

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

YSIDRO ANAYA, *Applicant*

vs.

STATE OF CALIFORNIA, *Legally Uninsured, Defendant*

**Adjudication Number: ADJ12932864
San Bernardino District Office**

**OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings, Award and Order of March 29, 2022, wherein it was found that, while employed as a correctional officer during a cumulative period ending on June 6, 2017, applicant sustained industrial injury to his heart and in the form of hypertension causing permanent disability of 29% after apportionment.

Applicant contends that the WCJ erred in finding permanent disability of only 29% arguing that his injuries constitute presumptive heart trouble pursuant to Labor Code section 3212.2 and are thus exempt from apportionment pursuant to Labor Code section 4663(e).

We have received an Answer from the defendant, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

We will grant reconsideration, and amend the Findings, Award and Order of March 29, 2022 to reflect that applicant is entitled to an unapportioned award of 54% permanent disability.

Labor Code section 3212.2 states, in pertinent part:

In the case of officers and employees in the Department of Corrections having custodial duties ... the term "injury" includes heart trouble which develops or manifests itself during a period while such officer or employee is in the service of such department or hospital.

The compensation which is awarded for such heart trouble shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workmen's compensation laws of this state.

Such heart trouble so developing or manifesting itself in such 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. 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 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Thus, under the statute, any heart trouble that “develops or manifests itself” during a correctional officer’s service or the statutory time after service has ended is entitled to the presumption. Here, qualified medical evaluator internist Stanley J. Machjer, M.D. testified that applicant’s heart trouble developed during applicant’s period of service beginning in 2012. (October 12, 2021 deposition at pp. 7-8.) Thus, applicant’s heart trouble developed during applicant’s service as a correctional officer and applicant is entitled to the presumption.

The WCJ found that applicant was not entitled to the presumption because he did not invoke the WCAB’s jurisdiction by filing an Application for Adjudication of Claim during his period of service, or within 18 months of his last date of service.¹ However, the time limits in section 3212.2 apply to when the heart trouble “develop[s] or manifest[s],” not to when an applicant files suit, which is governed by the statute of limitations, an entirely different legal principle. Here, applicant’s heart trouble developed while he was actually in service, rendering the additional 18 months in which the heart trouble could have manifested itself moot.

Since applicant’s injury is subject to the section 3212.2 heart trouble presumption, pursuant to Labor Code section 4663(e), applicant’s permanent disability is exempt from section 4663 apportionment. The WCJ found that applicant sustained 51% hypertensive heart disease permanent disability and 7% valvular heart disease permanent disability prior to apportionment. (Opinion on Decision at p. 6.) These permanent disabilities combine to produce 54% permanent disability. (2005 Schedule at p. 8-3.)

¹ As an employee who worked over six full years as a correctional officer, applicant was entitled to the presumption if the heart trouble developed or manifested itself up to 18 months after his service ended.

For the foregoing reasons,

IT IS ORDERED that that Applicant's Petition for Reconsideration of the Findings, Award and Order of March 29, 2022 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings, Award and Order of March 29, 2022 is **AMENDED** as follows:

FINDINGS OF FACT

(1) Ysidro Anaya, while employed during the period 3/14/2011 – 6/6/2017, as a correctional officer, Occupational Group Number 490, in California City, California, by the State of California, who was then legally uninsured and whose claims are administered by State Compensation Insurance Fund State Employees, sustained an injury arising out of and in the course of employment to his heart and in the form of hypertension.

(2) The stipulations in the Minutes of Hearing of 1/12/2022 are true and are incorporated herein by reference.

(3) Applicant's earnings at the time of injury were \$1,479.00 per week, producing a permanent disability indemnity rate of \$290.00 per week.

(4) There is no claim for temporary disability as there was no time lost per stipulation of the parties.

(5) Applicant's injury herein falls within the presumption afforded by Labor Code section 3212.2.

(6) Labor Code section 4663 apportionment does not apply to the permanent disability caused by the injury herein by operation of Labor Code section 4663(e).

(7) Applicant's injury caused permanent disability of 54%, after adjustment for age and occupation.

(8) Applicant will require further medical treatment to cure or relieve from the effects of this injury.

(9) Applicant is entitled to reimbursement of self-procured medical treatment in an amount to be adjusted by and between the parties, or absent such adjustment to be determined by a workers' compensation judge.

(10) The reasonable value of the services and disbursements of applicant's attorney is \$12,565.65.

AWARD

AWARD IS MADE in favor of Ysidro Anaya, against the State of California, payable as follows:

(a) Permanent disability of 54%, entitling applicant to 303.25 weeks of disability indemnity at the rate of \$290.00 per week, in the total sum of \$87,942.50, payable beginning January 22, 2021, less credit to defendants for all sums heretofore paid on account thereof, if any, and less \$12,565.65, to be commuted from the end of the award, payable to Adams, Ferrone and Ferrone as a reasonable attorney's fee.

(b) Further medical treatment reasonably required to cure or relieve from the effects of this injury.

(c) Reimbursement of self-procured medical treatment costs in an amount to be adjusted by the parties, or absent such adjustment, to be determined by a Workers' Compensation Judge.

ORDER

It is ORDERED that this matter be scheduled for lien conference to address the lien of Blue Shield of California.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 24, 2022

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

**YSIDRO ANAYA
ADAMS, FERRONE & FERRONE
STATE COMPENSATION INSURANCE FUND
BOEHM & ASSOCIATES**

DW/oo

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