

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

FRANCIS GOODWIN, *Applicant*

vs.

**ORANGE COUNTY FIRE AUTHORITY, permissibly self-insured, adjusted by
CORVEL CORPORATION, *Defendants***

**Adjudication Number: ADJ15278643
Santa Ana District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant Orange County Fire Authority seeks reconsideration of the February 8, 2023 Findings and Award, wherein the workers' compensation administrative law judge (WCJ) found, in pertinent part, that applicant qualifies for the cancer presumption pursuant to Labor Code, section 3212.1.¹

Defendant contends that the cancer presumption found in section 3212.1 does not apply because according to the statute, the cancer presumption would extend 105 months following termination of service and under no circumstances would the presumption extend 120 months following termination. Applicant's date of injury is August 19, 2021, approximately 140 months from his last date of service of December 18, 2009.

We received an answer from applicant Francis "Roy" Goodwin. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based on the Report, which we adopt and incorporate, and for the reasons discussed below, we deny reconsideration.

Section 3212.1(d) requires that the "cancer so *developing* or *manifesting* itself in these

¹ All subsequent statutory references are to the Labor Code unless otherwise indicated.

cases shall be presumed to arise out of and in the course of the employment.” (§ 3212.1(d); emphasis added.) The parties do not dispute that the cancer presumption under section 3212.1 extends 105 months following applicant’s termination of employment on December 18, 2009; which means that the cancer presumption extends until September 18, 2018. (Petition, p. 3:9-11; Answer, p. 3:17-21.) The parties dispute whether the applicant’s essential thrombocytosis falls under the presumption period.

Applicant contends that while applicant’s essential thrombocytosis, a form of bone marrow cancer, *manifested* on March 20, 2021, outside the presumption period, applicant’s essential thrombocytosis *developed* during the presumption period. (Answer, p. 3:22-23.)

Defendant contends that Jonathan Green, M.D., the Independent Medical Examiner (IME), testified that the latency period for essential thrombocytosis cannot be determined within medical probability and that the WCJ was in error in finding that applicant’s condition was developed within the presumption period. (Petition, p. 5:6-9.) Defendant argues:

In deposition[,] Dr. Green was questioned regarding the issue of latency. Dr. Green testified that he was not able to give an opinion with respect to latency period for this type of cancer within medical probability due to the lack of scientific literature addressing the latency period for this type of cancer (deposition of Dr. Green September 7, 202 at page 27, line 14 and page 29, line 9.[.]) (Petition, p. 4:20-26.)

In his report, Dr. Green states:

If the Presumption does apply, the primary site of the cancer is the bone marrow. The latency period for bone marrow cancers generally is between 5 and 10 years. The exposure data in this course indicates that Roy was exposed to carcinogens over his long career. Carcinogen in this case would include products of combustion as well as solvents and products of burning plastic among others.

That said, there is no data that actually would indicate that those types of chemicals cause ET [essential thrombocytosis].

On the other hand, there is no data that would indicate that carcinogens such as products of combustion do not cause ET. (Joint Exhibit 1, Dr. Green’s report dated June 11, 2022, p. 10.)

In his deposition, Dr. Green testified:

7 Q. When you say it had to have mutated several
8 years before it showed up, that's what we don't know.

9 In terms of medical probability you
10 indicated you couldn't state a latency period.

11 A. Right. In this particular cancer it hasn't
12 been studied. But we know in bone marrow cancers it
13 is often five to ten years. I was referring to in
14 this case it is so rare we don't even know. No one
15 has actually studied latency period for ET.

(Joint Exhibit 2, Dr. Green's deposition transcript dated September 7,
2022, p. 28:7-15.)

Dr. Green also testified that essential thrombocytosis is a form of bone marrow cancer. (Joint Exhibit 2, Dr. Green's deposition transcript dated September 7, 2022, p. 29:5-6.)

In order to constitute substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) “[A] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (citations.) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citations)” (*Gatten, supra*, at p. 928.) “A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation).” (*Kyle v. Workers' Comp. Appeals Bd (City and County of San Francisco)* (1987) 195 Cal.App.3d 614, 621.)

Here, while there have been no studies with respect to the latency period of essential thrombocytosis in particular, Dr. Green opined within reasonable medical probability that the latency period is generally between five to ten years using the studies on bone marrow cancer because essential thrombocytosis is a form of bone marrow cancer. This is the best and most reasonable medical evidence on the subject matter. Dr. Green testified that this cancer develops

over time, several years before it manifests itself. (Joint Exhibit 2, Dr. Green's deposition transcript dated September 7, 2022, p. 37:14-22.)

8 A. Well, again, I am a doctor not a lawyer.
9 Manifestation was in March of 2021 when he had the
10 high [platelet] count.
11 The mutation would have occurred five to ten
12 years previously. The answer to your question, if
13 you want to use the word development it was something
14 was happening in his body because it didn't show up
15 until years later.
16 Q. Because of the legal significance, would
17 this be prior to 2018, the development?
18 A. Five years minus 21, yes. He had to have
19 the mutation several years before it actually shows
20 up.

(Joint Exhibit 2, Dr. Green's deposition transcript dated September 7,
2022, p.25:8-20.)

Therefore, we agree with the findings that applicant developed essential thrombocytosis within the statutory period and is subject to the cancer presumption under section 3212.1. Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant Orange County Fire Authority's Petition for Reconsideration of the February 8, 2023 Findings and Award 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

April 19, 2023

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

**FRANCIS GOODWIN
WHITING, COTTER & HURLIMANN, LLP
LAW OFFICES OF C. ROBERT BAKKE**

LSM/pc

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

**STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board**

CASE NUMBER: ADJ15278643

FRANCIS GOODWIN

vs.

**ORANGE COUNTY FIRE AUTHORITY; PERMISSIBLY SELF-
INSURED; ADJUSTED BY CORVEL CORPORATION;**

**WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE:
Juan Cervantes**

DATE: March 8, 2023

**REPORT AND RECOMMENDATION OF WORKERS'
COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION**

Defendant, Orange County Fire Authority; timely filed a verified Petition for Reconsideration of a Findings and Order dated February 7, 2023. Defendant contends that the court erred in finding that the California Labor Code Section 3212.1 cancer presumption applies.

STATEMENT OF FACTS

Applicant was employed as a firefighter from May 1, 1974 to December 17, 2009. Applicant was diagnosed with essential thrombocytosis on August 19, 2021. (Joint Exhibit 1). Applicant filed an application for adjudication on October 12, 2021. (EAMS DOC ID 38590372). Applicant asserts injury in the form of essential thrombocytosis through the cancer presumption pursuant to Section 3212.1 due to applicant's occupation. The parties went to IME Jonathan Green, M.D. in internal medicine. This matter proceeded to trial on injury arising out and in the course of employment, date of injury, cancer presumption, permanent disability, need for further medical treatment, attorney fees, and reservation over permanent disability. This court found that applicant was entitled to the cancer presumption pursuant to section 3212.1, injury AOE/COE, permanent disability and need for further medical treatment. Defendant has filed a Petition for Reconsideration noting that applicant did not meet the requirements for the cancer presumption.

DISCUSSION

California Labor Code Section 3212.1, provides in pertinent part that:

“(a) This section applies to all of the following:

(1) Active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(b) The term “injury,” as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

(d) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. 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 120 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Here, pursuant to Section 3212.1(d) applicant began working as a firefighter in 1974 with the Department of Forestry and worked as a firefighter with Orange County from 1979 to December 18, 2009. (MOH/SOE page 4, lines 7-12).

Based on applicant’s testimony and record review by Dr. Jonathan C. Green, M.D. dated June 11, 2022, applicant was diagnosed with essential thrombocytosis on August 19, 2021. (Joint Exhibit 1). Applicant testified being exposed to jet, diesel and gasoline exhaust while working. (MOH/SOE page 4, lines 1-5). Applicant was also exposed to wood dust. (MOH/SOE page 3). According to the record, applicant was exposed to wildland fires residential fires, structure fires, trash, care fires and would breathe in smoke. (Joint Exhibit I, page 3). Therefore, applicant meets the requirements of section 3212.1(b).

Under section 3212.1(d), “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 120 months in any circumstance, commencing with the last date actually worked in the specified

capacity.” Here applicant, worked for 35 years as a firefighter extending his service 3 months for each full year totaling 105 months or 8.75 years. Therefore, applicant’s service period would extend until 2017. Moreover, according to IME Green, applicant’s mutation for essential thrombocytosis would have been 5 to 10 years prior to his diagnosis on August 19, 2021. (Joint Exhibit 2, lines 8-15). Therefore, applicant’s cancer is compensable because it developed during the LC 3212.1(d) extension of time. (*Green v. State of California - California Highway Patrol*, 2021 Cal. Wrk. Comp. P.D. LEXIS 337).

Lastly, there is nothing in the record, neither in Joint Exhibit 1 nor Joint Exhibit 2 that indicates that the presumption is disputable and/or controverted in that the exposure is not reasonably linked to the disabling cancer.

RECOMMENDATION

It is respectfully, recommended that the Petition for Reconsideration be denied.

DATE: March 8, 2023
Juan Cervantes
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE