

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

EMILY BECKER, *Applicant*

vs.

STATE OF CALIFORNIA, *Legally Uninsured, Defendant*

**Adjudication Number: ADJ15025167
Eureka District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of April 24, 2023, wherein it was found that, while employed as a state park peace officer during a cumulative period ending January 1, 2018, applicant sustained industrial injury in the form of breast cancer.

Defendant contends that the WCJ erred in finding industrial injury. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated in the Report, which we adopt, incorporate, and quote below, we will deny the defendant's Petition.

**I
INTRODUCTION**

a. Occupation:	State Park Peace Officer
Date of Birth	██████████
Dates of Injury:	September 1, 2000 through January 1, 2018
Parts of Body Injured:	Breast Cancer
b. Identity of Petitioner:	Defendant
Timeliness:	Yes
Verification:	Yes
c. Date of Findings and Award:	April 24, 2023
Petitioner's Contentions:	

1. Labor Code Section 3212.1 presumption does not apply.
2. Applicant has not met her burden of proof connecting employment with her breast cancer.

II **DISCUSSION**

Emily Becker, [age 43 on the date of injury], through her attorneys, filed an application for adjudication of claim on August 5, 2021 alleging her employment as a State Park Peace Officer during the period March 1, 2000 through January 1, 2018 with California State Parks, legally uninsured administered by State Compensation Insurance Fund, resulted in breast cancer due to cumulative carcinogenic exposures on the job.

The application was filed in the San Francisco office of the Workers' Compensation Appeals Board. Defendant timely objected to venue. Venue was transferred to the Eureka Office.

Defendant did not file an answer as mandated by Title 8 of the California Code of Regulations Title 8 Section 10465. Defendant did file a Declaration of Readiness to Proceed dated September 16, 2021 requesting dismissal of the application because "QME Bellinger found no industrial causation in his latest medical report."

Applicant's attorney objected to the Declaration of Readiness, noting their office had only recently been retained and defendant had not yet served all requested documents. Applicant's attorney stated time was needed to subpoena records, request a supplemental report from Qualified Medical Examiner Dr. Bellinger and possibly to depose Dr. Bellinger.

The October 25, 2021 Status Conference Minutes of Hearing indicate the case was taken off calendar to allow further discovery. The Minutes also reflect applicant's attorney complained defendant wrote to the QME without giving applicant time to object in accord with Labor Code Section 4062.3.

On October 10, 2023 applicant's attorney filed a Declaration of Readiness to Proceed requesting a Mandatory Settlement Conference on the issues of injury AOE/COE, temporary disability, self-procured medical treatment, and attorney's fees. The Declaration of Readiness stated in part "QME Dr. Bellinger has confirmed that applicant's occupation placed her at higher risk of developing cancer. QME, Dr. Bellinger will not confirm industrial causation. Applicant contends that his conclusion in not finding for industrial causation is contrary to the law." [The punctuation mark? used in the Declaration of Readiness has been changed to ' for ease of reading]

Defendant objected to the Declaration of Readiness. Defendant noted at the

conclusion of his deposition Dr. Bellinger recommended a consultation in the form of a second opinion. Defendant argued that “ ... a consult is necessary to clarify and solidify Dr. Bellinger's reporting and conclusions.”

At the February 7, 2023 Mandatory Settlement Conference stipulations and issues were framed and the case was set for trial. The only issue raised was injury AOE/COE.

At the March 15, 2023 trial an additional issue was raised whether the presumption set forth in Labor Code Section 3212.1 applied.

No motion for a second medical opinion was made by either party. No testimony was offered.

After review of the entire record a Findings and Award and Opinion on Decision issued on April 24, 2023. It is from that decision this Petition for Reconsideration was filed.

Likely out of an abundance of caution, defendant has submitted multiple arguments addressing each point discussed in the opinion. Consistent with the decision, defendant contends the presumption of compensability in Labor Code Section 3212.1 does not apply to Ms. Becker. The Findings of Fact and Opinion on Decision determined the Labor Code Section 3212.1 presumption did not apply.

The opinion's discussion of the case of San Francisco Bay Area Rapid Transit District vs. WCAB 2007 Cal. Wrk. Comp. LEXIS 370 was distinguished from Ms. Becker's case. Likewise, the discussion of pending legislation --SB 391-- was intended to point out the likelihood the law may change in the foreseeable future, possibly resulting in extending Ms. Becker's class of employee to coverage under the Labor Code Section 3212.1 presumption. Neither the case nor the bill was determinative of the decision in this matter, rather, they were background discussion.

The portion of the decision addressing causation best sets forth the rationale for finding industrial injury even without a presumption.

Quoting the relevant portion:

Labor Code Section 3202.5[1] states: “All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. ‘Preponderance of the evidence’ means [2] evidence [3] that, when weighed with that opposed to it has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.”

Even without the presumption Ms. Becker has met her burden of proof linking her breast cancer to industrial exposure. Dr. Bellinger testified in his deposition at p. 9 the latency period/or Ms. Becker's cancer would be between 8 and 15 years. This is the same latency period discussed in Dr. Bellinger's report of July 10, 2021 at p. 17. Ms. Becker worked for the State from 2000 to 2018. Her cancer was diagnosed in January of 2018. This is well within the latency period described by Dr. Bellinger.

Dr. Bellinger's report of October 20, 2021 at p. 3 contains an interesting discussion of whether continued exposure to the carcinogen accelerates or aggravates the development of the carcinogenic cells. He was open to the possibility but without peer reviewed evidence he opined if repeated exposure to the carcinogens accelerated development of tumors, "the latency period would be much shorter than 10 to 30 years or longer." This is a much longer latency period than the doctor discussed in his first report and in his deposition. It also addresses a collateral issue.

All parties agree Ms. Becker was exposed at work to Benzene and other known carcinogens. She developed cancer 18 years after her first industrial exposure. She had none of the other commonly identified risk factors. The only risk factor Dr. Bellinger specifically named associated with Ms. Becker was pregnancy at age 37. Since Ms. Becker was 44 when her cancer was diagnosed the latency period described by the doctor is not compatible with pregnancy as the cause. The doctor's reference to common household chemicals did not indicate anything other than a possibility.

Dr. Bellinger's deposition testimony on pages 18-19 indicates the obvious causative agent to which Ms. Becker was exposed was benzene. At p. 21: "This is a very difficult moment because there are a lot of factors here, but there is one for sure and that's the benzene."

When reviewing for substantial evidence in support of a judge's decision, the "test of substantiality must be measured on the basis of the entire record, rather by simply isolating evidence which supports the board and ignoring other relevant facts of record which rebut or explain that evidence." Garza v. Workmen's Comp. App. Bd. (1970) 26 Cal. Comp. Cases 500 .

Viewing the totality of Dr. Bellinger's comments and Ms. Becker's history of benzene exposure at work it is determined Ms. Becker's breast cancer is industrially related.

The most persuasive quote was Dr. Bellinger's deposition testimony that the one 'for sure' causative factor for cancer was the benzene. None of the other known risk factors for breast cancer was present.

Defendant correctly points out exposure to benzene alone is not sufficient to establish a causal connection.

All parties agree Ms. Becker was required to fill her vehicle with gasoline as a part of her work duties. See Exhibit J2, report of Dr. Bellinger dated August 4, 2021. That report quotes a letter from defendant referring to the ““carcinogen of fuel during her employment”” with Parks and Recreation. Dr. Bellinger did note on p. 2 of that report: “... environmental exposure to carcinogens in the workday had been linked to the development of breast cancer.”

The apparent stumbling block for the doctor was his assumption Ms. Becker was also fueling her private vehicles and was exposed to other carcinogens at home. Because of possible unsubstantiated nonindustrial exposures, Dr. Bellinger was unwilling to make an industrial connection without the presumption. His speculation that Ms. Becker may have had exposures outside of work was not supported. There was no evidence of non-industrial exposure. No viable alternative cause of cancer was present in the record.

When all his reports and deposition testimony were taken together, I concluded that Ms. Becker’s industrial benzene exposure was the only known and proven carcinogenic exposure within the latency period described by the doctor.

Whether Ms. Becker fueled her private vehicles or had carcinogens in her home is speculative. Both may be true but without evidence, and without sworn testimony, we are left with the only known and certain exposure to benzene was the exposure at the workplace.

Since benzene is the only clear cancer-causing factor specifically named in the record and since the only objectively documented exposure was at work, Ms. Becker’s breast cancer was found to have arisen from her employment at the State of California Department of Parks and Recreation.

Exhibit J4, transcript of deposition of Dr. Bellinger (at page 20 line 11 through page 22 line 1) suggests the possibility of consultation with an oncologist or toxicologist to further address the issue of causation.

At the time of submission, neither party requested any type of consultation. The record was decided on what was presented.

In the event the Honorable Commissioners determine the current record is insufficient to support a finding of injury AOE/COE it is recommended the matter be returned to the trial level to further develop the record via consultation with an oncologist or toxicologist.

III
RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied. In the alternative, it is recommended the matter be returned to the trial level for further development of the record.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings and Award of April 24, 2023 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 3, 2023

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

**EMILY BECKER
BROWN & DELZELL
STATE COMPENSATION INSURANCE FUND**

DW/oo

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