

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

MICHAEL CARRASCO, *Applicant*

vs.

**UC DAVIS POLICE DEPARTMENT;
CITY OF SACRAMENTO, *Defendants***

**Adjudication Numbers: ADJ10287483; ADJ10137345
Sacramento 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.

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/ MARGUERITE SWEENEY, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 5, 2022

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

**MICHAEL CARRASCO
MASTAGNI HOLSTEDT
THE LAW OFFICES OF TIMOTHY HUBER
CUNEO, BLACK, WARD & MISSLER**

JMR/pc

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

REPORT AND RECOMMENDATION ON PEITITON FOR RECONSIDERATION

INTRODUCTION

Defendant, City of Sacramento, filed a timely and verified Petition for Reconsideration from the Joint Findings of Fact and Order with Opinion on Decision, issued on May 23, 2022, which found, in pertinent part, that applicant sustained an industrial injury to his heart and circulatory system with City of Sacramento through the cumulative period ending on October 4, 2013, and for a date of injury per Labor Code¹, section 5412² of September 10, 2015.

Defendant alleges that I erred in finding industrial injury because defendant rebutted the presumption of industrial injury per section 3212.5 either because applicant's injury is non-industrial, or because the industrial injury that occurred with UC Davis is the sole cause of the injury.

Having thoroughly reviewed the contents of the Board's file and the Petition for Reconsideration, I respectfully recommend that defendant's Petition for Reconsideration be **DENIED**.

FACTUAL AND PROCEDURAL BACKGROUND

This matter proceed to a consolidated trial wherein applicant alleged injury to his heart, circulatory system, and respiratory system. (Minutes of Hearing and Summary of Evidence (MOH/SOE), March 30, 2022, pp. 2-3.) Applicant's injury occurred on September 10, 2015, while he worked as a police officer for UC Davis. (*Id.* at p. 2, lines 28-32.) However, applicant also filed a claim of cumulative trauma against his former employer, City of Sacramento, where he worked as a police officer through October 4, 2013. (*Id.* at p. 3, lines 3-9.) The presumption of industrial injury per Labor Code section 3212.5³ applied against City of Sacramento, but not UC Davis. (*Id.* at p. 3, lines 19-24.)

UC Davis did not appeal the finding of industrial injury with its employment; thus, that is no longer at issue. Applicant did not appeal the finding that the respiratory system was not industrial; thus, that is also not at issue.

City of Sacramento argues that it rebutted the presumption and that sole liability for the injury to the heart is against UC Davis. (*Ibid.*)

¹ All future references are to the Labor Code, unless noted.

² The Joint Findings of Fact errantly state that the date of injury was found per section 5500.5. The date of injury was found per section 5412. The cumulative period of injurious exposure was found per section 5500.5.

³ The Minutes of Hearing appear to contain a clerical error in referring to section 3212 of the Labor Code, which is not applicable to this case. (MOH/SOE, *supra* at p. 3, line 19.)

Applicant was evaluated by internist QMEs for each claim. Dr. Raye Bellinger reported as a QME in the claim against City of Sacramento. Dr. Richard Levy reported as QME in the claim against UC Davis.

Dr. Bellinger took the following occupational history of applicant:

Mr. Carrasco was employed as a police officer for the City of Sacramento from December 18, 1987, to October 4, 2013. He worked as a patrol officer, providing public safety, security and investigating crimes as well as arresting subjects and writing reports. He was promoted to sergeant during his career.

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(Exhibit 1, p. 2.)

Dr. Bellinger diagnosed applicant, in pertinent part, with pulmonary sarcoidosis and a sarcoid heart. (*Id.* at p. 32.)

Sarcoidosis is a heterogeneous, non-caseating granulomatous disorder **of unknown etiology** that can involve any organ within the body. Cardiac involvement may be detected alone or may proceed, follow or occur concurrently with other organ involvement (e.g., lung) . . . Studies have illustrated potential environmental, occupational, and infective disease triggers as well as possible genetic predisposition in development of sarcoidosis. The immunological response plays a central role in the development of early disease and disease progression.

(*Id.* at p. 33.)

As to the claim of presumptive heart injury against City of Sacramento, Dr. Bellinger opined: “The examinee's nonischemic dilated cardiomyopathy would be defined as "heart trouble" under Labor Code Section 3212.5.” (*Id.* at p. 34.)

Dr. Bellinger further opined: “The events of the injury of September 10, 2015, did not cause sarcoidosis, but brought clinical symptoms to light as Mr. Carrasco admits having clinical symptoms prior from the takedown of the suspect. Cardiac sarcoid is not an immediate process, but takes months or possibly years to develop.” (*Ibid.*)

Dr. Bellinger opined in supplemental reporting that applicant developed hyperthyroidism as a consequence of his heart medications as follows:

Causation of hypothyroidism is more likely not on the basis of long-term amiodarone therapy with well described changes on the thyroid as a side effect of the medication. In fact, most patients require some level of thyroid replacement. Mr. Carrasco's amiodarone therapy would be considered a compensable consequence of the treatment of his sarcoid heart and arrhythmias.

(Exhibit 3, p. 48.)

Dr. Bellinger agreed in principal with Dr. Levy as follows:

With regard to compensable injuries across two jurisdictions, I believe that Dr. Levy's assessment is correct and that the examinee's cardiac sarcoidosis/the examinee's cardiomyopathy was a pre-existing condition to UC Davis, but further refinement is appropriate pending medical records to define whether or not the examinee has recurrence of his arrhythmia and any effect on heart function.

(Exhibit 3, p. 49.)

In deposition, Dr. Bellinger clarified the contribution of the September 10, 2015 specific injury to applicant's overall condition.

[T]he physical exertion created shortness of breath and then triggered the development of heart failure and possibly the development of atrial fibrillation [.]

* * *

So the answer is he had pre-existing sarcoid heart because it doesn't happen that fast, so the actual event of taking down the inmate did not cause but aggravated preexisting conditions.

(Exhibit 5, p. 16, lines 4-7, 15-18.)

In this case his cardiomyopathy was preexisting so this was just -
- this was an aggravation, so the combination of development of atrial fibrillation, low cardiac output, and a weakened heart with a development of shortness of breath which turned out to be congestive heart failure, and in the setting of this what we call demand ischemia that prompted his shortness of breath and his

change in symptoms. So atrial fibrillation more likely than not was triggered by his takedown. Nonsustained ventricular tachycardia resulted more likely than not after he had developed atrial fibrillation because it set up this unholy problem of heart failure of demand ischemia. Demand ischemia -- think of it as low blood flow to the entire heart which then makes it irritable, and then the bottom chamber, the ventricle increased the ventricular tachycardia.

(Id. at p. 17, lines 9-25.)

Q So can we say that for those three diagnoses the event of September 10, 2015, caused each of those diagnoses?

A Aggravated. I mean the issue is really the definition of causation versus aggravation, so for those events atrial fibrillation caused by the a takedown, nonsustained ventricular tachycardia as result of the atrial fibrillation weakening the heart, and the nonischemic dilated cardiomyopathy was preexisting, and the atrial fibrillation aggravated that.

(Id. at p. 20, lines 3-13.)

City of Sacramento asked Dr. Bellinger whether applicant's sarcoidosis is entirely non-industrial, to which Dr. Bellinger made clear:

Q Would you agree that Carrasco did not develop the sarcoidosis as a result of workplace exposures?

A Unknown. I don't know what the cause is so basically if I said yes that would presume I know what the cause is. If I said no to the cause I just don't know.

(Id. at p. 30, lines 19-25.)

In further deposition, Dr. Bellinger affirmed his original opinion, that the cause of sarcoidosis is unknown and that the September 10, 2015 takedown event with UC Davis aggravated the underlying heart disease. (Exhibit 6, p. 52, lines, 3-24.)

UC Davis obtained reporting from QME Dr. Richard Levy, who initially opined as follows:

Sarcoidosis is generally not an industrial condition. However, this patient is a California Police Officer. The heart is clearly in a troubled state because of the above. He was hospitalized for

congestive heart failure. The patient qualifies under the California Presumption for heart trouble.

(Exhibit 7, p. 9.)

Dr. Levy maintained this opinion after reviewing diagnostic workup without significant comment upon the specific injury of September 10, 2015. (Exhibit 8, p. 21.) Dr. Levy then reviewed the opinions of Dr. Bellinger and revised his opinion on causation to also address the September 10, 2015 specific injury as follows:

Simply stated this patient presented with an arrhythmia relative to a work-related episode. He had pre-existing dilated cardiomyopathy related to sarcoidosis. He managed to be asymptomatic and perform his job prior to the provocation of arrhythmia by the altercation with the inmate.

The altercation provoked the arrhythmia which brought to light the underlying cardiac sarcoidosis and dilated congestive heart failure. His UC Davis job itself did not cause the dilated cardiomyopathy.

Rather, his intrinsic sarcoidosis caused the cardiomyopathy sympathetic substrate with the work related episode caused arrhythmia given the presence of dilated cardiomyopathy. It also caused the nonsustained ventricular tachycardia. **This was under the County of Sacramento aegis and not related to UC Davis employment.**

I would further refine Dr. Bellinger's apportionment ratings in the following matter. **His cardiomyopathy industrial component arose while he worked at County of Sacramento.** There would be no apportionment of that impairment to UC Davis.

His arrhythmia impairment is different. The trigger for the arrhythmia came from UC Davis employment during the acute takedown. There was need for the AICD/pacer from his cardiomyopathy which was County of Sacramento related.

Given the above, I believe the 10\$ (sic) impairment described above should be divided equally between County of Sacramento and UC Davis, or 50% apportionment to each employer.

(Exhibit 10, p. 13, (emphasis added).)

Dr. Bellinger also ascribed 50% apportionment to each employer. (Exhibit 3, p. 7.)

In deposition, Dr. Levy clarified his opinion as follows:

Clearly there's a direct relationship to UC Davis with respect to the arrhythmias. And so I don't think you can apportion that to the City of Sacramento. To the extent that there was underlying heart disease, cardiomyopathy, sarcoidosis, while it's non industrial (Reporter clarification.) THE WITNESS: To the extent that there was nonindustrial sarcoidosis, it was likely present in some degree with the City of Sacramento. But it also became manifest during his UC Davis employment. And so there is a relationship to both employers there for that. Even though it's nonindustrial, it's causing heart disease. And he had heart trouble based on it. His hypertension would fall into the same description. His hypertension or potential for hypertension would have come under both employers. His renal insufficiency you can proportionalize based on the nonsteroidal use. And wherever the orthopedist said that there was more pain and more nonsteroidal use based on the injuries that would be the proportionality between the employers.

(Exhibit 14, p. 60, line 8, through p. 61, line 4.)

The parties took the deposition of applicant's treating physician, Dr. Swapna Parikh, who offered no opinions as to causation of injury. (See generally, Exhibit 17.)

DISCUSSION

A. Injury AOE/COE

When applicant claims a physical injury, applicant has the initial burden of proving industrial causation by showing the employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302; § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (Lab. Code⁴, §§ 3202.5; 3600(a).)

The requirement of Labor Code section 3600 is twofold. On the one hand, the injury must occur in the course of the employment. This concept ordinarily refers to the time, place, and circumstances under which the injury occurs. On the other hand, the statute requires that an injury arise out of the employment. It has long been settled that

⁴ All future references are to the Labor Code unless noted.

for an injury to arise out of the employment it must occur by reason of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion.

* * *

The statutory proximate cause language [of section 3600] has been held to be less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of employee benefits. In general, for the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a contributing cause of the injury.

(*Clark, supra* at 297-298 (internal citations and quotations omitted).)

Applicant alleged a presumptive heart injury against City of Sacramento. By stipulation of the parties, applicant qualifies for a presumption of compensability per Labor Code, section 3212.5, and it is City of Sacramento's burden to overcome the presumption.

In their petition for reconsideration, City of Sacramento states: "It is well-established that where there is a concurrent cause to the heart trouble, the presumption is rebutted. *City and County of San Francisco v. WCAB* (1978) 43 Cal. Comp. Cases 984; *McMillan v. City of Riverside* 2020 Cal. Wrk. Comp. P.D. LEXIS 82." I reviewed the citations in the petition and found no support for the City's contention. To the contrary, defendant's cited cases support the original finding that applicant sustained a presumptive heart injury:

Once a prima facie case is established, as was stipulated here, the burden shifts to defendant to rebut the presumption of industrial causation. To do so, defendant must show through substantial medical evidence "that some contemporaneous nonwork-related event - for example, a victim's strenuous recreational exertion - was the sole cause" of the applicant's heart trouble. (*City and County of San Francisco v. Workers' Comp. Appeals Bd. (Wiebe)* (1978) 22 Cal. 3d 103 [43 Cal. Comp. Cases 984].)

(*San Francisco v. WCAB*, 2020 Cal. Wrk. Comp. P.D. LEXIS 82, *8.)

Concurrent causation alone is not sufficient to overcome the presumption of industrial injury. Where applicant sustained a concurrent industrial injury to the heart, as happened here, defendant must show that the concurrent injury is the **sole cause** of injury in order to rebut the presumption. The record here is clear that certain elements of the injury were ascribed solely to the cumulative claim, while others were ascribed to the specific claim as an aggravation of the

cumulative injury. Defendant has not overcome the presumption of compensability.

Defendant's petition cherry picks the factual record multiple times in falsely asserting that applicant's sarcoidosis was proven non-industrial. Both QMEs in this case are essentially in agreement. The cause of applicant's sarcoidosis is presently unknown to science. The QMEs use the term "non-industrial" in a lay sense, in that absent a legal presumption, the injury would be found non-industrial because the cause cannot be ascertained. Defendant did not prove that the cause of sarcoidosis was non-industrial. Defendant's QME clearly and unequivocally stated numerous times that causation of sarcoidosis was unknown to science. Defendant's assertions that it proved the cause as non-industrial appear to be misstatements of the factual record.

In this case, City of Sacramento failed to overcome the presumption of injury, as it has not proven the cause of applicant's heart condition was entirely non-industrial, or that the subsequent industrial injury at UC Davis was the sole cause of injury to the heart and circulatory system. While Dr. Levy uses the term 'non-industrial' to describe the sarcoidosis, he never actually explains the cause of the sarcoidosis. His use of the term reflects the general understanding that the disease would be found non-industrial but for the statutory presumption. That is because the cause of the disease is unknown to science. City of Sacramento had the burden to prove the cause of the sarcoidosis was non-industrial, but they cannot meet that burden because science is unable to explain it. Accordingly, they failed to overcome the presumption of injury that applicant is entitled to. A finding of fact issued accordingly.

For all of the above reasons, I found that applicant sustained injury to his heart and circulatory system and found cumulative injury against City of Sacramento. The petition for reconsideration raises no issue of fact or law that would change the original analysis. I respectfully recommend the petition for reconsideration be denied.

Date: 6/22/2022

Eric Ledger
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE