

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

HANS WILLIAMS, *Applicant*

vs.

**CITY OF VALLEJO, Permissibly Self-Insured,
Administered by LWP CLAIMS SOLUTIONS, *Defendants***

**Adjudication Number: ADJ14350935
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and Opinion on Decision 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 and Opinion on Decision, which are both adopted and incorporated herein, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 26, 2023

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

**HANS WILLIAMS
RAINS LUCIA STERN ST. PHALLE & SILVER PC
MULLEN & FILIPPI, LLP**

PAG/ara

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 PETITION FOR RECONSIDERATION**

Elizabeth Dehn, Workers' Compensation Judge, hereby submits her report and recommendation on the Petition for Reconsideration filed herein.

Introduction

On April 27, 2023, defendant filed a Petition for Reconsideration following the issuance of my April 3, 2023 Findings of Fact, Award and Opinion Decision in this matter. Defendant asserts that by my Opinion on Decision and Findings of Fact and Award I acted without, or in excess of, my powers; that the evidence does not justify the Findings of Fact; and that the Findings of Fact do not support the Award in this matter.

Defendant's petition was timely filed and accompanied by the verifications required under Labor Code section 5902. To date, I am not aware of an answer having been filed by applicant.

Facts

Applicant sustained an admitted injury to his heart while employed by Defendant City of Vallejo as a police officer during a period through June 3, 2020. Dr. Roger Nacouzi evaluated the applicant as a panel selected Qualified Medical Examiner ("PQME"). The matter proceeded to trial on February 21, 2023 on the issues of defendant's petition to strike the reports of the panel QME, permanent disability, apportionment and attorneys' fees.

On April 3, 2023, after carefully considering the documentary evidence and trial briefs submitted by the parties, I found that the reports of Dr. Nacouzi were substantial medical evidence, and that the applicant's injury caused permanent partial disability of 94%.

Defendant's Contentions

In its' petition, defendant makes the following contentions:

1. The reporting of the PQME Nacouzi was not substantial medical evidence, and
2. I erred in awarding permanent disability of 94% based on the reports of Dr. Nacouzi because it was not substantial medical evidence.

Discussion

1. The reporting of Dr. Nacouzi is substantial medical evidence.

The term "substantial evidence" means evidence "which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support the conclusion. . . . It must be reasonable in nature, credible, and of

solid value." (*Braewood Convalescent Hospital v. WCAB (Bolton)*, (1982) 48 Cal. Comp. Cases 566, 568.) A medical report is substantial evidence if it is framed in terms of reasonable medical probability, is based on pertinent facts and on an adequate examination and history, and clearly sets forth the reasoning in support of its conclusion. (*Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 611 (Appeals Board *en banc*).)

I found the reporting and deposition of Dr. Nacouzi to be substantial medical evidence. Dr. Nacouzi twice evaluated the applicant, and reviewed records at the time of each evaluation and in connection with two supplemental reports. No evidence was submitted that Dr. Nacouzi's history was inaccurate, or that he performed an incomplete evaluation of the applicant or review of medical records.

Dr. Nacouzi testified at length as to why diagnosed the applicant with hypertensive cardiac disease without documentation of elevated blood pressure readings in the medical records he reviewed. The PQME reviewed two echocardiograms that were consistent with hypertensive disease. (Joint Exhibit 105, pages 13 – 14.)¹ The left ventricular hypertrophy, which was confirmed by echocardiograms on August 21, 2020 and November 4, 2021 were, in Dr. Nacouzi's medical opinion, incontrovertible evidence of hypertensive disease. (Joint Exhibit 105, page 17.) He explained why he ruled out potential causes of left ventricular hypertrophy other than hypertension in this case. (Joint Exhibit 105, pages 25 – 27.) Even without documentation of blood pressure elevation in the medical records, he believed that there was hypertensive cardiac disease. (Joint Exhibit 105, pages 25 and 29.) I therefore found that the reporting and deposition of Dr. Nacouzi was substantial medical evidence.

2. Dr. Nacouzi's opinions on permanent disability were substantial evidence.

As noted above, I found the opinions of Dr. Nacouzi to be substantial medical evidence. In his deposition, Dr. Nacouzi found that the applicant's diagnosis of hypertension, the need for hypertensive medications and the presence of left ventricular hypertrophy with systolic function justified his rating under the AMA Guides. (Joint Exhibit 105. at pages 46-48.) In addition, Dr. Nacouzi testified that if it was determined that the strict interpretation of the AMA Guides did not warrant the rating of 63% WPI using Class 4 of Table 4-2 of the AMA Guides it was the most accurate rating of impairment under *Alvarez/Guzman*. (Id. at page 47.) Based on the un rebutted opinions of Dr. Nacouzi, I found the applicant had 94% permanent partial disability.

¹ In its' Petition for Reconsideration, defendant cites to Defendant's Exhibits C, D, E, F, and G, none of which are in evidence. It appears that defendant is actually referring to Joint Exhibits 101, 102, 103, 104 and 105.

Recommendation

For the foregoing reasons, I recommend that the April 27, 2023 Petition for Reconsideration be denied.

DATE: May 9, 2023

Elizabeth Dehn
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

This matter proceeded to trial on February 21, 2023 on the issues of defendant's petition to strike the reports of the panel QME, permanent disability, apportionment, and attorney's fees. Documentary evidence was submitted and both parties filed memoranda of Points and Authorities. No testimony was taken.

Stipulated facts

Hans Williams, born [], while employed during the period through June 3, 2020 as a police officer, Occupational Group Number 490, at Vallejo, California, by the City of Vallejo, permissibly self-insured for worker's compensation purposes and administered by LWP Claim Solutions, sustained injury arising out of and in the course of employment to his heart.

At the time of injury, the applicant's earnings were sufficient to warrant permanent disability at the rate of \$290.00 per week. The employee has been adequately compensated for all periods of temporary disability through the present, and stipulations dated April 28, 2022 resolved claims of temporary disability and Labor Code section 4850 pay.

There is a need for further medical care to the heart to cure or relieve the effects of the injury.

Documentary evidence

Roger Nacouzi evaluated the applicant on January 21, 2021. He took a history from the applicant that he had been employed since August 2013 by the City of Vallejo as a police officer.¹ In 2013, he was diagnosed with left bundle branch block on echocardiogram. On June 1, 2020, looters came to Vallejo and destroyed many stores. They protested in front of the Vallejo Police Department on June 2, 2020. On June 3, 2020 the applicant was at the skirmish line, got into a hyper vigilant state and developed shortness of breath, chest pain, and elevated blood pressure for which was started on antihypertensive medications. He received an echocardiogram in August 2020. On October 2, 2020 he was diagnosed with cardiomyopathy after he received cardiac catheterization that showed dead tissue on the bottom of the heart that caused ischemia and the associated left heart block. At the time of the evaluation, the applicant was on medication including Lisinopril, metoprolol, and amlodipine. Dr. Nacouzi performed a records review, with the earliest record being an August 31, 2020 Doctor's First Report of Occupational Injury that diagnosed the applicant with chest pressure and recommended evaluation and treatment by a cardiologist. Dr. Nacouzi's diagnoses included a reported history of left bundle branch block since 2013 and cardiomyopathy on October 2, 2020, and hypertension. He opined that the cardiac findings noted in the Kaiser occupational clinic were concerning. The cardiac abnormalities appeared to be a form of heart trouble that developed and manifested during the applicant's employment with the City of Vallejo. Dr. Nacouzi asked to review the entire medical file. (Joint Exhibit 101, Report of Panel QME Roger Nacouzi, M.D. dated January 21, 2021, pages 1, 2, 3, 6 and 8.)

¹ The copy of the report of Dr. Nacouzi that was filed in EAMS has yellow highlighting on portions of the report. The highlighting has been disregarded.

Dr. Nacouzi reevaluated the applicant on October 21, 2021. Since the prior evaluation, the applicant had remained on modified duty which began following an October 2, 2020 cardiac catheterization. He received electrocardiograms in July 2021 and September 2021. In September 2021 he experienced at work an episode of chest pain and shortness of breath despite being on modified duty. He received an echocardiogram in October, 2021. His current medications include lisinopril, metoprolol, amlodipine, atorvastatin, nitroglycerin sublingual, baby aspirin, naproxen, mononitrate, and Tylenol. Dr. Nacouzi diagnosed the applicant with hypertensive cardiac disease with systolic failure. (Joint Exhibit 102, Report of Panel QME Roger Nacouzi, M.D., dated October 21, 2021, pages 2, and 3.)

He noted that the echocardiogram performed on August 21, 2020 showed a left ventricular ejection fraction of 48% (with normal being 50 to 60). The October 2, 2020 cardiac catheterization showed a resting left ventricular ejection fraction of 42% and 49% post stress. Dr. Nacouzi listed blood pressure readings of 134/90 on July 10, 2020 on the occasion of an office visit for a panic attack the day before, 120/74 on July 30, 2020, 124/86 on August 27, 2020, 116/74 on September 29, 2020, 124/84 on October 9, 2020, 132/84 on November 11, 2020, and 125/81, on February 22, 2021. Dr. Nacouzi opined that the applicant developed hypertensive cardiac disease with systolic failure. The hypertension became associated with cardiac damage in the form of left ventricular hypertrophy, hypokinesia and systolic failure which developed and manifested during the applicant's employment as a police officer. There were no nonindustrial factors precipitating the heart trouble so the hypertensive cardiac disease with systolic failure should be considered industrial. He asked to review the entire medical records. He stated that the applicant's cardiac condition "was not insignificant." (Joint Exhibit 102, Report of Panel QME Roger Nacouzi, M.D., dated October 21, 2021, pages 11 and 12.)

Dr. Nacouzi submitted a supplemental report dated November 9, 2021 in response to a letter from applicant's attorney and a review of additional records. He reviewed a November 4, 2021 echocardiogram which he opined confirmed the presence of left ventricular hypertrophy as in hypertensive cardiac disease and worsening of the left ventricular systolic function with left ventricular ejection fraction measuring 35 to 40%. Dr. Nacouzi stated that the applicant advised that in 2013 he was diagnosed with a left bundle branch block on the electrocardiogram. He also had a 2.4 pack year smoking history as well as hyperlipidemia. Dr. Nacouzi noted that a supplemental report would be issued following the review of additional medical records. He also reiterated his opinion that the applicant's cardiac condition was not insignificant. Upon receiving the complete medical records a supplemental report would be issued. (Joint Exhibit 103, Report of Panel QME Roger Nacouzi, M.D., dated November 9, 2021, pages 3 and 4)

Dr. Nacouzi submitted a supplemental report dated December 8, 2020 in response to a request from applicant's counsel. His diagnoses included hypertensive cardiac disease with systolic failure which he states was a form of heart trouble that developed and manifested during the applicant's employment with the city of Vallejo. The hypertensive cardiac disease with systolic failure reached maximum medical improvement as of December 8, 2021. Using Table 4-2 of the *AMA Guides* he noted there was an intake of antihypertensive medications with left ventricular hypertrophy and systolic dysfunction and placed him in Class 4. Given that the left ventricular ejection fraction measured 35 to 40%, with normal being above 50%, he opined that the hypertensive cardiac disease with systolic heart failure resulted in 63% Whole Person Impairment ("WPI"). In terms of

apportionment, there was a prior March 21, 2013 pharmacological stress myocardial perfusion study which demonstrated “what could be attenuation defect however cannot completely exclude the possibility of small mild mid inferior ischemia” and in 2013 the applicant reportedly was diagnosed with left bundle branch block on echo electrocardiogram which contributed to the causation of the cardiac permanent impairment. He apportioned 80% of the impairment to the industrial injury of June 3, 2020, 15% of the pre-existing left bundle branch block and 5% the nonindustrial factors of smoking, excess weight and hyperlipidemia. Should the anti-attribution clause apply, 100% was due to the industrial injury of June 3, 2020. For future medical care, he recommended follow up with treating internal and cardiovascular physicians four times a year for office visits. He assigned work restrictions of no working in emotionally stressful environments, sudden work demands on cardiac capacity, schedule deadlines or pressure work and work in extremes of heat or cold and the need to rest intermittently due to fatigue. He is not able to continue as usual and customary work duties. (Joint Exhibit 104, Report of Panel QME Roger Nacouzi, M.D., dated December 8, 2021, pages 2 and 3.)

Dr. Nacouzi was deposed on April 28, 2022. He testified that he reviewed an echocardiogram consistent with hypertensive cardiac disease. A subsequent echocardiogram on November 4, 2021 showed the left ventricular hypertrophy and confirmed the findings on the earlier echocardiogram of August 21, 2021 and shows that it was worsening. He opined that it takes several years of high blood pressure to cause end organ damage such as left ventricular hypertrophy. The finding of left ventricular hypertrophy on the echocardiogram of August 21, 2020 confirmed later by the November 4, 2021 echocardiogram provided incontrovertible evidence of hypertensive cardiac disease. There was a borderline measurement of blood pressure 134/90 on July 10, 2020 and otherwise he did not have any records with a blood pressure elevation measurement. Dr. Nacouzi testified that although there are other causes of left ventricular hypertrophy (LVH) other than hypertension, the applicant does not have them. He testified that assuming there was no documentation of blood pressure elevation either because the patient did not go to the doctor or the doctor happened to measure normal blood pressure, he would still be of the opinion that the applicant had hypertensive cardiac disease because, although the blood pressure measured normal at the doctor’s office, the applicant performed his job under the influence of work stress, emotional and physical, and the blood pressure was spiking above normal which cumulatively led to the LVH. He was saying this to a reasonable degree of medical probability. (Joint Exhibit 105, Transcript of the deposition of Panel QME Roger Nacouzi, M.D., dated April 28, 2022, pages 13, 14, 16, 17, 25 and 28 - 29.)

Dr. Nacouzi testified that once a patient is ushered into systolic failure as required under Class 4 of table 4-2 than logically the blood pressure would be normal. When there is systolic failure the blood pressure goes down partly because of the failing heart and partly because the medications being prescribed. It is more likely are not that working as a police officer the applicant had hypertensive episodes at work with increased blood pressure, or labile hypertension. The applicant was currently on Norvasc and metoprolol for hypertension. He agreed that the applicant would not have been placed on anti-hypertensive medications unless he had hypertension. Based on the ejection fraction, the applicant has moderate systolic dysfunction. He opined that the applicant fits squarely in Class 4 as there was a need for hypertensive medication and left ventricular hypertrophy with systolic function under Item 3 of Class 4. Dr. Nacouzi also testified that if the applicant was in a different class, then he agreed that 63% WPI in Class 4 was the most accurate

rating of the cardiac impairment. He also testified that his opinion was given to a reasonable degree of medical probability based on the science, his experience and his knowledge of the case. (Joint Exhibit 105, Transcript of the deposition of Panel QME Roger Nacouzi, M.D., dated April 28, 2022, pages 33, 34, 43, 44, 46, 47, and 48.)

Defendant filed a petition to strike the reporting of panel QME Dr. Nacouzi. Defendant argued that the reporting was unreliable and not substantial medical evidence, that the panel QME erred in placing the applicant in class for hypertensive heart disease and the replacement panel be issued. (Defendant's Exhibit A, Defendant's Petition to Strike Panel QME Reporting of Dr. Nacouzi, dated December 5, 2022.)

Judicial notice is taken of the April 28, 2022 Stipulations resolving all claims for temporary disability and Labor Code section 4850 benefits. Those Stipulations state, in part, that Applicant agreed to submit a Disability Retirement Election Application asserting entitlement to an Industrial Disability Retirement with an effective date of retirement no later than April 15, 2022. Defendant would stop Labor Code 4850 benefits and begin advancing disability pension benefits as of the effective date of retirement.

Analysis

1. Is there a basis to replace Dr. Nacouzi as a panel QME?

The grounds for either the medical unit or the trial judge to issue a replacement panel QME are enumerated in Title 8, California Code of Regulations section 31.5. In addition, a medical-legal evaluator may be replaced if the evaluator displays a disqualifying conflict of interest, such as bias, under Regulation 41(c)(3.) Defendant, in its petition to strike the reporting of the report of the panel QME, Dr. Nacouzi, is requesting a replacement evaluator based on their argument that his reporting is not substantial evidence. That is not a basis to replace a medical-legal evaluator under either Regulations 31.5 or 41. In addition, as outlined below, I find that the reporting of Dr. Nacouzi is substantial evidence. Therefore the December 5, 2022 petition to strike the reporting of Dr. Nacouzi is denied.

2. What is the level of applicant's permanent disability?

The burden of proof rests on the party holding the affirmative on the issue. (Labor Code section 5705) With respect to permanent disability, the applicant holds the burden of proof by a preponderance of the evidence. (Labor Code section 3202.5.)

The term "substantial evidence" means evidence "which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support the conclusion. . . . It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. WCAB (Bolton)*, (1982) 48 Cal. Comp. Cases 566, 568.) A medical report is substantial evidence if it is framed in terms of reasonable medical probability, is based on pertinent facts and on an adequate examination and history, and clearly sets forth the reasoning in support of its conclusion. (*Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 611 (Appeals Board *en banc*)).

I do find the reporting and deposition of Dr. Nacouzi to be substantial medical evidence. Dr. Nacouzi twice evaluated the applicant, and reviewed records at the time of each evaluation and in two supplemental reports. No evidence has been submitted that Dr. Nacouzi's history was inaccurate, or that he performed an incomplete evaluation or records reviews. Dr. Nacouzi was questioned at length in his deposition regarding his opinions regarding the level of permanent disability. He testified that the applicant's left ventricular hypertrophy was caused by hypertension, and even without documentation of blood pressure elevation, he believed that there was hypertensive cardiac disease. (Joint Exhibit 105, pages 25 and 29.) He testified that the applicant's diagnosis of hypertension, the need for hypertensive medications and the presence of left ventricular hypertrophy with systolic function justified his rating under the AMA Guides. (Id. at pages 46-48.) In addition, Dr. Nacouzi testified that if it was determined that the strict interpretation of the AMA Guides did not warrant the rating of 63% WPI using Class 4 of Table 4-2 of the AMA Guides it was the most accurate rating of impairment under *Alvarez/Guzman*. (Id. at page 47.) I find that the reporting of Dr. Nacouzi is substantial medical evidence.

Dr. Nacouzi opined that the applicant's hypertensive cardiac disease with systolic failure was a form of heart trouble that developed and manifested during the applicant's employment with the city of Vallejo. (Joint Exhibit 104 page 2). This would qualify as "heart trouble" under Labor Code sections 3212 or 3212.5. Pursuant to Labor Code section 4663(e), in cases of heart trouble subject to the presumption of sections 3212 or 3212.5, apportionment to other factors does not apply. Based on the unrebutted opinions of Dr. Nacouzi, I rate the applicant's impairment as follows:

04.01.00.00 – 63% - [1.4]88 – 490I – 91 – 94%

Applicant is entitled to permanent disability of 94%, amounting to 817.25 weeks of indemnity payable at the rate of \$290.00 per week, totaling \$237,002.50 before attorney's fees, and thereafter a life pension.

Are applicant's attorneys entitled to a fee?

In light of the competent and diligent representation provided to the injured worker in connection with this dispute, I find that applicant's attorneys are entitled to a fee consisting of 15% of the indemnity being awarded herein. Jurisdiction will be reserved in the event of a request for commutation of the fee.

DATE: April 3, 2023

Elizabeth Dehn
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE