

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

DENNIS MORALES, *Applicant*

vs.

**COUNTY OF LOS ANGELES, permissibly self-insured;
administered by SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ10647098, ADJ10647129, ADJ10647130
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

Labor Code¹ section 3212 provides that heart trouble shall be presumed to arise out of and in the course of the employment as follows:

In the case of members of ... police or fire departments of cities, counties, cities and counties, districts or other public or municipal corporations or political subdivisions, whether those members are volunteer, partly paid, or fully paid, ... or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, ... and in the case of members of fire departments, *except those whose principal duties are clerical, such as stenographers, telephone operators, and other officeworkers*, and in the case of county forestry or firefighting departments, *except those whose principal duties are clerical, such as stenographers, telephone operators, and other officeworkers*, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting, ... the term "injury" includes pneumonia and heart trouble that develops or manifests itself during a period while the member is in the service of the office, staff, department, or unit.

¹ All further statutory references are to the Labor Code.

(Lab. Code, § 3212, italics added.) The WCJ found that applicant sustained presumptive injury to his heart arising out of and occurring in the course of employment pursuant to section 3212, as he was an employee of the fire department of the county and his duties were not principally clerical. (Joint Findings and Award, p. 2; Opinion on Decision, p. 2.)

In addition to section 3212, section 3211.5 is also relevant to the issue of whether the heart trouble presumption applies to applicant.

For purposes of this division, whenever the term “firefighter,” “firefighting member,” and “member of a fire department” is used, the term shall include, *but shall not be limited to, unless the context expressly provides otherwise*, a person engaged in providing firefighting services who is an apprentice, volunteer, or employee on a partly paid or fully paid basis.

(Lab. Code § 3211.5, italics added.)

Defendant contends that the terms “firefighter,” “firefighting member,” and “member of a fire department” include only a “person engaged in providing firefighting services.” (Petition, pp. 3-4.) However, defendant ignores that that statute clarifies that those terms “include, *but shall not be limited to, unless the context expressly provides otherwise*, a person engaged in providing firefighting.” (Lab. Code § 3211.5, italics added.) First, section 3211.5 states that it is not limited to only those engaged in providing firefighting services. Further, section 3212 expressly provides that employees of county fire departments whose duties are not primary clerical qualify for the presumption. (Lab. Code, § 3212.) Therefore, section 3211.5 is not a bar to the heart presumption for applicant. Here, as admitted by defendant in its Petition, applicant was qualified as an emergency medical technician and in that capacity, he provided basic life support and administered first aid. As part of his responsibilities, he responded to fires, and he extinguished small beach fires and/or requested additional resources when it was a larger fire. Applicant was entitled to heart presumption because he was employee of fire department and, as lifeguard, was not an employee whose principal duties were clerical. (See *Smith v. County of L.A.* (April 15, 2019; ADJ10782441, ADJ9193836) [Cal.Wrk.Comp. P.D.LEXIS 147, *3-4.]² Accordingly, we deny the Petition for Reconsideration.

² Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers’ compensation judges. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) While not binding, the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc).) We find the reasoning in *Smith* persuasive given that the case currently before us involves a similar legal issue.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 25, 2024

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

**DENNIS MORALES
STRAUSSNER SHERMAN LONE TREGER HELQUIST
COUNTY OF LOS ANGELES, OFFICE OF THE COUNTY COUNSEL**

JMR/ara

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

JOINT REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION AND FACTS

Defendant seeks timely verified reconsideration dated January 25, 2024, of this Workers' Compensation Administrative Law Judge's (WCJ) Findings and Award of January 11, 2024 in both case numbers above¹, wherein it was found that, while employed by the Los Angeles County Fire Department as an ocean lifeguard during a cumulative of trauma period ending on February 11, 2015 in ADJ10647129, applicant, claims to have sustained injuries arising out of and in the course of employment to hearing, cervical, right shoulder, lumbar, both ankles, hypertension, arrhythmia, hemorrhoids, right elbow, both knees, skin, mitral valve prolapse. In the other matter, ADJ10647130, Dennis Morales, now seventy years old, while employed on January 8, 2016, as a Lifeguard, Occupational Group No. 590, at Los Angeles, California, by Los Angeles County, claims to have sustained injury arising out of and in the course of employment to heart. The WCJ made a bifurcated finding that Labor Code § 3212 presumption about the heart, applies to this case.

II. CONTENTION

Defendant contends that the WCJ erred in finding that the Labor Code § 3212 heart trouble presumption applies. We have received a very detailed answer from the applicant and the WCJ files this report and recommendation (Report) on petition for reconsideration (Petition).

For the reasons stated herein in this report, the WCAB should affirm the finding that the Labor Code § 3212 heart trouble presumption applies to this case and dismiss the Petition.

Labor Code § 3212 states, in pertinent part, as follows:

In the case of members of ... **police or fire departments of cities, counties, cities and counties**, ... the term "injury" as used in this act includes hernia when any part of the hernia develops or manifests itself during a period while the member is in the service in the office, staff, division, department, or unit, and in the **case of members of fire departments, except those whose principal duties are clerical, such as stenographers, telephone operators, and other officeworkers**, ... the term "injury" includes pneumonia and heart trouble that develops or manifests itself during a period while the member is in the service of the office, staff, department, or unit. In the case of regular salaried county or city and county peace officers, the term "injury" also includes any hernia that manifests itself or develops during a period while the officer is in the service. The compensation that is awarded for the hernia, heart trouble, or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

¹ Although defendant listed additional case number ADJJ 064798 in the caption of the petition for reconsideration, it has raised issues pertaining only to the two case numbers above. Applicant's answer and the WCJ's Report do not list case number ADJ1064798 as that case was not at issue.

The hernia, heart trouble, or pneumonia so developing or manifesting itself in those 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. The 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.

The hernia, heart trouble, or pneumonia so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(Bold and italics added)

The applicant has alleged the body part heart and mitral valve prolapse². Here, the WCJ has found per the statute that any “member of the fire department” qualifies for the heart trouble presumption, except those “whose principal duties are clerical, such as stenographers, telephone operators, [or] other office workers.” [*California Horse Racing Board v. Workers' Comp. Appeals Board (Snezek) (2007) 72 C.C.C. 903.*] Labor Code § 3212 does not require that a member of a fire department be an active firefighting member to come under its protection. (*City and County of San Francisco v. Industrial ACC. Comm. (Bamford) (1956) 21 C.C.C. 2003*³; *City of Santa Ana v. Workers' Comp. Appeals Board (Sargent) (1996) 61 C.C.C. 1188 (writ denied)*). As noted in both *Bamford* and *Sargent*, § 3212 requires Department of Forestry and Fire Protection employees to be “active firefighting members ... whose duties require firefighting” to come under the protection of § 3212, but there is no similar requirement for city or county fire department employees. If the legislature had wanted to restrict the protection of § 3212 to active firefighters in city and county fire departments, it knew how to say so.

Thus, as found by this WCJ, as a member of a county fire department, applicant is entitled to the heart presumption. Applicant is entitled to the heart presumption because he is an employee of the fire department and not an employee whose principal duties are clerical. Thus it was proper when this WCJ found, as a lifeguard, applicant’s duties were not principally clerical.

² It appears uncontested that applicant’s mitral valve prolapse that caused this applicant to claim heart injury, constituted “heart trouble.”

³ *Bamford* was decided before the “clerical worker” exception was added with regard to the heart and pneumonia presumptions vis-à-vis members of both city and county fire department (Stats 1965, CH 1690 § 1.).

III. CONCLUSION

For the foregoing reasons, it is requested that defendant's petition for reconsideration of the findings and award of January 11, 2024 be dismissed.

DATE: 02/07/2024

STEVEN CARBONE
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE