

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

ERIC FULFORD, *Applicant*

vs.

COUNTY OF RIVERSIDE, *Permissibly Self-Insured, Defendant*

**Adjudication Number: ADJ12359859
Riverside District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) First Amended Findings and Award of June 22, 2022 wherein it was found that, while employed as a deputy sheriff during a cumulative period from October 14, 2008 through April 27, 2019, applicant sustained industrial injury to the heart, gastric system and low back causing permanent disability of 72 percent and the need for further medical treatment.

Defendant contends that the WCJ erred in finding permanent disability of 72%, arguing that the WCJ should have applied the apportionment determination of qualified medical evaluator internist Paul J. Grodan, M.D. with regard to applicant's coronary heart disease. The WCJ found that applicant's coronary heart disease was subject to the heart trouble presumption codified in Labor Code section 3212.5 and was thus precluded from apportionment pursuant to Labor Code section 4663(e). We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will deny defendant's Petition.

Labor Code section 3212.5 states, in pertinent part, as follows:

[I]n the case of a sheriff or deputy sheriff ... employed upon a regular, full-time salary, the term "injury" as used in this division includes heart trouble ... which develops or manifests itself during a period while such ... deputy sheriff ... is in the service of the ... sheriff's office.... The compensation which is awarded for such heart trouble or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such heart trouble ... so developing or manifesting itself shall be presumed to arise out of and in the course of the employment; provided, however, that the ... deputy sheriff ... shall have served five years or more in such capacity before the presumption shall arise as to the compensability of heart trouble so developing or manifesting itself. 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.

Such heart trouble ... so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

The term "members" as used herein shall be limited to those employees of police departments, the California Highway Patrol and sheriffs' departments and inspectors and investigators of a district attorney's office who are defined as peace officers in Section 830.1, 830.2, or 830.3 of the Penal Code.

In this case, applicant was employed as a deputy sheriff in October of 2008. According to Dr. Grodan's January 10, 2020 report, applicant, "described the April 27, 2019 occurrence while on patrol responding to a call of family disturbance. This encounter was severely stressful which led to his blood pressure rising to 197/104. He had a subsequent call but did not make it. He developed sudden feeling of heat, started perspiring and therefore stopped at the fire station where the blood pressure elevation was noted. He was then transferred to Inland Valley Medical Center ER. Testing was done and subsequently he was transferred to Temecula Valley where he had open heart surgery with a quintuple bypass graft. However, he did have a prior infarction involving inferior wall in 2006 with stenting at age 30." (January 10, 2020 report at p. 11.)

Dr. Grodan opined that after the non-industrial heart attack in 2006, during his employment with defendant, applicant's condition "aggravated or accelerated." Dr. Grodan wrote, "The fact that he had infarction and stent at age 30 and did so well [until] more recently indicates that there was no interval aggravation or acceleration of his heart disease until the occurrences at work associated with the current claim." (January 10, 2020 report at p. 14.) Dr. Grodan made an apportionment analysis and stated that "if we consider the extent of prior disease versus the current findings the apportionment to pre-existing disease would not be greater than 30% industrial." (January 10, 2020 report at p. 12.)

Here applicant had heart trouble that both developed and manifested itself more than five years after beginning his service as a deputy sheriff. Applicant's hospitalization and surgery was more than 10 years after beginning his service with defendant, and Dr. Grodan opined that the condition aggravated or accelerated, and thus "developed" near the time of this manifestation. Indeed, by attributing 70 percent of applicant's coronary heart disease disability to his work as a deputy sheriff, Dr. Grodan necessarily found that applicant's job as a deputy sheriff was contributory to his coronary heart disease. Defendant appears to argue that because applicant's condition first developed and first manifested prior to employment, that the presumption is not available to applicant. To the contrary, Labor Code section 3212.5 contains an anti-attribution clause which expressly states, "Such heart trouble ... so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation."

Accordingly, since applicant had an injury coming within the ambit of Labor Code section 3212.5, the disability caused by the injury was not subject to apportionment pursuant to the clear statutory language of Labor Code section 4663(e), which precludes apportionment of permanent disability arising from injuries covered by section 3212.5. Despite the clear language of section 4663(e), defendant relies upon a digest summary of a case denied writ review in *Yubeta v. Workers' Comp. Appeals Bd.* (2011) 76 Cal.Comp.Cases 1119 (writ den.). A California Compensation Cases digest of a "writ denied" case is not binding precedent on the Appeals Board, especially one, like *Yubeta*, where a WCJ's Report was adopted without further comment. (*MacDonald v. Western Asbestos Co.* (1982) 47 Cal.Comp.Cases 365, 366 [Appeals Bd. en banc].) While we would decline to follow the reasoning of *Yubeta* in any case, we note that *Yubeta* involved Labor Code sections 3212.2 and 3212.10, which do not contain an anti-attribution clause.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the First Amended Findings and Award of June 22, 2022 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 6, 2022

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

**ERIC FULFORD
MATTHEW HILL
JEFFREY B. SELLBERG**

DW/oo

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