence” has been defined as “[t]he judgment that a court formally pronounces after finding a criminal defendant guilty . . . [a]lso termed *judgment of conviction*.” *Black’s Law Dictionary* 1485 (9th ed. 2009) (emphasis in original).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Colin Woodley,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 62 C.D. 2011
	:	
Workers' Compensation Appeal Board	:	
(J.P. Mascaro),	:	
Respondent	:	

ORDER

AND NOW, this 30th day of November, 2011, the order of the Workers' Compensation Appeal Board, dated January 6, 2011, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge