

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

HENRIETTA COLLINS, *Applicant*

vs.

**AC TRANSIT, Permissibly Self-Insured, Adjusted By ATHENS ADMINISTRATORS,
*Defendant***

**Adjudication Number: ADJ11360280
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of our Decision After Reconsideration of October 15, 2021 wherein we found that, while employed as a bus operator during a cumulative period ending February 28, 2018, applicant sustained industrial injury in the form of cardiac arrest. All other issues were deferred. In finding industrial injury, we reversed a workers' compensation administrative law judge's (WCJ) Findings and Award [sic]¹, wherein it was found that, while employed as a bus driver during a cumulative period ending February 28, 2018, applicant did not sustain industrial injury in the form of cardiac arrest.²

Defendant contends that we erred in finding industrial injury. We have not received an answer from the applicant.

We will deny defendant's Petition for the reasons stated in our Opinion and Decision of October 15, 2021 which we adopt and incorporate, and quote below.

Defendant argues that we should have followed the opinions of psychologist Joshua Kirz, PhD regarding causation of applicant's cardiac arrest. As noted in our prior opinion, psychologists

¹ Although the decision was captioned Findings and Award, there was no award of benefits. To the contrary, the decision contained a take-nothing order.

² The WCJ concurrently issued another decision also captioned Findings and Award in case ADJ12092966, although it also contained no award, wherein it was found that an industrial incident of November 23, 2016 did not cause later "cardiac arrest due to [post-traumatic stress disorder]." Applicant sustained admitted injury to the psyche on November 23, 2016 because of a sexual assault, but it was found that the psychiatric injury did not contribute to applicant's cardiac arrest or cause the need for any further medical treatment. In our Decision After Reconsideration of October 15, 2021, we affirmed the WCJ's decision in case ADJ12092966. The instant Petition does not raise any issues regarding that case.

and psychiatrists in the workers' compensation system are charged with determining whether an injured worker has sustained "psychiatric injury" under Labor Code section 3208.3, meaning those "diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised [DSM], or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine." (Lab. Code, § 3208.3, subd. (a).) Psychiatric injuries governed by Labor Code section 3208.3 are subject to numerous limitations not applicable to other injuries. Psychiatric injuries must be predominately caused by actual events of employment (Lab. Code, § 3208.3, subd. (b)(1)), whereas other injuries only require that work be a contributing cause of the injury. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 299 [80 Cal. Comp. Cases 489]). While the requirement that "actual events of employment" be the cause of psychiatric injury requires "objective evidence of harassment, persecution, or other basis for the alleged psychiatric injury" (*Verga v. Workers' Comp. Appeals Bd.* (2008) 159 Cal.App.4th 174, 186 [73 Cal.Comp.Cases 63]), this requirement does not apply to other injuries.

Labor Code section 3208.3 does not apply to physical injuries, such as injury in the form of cardiac arrest. This is true even when nonphysical stress is a contributing cause to the ultimate physical injury. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310].)

Applicant testified at trial as follows:

She testified that she had more stress in the last five years of her employment with AC Transit due to driving, the traffic increase, passenger problems, including them not wanting to pay and people trying to smoke on the bus. The passengers would do things that were against the bus rules. Sometimes she had to call the sheriff because they would not comply with the bus rules. During traffic, the other driver would honk, give her the finger, call her names, cut her off. She recalls one incident when she was stopped at a light and one driver came up next to her and he called her a "black bitch."

There was an increase in traffic. The increase in traffic caused her to shorten her break time, and she barely had time to eat and go to the restroom.

(Minutes of Hearing and Summary of Evidence of May 11, 2021 trial at pp. 6-7.)

The WCJ found that applicant testified credibly. (Opinion on Decision at p. 3.)

Regardless of whether applicant sustained a psychiatric injury pursuant to Labor Code section 3208.3, qualified medical evaluator internist Juan C. Larach, M.D. opined that generalized stress below the threshold for finding a psychiatric injury contributed to applicant's heart issues. Even Dr. Kirz, who defendant argues we should rely on wrote in his November 19, 2019 report as follows:

In reflecting on this case, I still do not believe the 11-23-16 incident had any lasting effect or any effect whatsoever on the 2-28-18 cardiac arrest.

The day-to-day stressors of a bus driver are a different matter - more of a "grey area." I assume the applicant would have told me if there were any other extreme events in her work history at AC Transit. Nor again were any other industrial stressors referenced in the records.

All told, I am confident that the applicant did not meet criteria for any diagnosable psychiatric condition in the timeframe predating her 2-28-18 injury. Meeting criteria for a condition is different than experiencing "stress."

While stress is ubiquitous in life, I suspect that driving a bus for many years in the East Bay is probably somewhat above average for stress burdens among jobs in the labor market. There is the inherent unpredictability and occasional volatility of dealing with the public.

Thus, is it possible that work stress contributed 1 % to the applicant's underlying cardiac issues? Yes. The dilemma is that it would be speculative to support this statement as "substantially medically probable." If the applicant were an emergency responder, the stress contribution would probably be a presumption. I am not aware of any such presumptions for bus drivers.

(November 19, 2019 report at p. 4.)

Here, no evidentiary presumptions were applied. Dr. Larach explained how applicant experienced stress at her job, and the applicant testified that these factors indeed existed and subjectively caused stress. Dr. Larach opined utilizing the standard of medical probability that stress was a contributing cause of applicant's heart problems and cardiac arrest.

While we understand that Dr. Kirz believed that Dr. Larach's opinion in this regard was speculative, as we explained in our original decision, Dr. Kirz is not an internist or a cardiologist. In fact, he is not even a medical doctor. While he is competent to opine regarding whether applicant sustained a psychiatric injury pursuant to Labor Code section 3208.3, he is not competent to opine regarding the causation of a physical injury to the heart, or the cause of cardiac arrest,

including the threshold level of nonphysical stress necessary to contribute to physical manifestations.

Thus for the reasons expressed above, and for the reasons stated in our Opinion of October 15, 2021, which we quote in full below (footnotes omitted), we will deny the defendant's Petition.

OPINION AND DECISION AFTER RECONSIDERATION

In order to further study the factual and legal issues in this case, on September 7, 2021, we granted applicant's Petition for Reconsideration of two decisions issued concurrently by a workers' compensation administrative law judge (WCJ) on June 16, 2021. In a Findings and Award [sic] issued in case ADJ11360280, it was found that, while employed as a bus driver during a cumulative period ending February 28, 2018, applicant did not sustain industrial injury in the form of cardiac arrest. In a Findings and Award [sic] issued in case ADJ12092966, it was found that applicant's industrial incident of November 23, 2016 did not cause later "cardiac arrest due to [post-traumatic stress disorder]." Applicant sustained admitted injury to the psyche on November 23, 2016 because of a sexual assault, but it was found that the psychiatric injury did not contribute to applicant's cardiac arrest or cause the need for any further medical treatment.

Applicant contends that the WCJ erred in not finding industrial injury in the form of cardiac arrest. We have received an Answer, and the WCJ had filed a Report and Recommendation on Petition for Reconsideration.

We will affirm the WCJ's findings in case ADJ12092966. However, we will rescind the Findings and Award in case ADJ11360280, and issue a new decision where we find cumulative industrial injury in the form of cardiac arrest. As explained below, the WCJ erred in not following the medical opinion of internist Juan C. Larach, M.D., which was the only substantial medical evidence offered on the issue of causation of applicant's cardiac arrest.

Applicant began her employment as a bus driver in July of 1999. (March 20, 2019 report of Dr. Larach at p. 24.) In November of 2016, applicant sustained a work injury when a passenger reached his hand out touched and grabbed the applicant's breasts. She pushed him away and the man ran off the bus. (Minutes of Hearing and Summary of Evidence of May 11, 2021 trial at p. 6.) After this sexual assault, applicant took time off work and sought counseling. The history given to Dr. Larach was that symptoms "lasted a long time" after the attack, and that she had "several recurrent panic/anxiety attacks which still manifested until around the time of the cardiac arrest." (March 20, 2019 report at p. 3.) However, at her deposition, applicant testified that any nightmares or panic attacks lasted only for a month or two after the attack. (May 1, 2019 deposition of Henrietta Collins at p. 34.)

At some point between March and June of 2017, applicant developed exertional chest pain and palpitations. (March 20, 2019 report of Dr. Larach at p. 13; May 1, 2019 deposition of Henrietta Collins at pp. 20-23.) On February 28, 2018, applicant collapsed at work. She was found convulsing at the bus yard by her co-workers and the paramedics that were summoned found her in ventricular fibrillation. Applicant was stabilized by a defibrillator, and applicant was hospitalized for weeks. (March 20, 2019 report of Dr. Larach at pp. 15-19.)

As a result, applicant sustained permanent impairment due to cardiomyopathy, cardiac arrhythmia, and neurologic symptoms due to anoxic encephalopathy. (March 20, 2019 report of Dr. Larach at p. 31.)

In his March 20, 2019 report, Dr. Larach thoroughly discusses applicant's possible diagnoses and causation of the February 28, 2019 incident. In the report, Dr. Larach discusses possible myocarditis, sarcoidosis, and stress cardiomyopathy. Although Dr. Larach "favor[ed] diagnosis of cardiac sarcoidosis in Ms. Collins," (March 20, 2019 report at p. 36), he does not give a definitive diagnosis. Nevertheless, regardless of the background cause of applicant's myocarditis, Dr. Larach opined that work stress was a contributing cause of applicant's heart issues. (March 20, 2019 report at pp. 38-40.) In the initial March 20, 2019 report, Dr. Larach believed that applicant's November 2016 sexual assault had caused post-traumatic stress disorder (PTSD), and he opined that applicant's PTSD was a contributing cause of the cardiomyopathy and cardiac arrest. (March 20, 2019 report at pp. 39-40.)

Subsequently, agreed medical evaluator psychologist Joshua Kirz, PhD clarified that applicant "has never suffered from PTSD." (August 15, 2019 report at p. 16.) Rather, Dr. Kirz stated that the proper diagnosis was "History of Adjustment Disorder with Anxiety (in Sustained Remission)." (August 15, 2019 report at p. 15.)

In response, Dr. Larach issued a supplemental report on November 1, 2019. Dr. Larach clarified that "though I suspected earlier diagnosis of PTSD, I had pointed out that within my original report I had 'even PTSD symptom severity below the threshold for a diagnosis of PTSD was associated with an increased likelihood of being diagnosed with angina and/or tachycardia' and that generalized stress, not just PTSD, can contribute to heart disease. (November 1, 2019 report at p. 13.) As a result, Dr. Larach concluded that "worsening of this cardiomyopathy condition within reasonable medical probability has been aggravated (at least 1%) by residual industrial psychological stressors still active in late February 2018. More importantly, with even greater reasonable medical probability, the sudden cardiac arrest in Ms. Collins was also contributed at least 1% by residual industrial psychological stressors still active in late February 2018." (November 1, 2019 report at p. 14.) Dr. Larach also opined that, within reasonable medical probability, her routine daily stressors as a bus driver ... did

contribute at least 1% to the progression of her disease before the sudden cardiac arrest.” (November 1, 2019 report at p. 14.) At his deposition, Dr. Larach reiterated that regardless of whether the sexual assault caused PTSD, industrial stressors including the sexual assault, but also the daily stress of driving a bus, being in traffic, keeping the bus on schedule, and dealing with unruly passengers was a contributing cause of applicant’s heart disease. (August 7, 2020 deposition of Dr. Juan C. Larach at pp. 34-37.)

The WCJ found no industrial injury, apparently because there was no PTSD. In so finding, the WCJ seems to have disregarded the fact that Dr. Larach found an industrial contribution to applicant’s heart disease even in the absence of a PTSD diagnosis, and to have disregarded the fact that applicant did not even allege psychiatric injury in the cumulative injury case (ADJ11360280).

Stress by itself is not an injury. “Stress is not a diagnosis, disease, or syndrome. It is a nonspecific set of emotions or physical symptoms that may or may not be associated with a disease or syndrome. Whether or not stress contributes to a disease or syndrome depends on the vulnerability of the individual, the intensity, duration, and meaning of the stress; and the nature and availability of modifying resources.” (American College of Occupational and Environmental Medicine (ACOEM) Practice Guidelines, 2nd Edition at p. 1055.) However, stress may cause a physical injury or a psychiatric injury or both. Psychiatrists and psychologists in the workers’ compensation system are charged with opining on injuries subject to section 3208.3, meaning those “diagnosed using the terminology and criteria of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised [DSM], or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.” (Lab. Code, § 3208.3, subd. (a).) The causes of cardiac arrest is not diagnosed by a psychiatrist or psychologist pursuant to the DSM. Unlike a physical condition like cardiomyopathy and cardiac arrest, psychiatric injuries are subject to a heightened causation threshold. In order to be compensable, “actual events of employment [must be] predominant as to all causes combined of the psychiatric injury.” (Lab. Code, § 3208.3, subd. (b)(1).) However, this heightened causation standard does not apply to physical injuries, even if the injuries were caused by emotional stress. (*Verizon/GTE v. Workers’ Comp. Appeals Bd. (Garth)* (2002) 67 Cal.Comp.Cases 856, 857 [writ den.]; *May Co. Department Stores v. Workers’ Comp. Appeals Bd. (Hull)* (2001) 66 Cal.Comp.Cases 1378, 1380 [writ den.]; *City of Cypress v. Workers’ Comp. Appeals Bd. (Spernak)* (1996) 61 Cal.Comp.Cases 612, 613 [writ den.].) The relevant inquiry in a claim for physical injury, such as a claim for injury in the form of cardiac arrest, is whether the work-related stress is a contributing cause to the applicant’s injury. (*McAllister v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 418 [33 Cal.Comp.Cases 660]; *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310].)

It appears that in determining whether industrial stress contributed to applicant's physical injury, the WCAB relied on standards not applicable to physical injuries. We thus find industrial injury in the form of cardiac arrest in case ADJ11360280, pursuant to the well-reasoned opinion of Dr. Larach. Although Dr. Kirz apparently did not endorse an industrial contribution to applicant's cardiac arrest, Dr. Kirz is not an internist or cardiologist, and not even a medical doctor. He is not competent to opine on the causation of applicant's heart disease or cardiac arrest. Pursuant to Dr. Kirz's opinion, however, we find that applicant did not suffer from post-traumatic stress disorder in case ADJ12092966, and we thus therefore affirm the decision in that case.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of our Decision After Reconsideration of October 15, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ AMBER A. INGELS, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 22, 2021

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

**HENRIETTA COLLINS
BOXER & GERSON
WITKOP LAW GROUP**

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