

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

TOMMY CARTER, *Applicant*

vs.

**CORCORAN STATE PRISON/ CALIFORNIA DEPARTMENT OF CORRECTIONS;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11896991
Fresno District Office**

**OPINION AND ORDER GRANTING PETITION
FOR RECONSIDERATION AND DECISION
AFTER RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact, Award and Opinion on Decision (F&A) issued on July 14, 2023, wherein the workers' compensation administrative law judge (WCJ) found as relevant that (1) applicant sustained injury to the heart which began developing during his employment with defendant; and (2) applicant is entitled to an unapportioned award for the cardiac portion of the case of permanent disability which the parties agree rates 57 percent.

The WCJ issued an award in favor of applicant of permanent disability indemnity in accordance with these findings.

Defendant contends that the WCJ erroneously found that (1) applicant sustained injury to the heart which began developing during his employment; and (2) applicant is entitled to an unapportioned award for the cardiac portion of the case.

We received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the Petition, the Answer, and the contents of the Report. Based upon our review of the record, and for the reasons discussed below, we will grant reconsideration and, as our Decision After Reconsideration, we will rescind the F&A and return the matter to the trial level to develop the record as to the issues of whether and when applicant's hypertension developed into heart trouble and all other issues as appropriate.

FACTUAL BACKGROUND

In the Report, the WCJ states:

Applicant herein is a retired correctional officer employed by the State of California, CDCR . . .

In 2020, he was diagnosed with Left Ventricular Hypertrophy (LVH). He had been diagnosed with hypertension in 2008 or 2009.

The PQME, Dr. Verma, opined that while hypertension does not constitute "heart trouble", in this case, hypertension contributed to the development of heart trouble.

This Court issued an award of permanent disability without apportionment. Defendant had stipulated to the cardiac claim of injury but maintains that the award should be apportioned claiming that the provisions of LC Sec 3202.2 do not apply as the applicant's heart trouble had not manifested itself until 2020, well beyond the period of time extended by LC Sec 3202.2.

. . .

The main contention of defendant is that Dr. Verma specifically negates development of heart trouble early on, in his report of June 9, 2022, Joint Exh. A. See petition for Reconsideration, Pg 8, 12-17.

That is not what Dr. Verma opined. He merely stated that it's impossible to determine when LVH *manifested* itself. He did not say that it was not *developing* until 2020.

Inasmuch as Dr. Verma testified that hypertension is a contributing factor to *development* of LVH, (Jt Exh f Pg 13:7-14), and since applicant was diagnosed with hypertension well before his termination of employment with CDCR, it follows that LVH was *developing* as far back as his employment period, although the condition had not manifested itself until much later in 2020.

The Labor Code does not require the condition to both develop and manifest itself. The word "or" cannot be ignored. (Report, pp. 1-2.)

DISCUSSION

Labor Code section 3212.2 states, in pertinent part:

In the case of officers and employees in the Department of Corrections having custodial duties . . . the term "injury" includes heart trouble which develops or manifests itself during a period while such officer or employee is in the service of such department or hospital.

The compensation which is awarded for such heart trouble shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workmen's compensation laws of this state.

Such heart trouble so developing or manifesting itself in such cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Under this statute, the presumption that heart trouble arose out of employment “does not become operative until it is first established that [the] heart trouble developed or manifested itself during the period of service. [citation omitted.] The presumption is one of occupational causation; it is not a presumption that a disability is attributable to heart trouble.” (*Baker v. Workmen's Comp. Appeals Bd.* (1971) 18 Cal.App.3d 852, 859 [36 Cal.Comp.Cases 431, 435].)

In *Muznik v. Workers' Comp. Appeals Bd.* (1975) 51 Cal.App.3d 622 [124 Cal.Rptr. 407], the court found that the heart trouble presumption arose in a case where the applicant's hypertension contributed to, among other things, ventricular irritability that caused the heart to skip beats. But in doing so it expressly declined to hold that "hypertension, in every instance, constitutes 'heart trouble;' nor do we conclude that disorders in other areas of the body that do not place the heart in a 'troubled' condition, qualify as 'heart trouble.'" (*Id.* at pp. 635, fn. 5, 637.)

In this case, as stated in the Report, the WCJ found that the heart trouble presumption arose here because (1) PQME Verma testified that hypertension is a contributing factor to the development of LVH; and (2) although his LVH did not manifest itself until 2020, applicant's hypertension diagnosis occurred “well before his termination of employment.” (Report, p. 2.) In other words, the WCJ concluded that applicant's LVH must have developed from his hypertension during his employment. However, the testimony and reporting by PQME Verma did not opine as to whether or not applicant's hypertension did in fact develop into heart trouble in the form of LVH during his employment with defendant.

All decisions by a WCJ must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [113 Cal. Rptr. 162, 520 P.2d 978, 39 Cal.Comp.Cases

310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [83 Cal. Rptr. 208, 463 P.2d 432, 35 Cal.Comp.Cases 16]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246 [262 Cal. Rptr. 537, 54 Cal.Comp.Cases 349].) Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and must be more than a mere scintilla. (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159 [48 Cal.Comp.Cases 566].) To constitute substantial evidence "... a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Because the WCJ found that the heart trouble presumption arose here without substantial medical evidence in the record showing that applicant's hypertension developed into heart trouble in the form of LVH during his employment, we conclude that record should be further developed as to the issues of whether and when applicant developed heart trouble. Accordingly, we will return the matter to the trial level for further development of the record. (See *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [65 Cal.Rptr.2d 431, 62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [72 Cal.Rptr.2d 898, 63 Cal.Comp.Cases 261] (finding that the Appeals Board has the discretionary authority to develop the record when appropriate to fully adjudicate the issues); see also § 5313.)

Having determined that the record should be further developed on the issues of whether and when applicant developed heart trouble, we need not address defendant's contention that the WCJ erroneously found applicant entitled to an unapportioned award for the cardiac portion of the case.

Accordingly, we will rescind the F&A and return the matter to the trial level to further develop the record as to the issues of whether and when applicant developed heart trouble and all other issues as appropriate.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact, Award and Opinion on Decision issued on July 14, 2023 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact, Award and Opinion on Decision issued on July 14, 2023 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ NATALIE PALUGYAL, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 26, 2023

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

**TOMMY CARTER
FERRONE & FERRONE
STATE COMPENSATION INSURANCE FUND**

SRO/abs

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