

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

ADAN FLORES (deceased), *Applicant*

vs.

**JD AND LA TRUCKING, INC.;
NATIONAL LIABILITY AND FIRE INSURANCE COMPANY,
administered by NORTH AMERICAN RISK SERVICES, *Defendants***

**Adjudication Number: ADJ12008723
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the June 9, 2022 Petition for Reconsideration and the contents of the reports 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 dated June 1, 2022, which we adopt and incorporate, we will deny reconsideration.¹

¹ The WCJ issued Findings of Fact & Order on April 28, 2022, and defendant filed a Petition for Reconsideration on May 20, 2022. The WCJ issued an Amended Findings of Fact & Order for Scrivener's Error Regarding Date of Birth on May 23, 2022, and defendant filed a Petition for Reconsideration on June 1, 2022, which incorporated its original petition filed on May 20, 2022. (See Cal. Code Regs., tit. 8, §10961.) Since the merits of defendant's petition are discussed in the WCJ's initial report, we adopt and incorporate the June 1, 2022 report.

For the foregoing reasons,

IT IS ORDERED that the Petitions for Reconsideration are **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ MARGUERITE SWEENEY, 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.

**GLORIA FLORES
BURGIS & ASSOCIATES
LAUGHLIN, FALBO, LEVY & MORESI**

SAR/abs

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

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

I

INTRODUCTION

1. Decedent's Occupation: Truck Driver
Decedent's Age: 55
Date of Injury: 01/01/2003 - 08/28/2018
Parts of Body Injured: Internal, heart, high blood pressure, brain, and death
Manner in Which Injury Occurred: Repeated physical and psychological trauma
2. Identity of Petitioner: Defendant filed the petition
Timeliness: The petition is timely filed
Verification: The petition is properly verified
3. Date of Issuance of Findings of Fact & Order: 04/28/2022 (date of service)
4. Petitioner's Contentions (taken slightly out of order):
 - A. The death certificate (applicant's exhibit 17) has no probative value.
 - B. The coroner's report (applicant's exhibit 18) contains nothing that allows a reasonable mind to find a work connection to the decedent's death.
 - C. The deposition transcript of Gloria Flores (defendant's exhibit F) cannot be used to support a claim of death arising out of employment.
 - D. The PQME report of Dr. Minal Borsada (applicant's exhibit 2) fails to link the decedent's employment with his death, even as a contributing factor. 2
 - E. The deposition transcript of the PQME, Dr. Minal Borsada (applicant's exhibit 1) is lacking in information and evidence such that it is not reasonably medically probable to find industrial causation.
 - F. The judge erroneously shifted the burden of proof and the applicant did not meet theirs.
 - G. The judge relied upon evidence that was neither substantially nor legally valid.

II

FACTS

The applicant in this case is Ms. Gloria Flores, the daughter of the decedent, Mr. Adan Flores, a 55 year old truck driver employed for more than 15 years with JD and LA Trucking who alleges that the physical and psychological trauma of her father's work duties contributed to his atherosclerotic cardiovascular disease (hypertension being a factor) which caused his death on August 28, 2018. According to the coroner's records (offered not only as applicant's exhibit 18 but also as defendant's exhibit C), the decedent was found face down on the asphalt at Matheson

Tri-Gas next to his truck with a key in the ignition. Additionally, his tractor truck was backed up to a large helium tanker, his hoses were not connected, and there were containers of heart medication nearby. His cell phone was found on the seat of his cab, and he had spoken with his girlfriend at which point he complained of shortness of breath and chest pain just before the line went dead. For the two days before his death, Mr. Flores drove to Oakland and back, a total of approximately 800 miles.

The autopsy report concluded that the decedent had “[n]o fatal traumatic injuries” and emphasized:

“[t]he decedent died due to atherosclerotic cardiovascular disease. History of hypertension is listed as a contributing condition. Exam reveals no fatal traumatic injuries and the laceration to the right eyebrow may be associated with a terminal collapse. The toxicology studies are negative. The manner of death is natural.”

The parties utilized Dr. Minal Borsada as the PQME, who issued one report dated December 14, 2019 and who was cross-examined on March 8, 2021. In between these dates the decedent’s daughter was deposed on September 17, 2020. This matter proceeded to trial on February 28, 2022 without testimony from either party, and it was submitted on the record. At that time, various exhibits were offered by both parties, and neither lodged any objections. Thus, all items were 3 admitted. The Findings of Fact & Order (“F&O”) was issued on April 15, 2022 and was served on April 28, 2022. The petitioner correctly points out that the decedent’s date of birth is [], and not [] that was stated in the F&O. This court corrected its scrivener’s error on May 23, 2022.

III DISCUSSION

On its face, the contentions raised in the defendant’s petition for reconsideration appear methodically reasoned, going through each point, one at a time to refute the court’s findings. But with this type of death case and the threshold issue of AOE/COE, it is not possible to simply look at the evidence in an isolated manner, one exhibit at a time, as the defendant would have us do. Rather, all evidence must be viewed together and within the totality of circumstances to determine if the decedent’s employment at JD and LA Trucking contributed to his death. Only then can we

conclude whether there exists substantial evidence based upon reasonable medical probability to support the findings.

Petitioner's Contentions A & B

It is true that this court considered both the death certificate and the coroner's records in reaching its conclusion. The defendant, however, argues that the death certificate has no probative value and that the coroner's records do not allow for a work connection. The defendant believes that the girlfriend who was speaking with the decedent shortly before the line went dead is a "...critical witness as to what may have transpired." The defendant also argues that because the coroner's report states that the decedent's death was "natural", it's a leap to find the death work related. This court respectfully disagrees.

First, the death certificate states the cause of death, and that is the starting point in order to determine causation. Dr. Borsada opines (to be more fully discussed below) that hypertension is a contributing factor towards arteriosclerosis, the condition that caused Mr. Flores' death. The doctor then discusses the stressors that can lead to an aggravation of hypertension. After reviewing the evidence presented, the doctor concludes that the decedent's stressors at work aggravated his hypertension and his atherosclerotic cardiovascular disease that caused his death.

Second, the court does not feel that the person who was speaking with the decedent shortly before his death is dispositive of a work-related question. In fact, the court feels that any lay testimony that may be offered would add little, if any, probative value. The core issue is whether the decedent's job duties contributed to the hypertension and arteriosclerosis. That is a medical question that must be left to the PQME.

Third, in terms of the "natural" cause of death being found by the coroner, the only options for the coroner are "natural", "suicide", "homicide", "accident", or "could not be determined". There has been no evidence presented to explain the definitions of these autopsy options, and this court did not want to conclude that "natural" has any bearing on industrial causation. The defendant appears to argue that the "natural" death conclusion means that the death is entirely not work related. This court does not agree with this assertion.

Again, the death certificate and the coroner records were reviewed and considered since both shed light on the decedent's medical condition that the PQME had to address. Both have value in this case.

Petitioner's Contention C

The defendant contends that it was error to rely on the deposition transcript of the decedent's daughter to find a work-related connection. Contrary to the defendant's assertion that she knew "nothing" about her father's medical history, work history, job duties, or any other relevant facts, the court found the deposition transcript to contain relevant facts pertaining to how tired her father was after a day's work, that he was stressed and always on the go because of deadlines, that he would drive through the night to get to his locations on time, that he would not sleep at times, that he drove to and from Oakland once every week, that he ate junk food and fast food when on the road, and that he would sometimes work from 6:00 a.m. to 9:00 p.m. Ms. Flores knew much more than nothing.

More importantly, however, again, is considering the deposition testimony within the totality of circumstances. The PQME interviewed Ms. Flores, and the history is substantially similar in terms of the decedent's work hours, stress, diet on the road, and trips to Oakland. This court could not ignore the unrebutted history provided by the decedent's daughter.

Petitioner's Contentions D & E

The defendant contends that the opinion of the PQME (in both the report and deposition transcript) fails to link the decedent's employment with his death, even as a contributing factor, and that it is lacking in information and evidence such that it is not reasonably medically probable in finding industrial causation. The defendant goes on to cite several well-known Labor Code provisions and case holdings, and then goes on to pick out a few statements from the PQME's report and deposition that are taken out of context and do not account for the doctor's entire opinion. The doctor was indeed given hypotheticals, but she was also provided with facts from the decedent's daughter.

The defendant points out just a small portion of Dr. Borsada's report when framing its arguments. Although true that Dr. Borsada could not get the decedent's work hours, job duties, or a detailed medical history, she did get information mentioned above. The defendant similarly asserts that it is unknown whether the decedent was taking any cardiac medication. In this no-fault system, the court does not find this argument to be cogent. The autopsy coroner's records found a container of Metoprolol labeled from Rite Aid for Juana Flores (the decedent's wife) and empty boxes of Losartan. The autopsy showed that Metoprolol was not found in his system, that the

toxicology studies were negative, and that no drugs were found in his system. Regardless, the fact that the decedent was or was not taking heart medication is not dispositive to the issue of an aggravation of his arteriosclerosis, with hypertension being a contributing factor.

The PQME, in fact, had a wealth of information that lead her to conclude during her cross examination that the decedent's job duties contributed to his heart attack. Specifically, she testified that hypertension is a risk factor for arteriosclerosis and thus a cause for the heart attack. Dr. Borsada went on to acknowledge the decedent's long work hours, lack of breaks, transportation of hazardous materials, acute physical exertion, lack of sleep, poor eating habits, weight gain, deadlines, working full time for the last decade, driving to and from Oakland (800 miles), and obesity. The doctor then concluded that his job duties contributed to his heart attack and to a reasonable degree of medical probability. The doctor said that the only way she would change her opinion to a non-industrial finding is that if she saw records demonstrating that the decedent's blood pressure was under control over the course of years. Such records were not produced to wither the PQME or at trial. In an effort by the defendant to demonstrate non-industrial causation to the decedent's family history, the doctor reiterated that she was concerned about an aggravation. She thus noted that the coroner's report demonstrated significant blockage that was building up for a while, with one of the causes and contributing factors of the blockage and arteriosclerosis being that of hypertension. This court therefore found the medical opinion of the PQME linking the job duties to the decedent's death to constitute substantial medical evidence based upon reasonable medical probability. For the defendant to pick parts of the doctor's isolated statements does not provide the full and accurate opinion.

Petitioner's Contention F

The defendant argues that this court erroneously shifted the burden of proof, presumably to the defendant having to prove that the death was not work related. The court disagrees and is aware of the Labor Code provisions and case law cited by counsel. The defendant's position is conclusory and does not lend credence to its position. The court found that the applicant met her burden of proof of finding that work stressors contributed to the decedent's death and that industrial causation was not zero, consistent with case law, including *South Coast Framing v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291 [80 Cal.Comp.Cases 489].

Petitioner's Contention G

The defendant's final contention is that this court relied on evidence that was neither substantially nor legally valid. The foregoing facts presented within all admitted exhibits and the conclusions reached by the PQME meet all legal requirements. Case law allows circumstantial evidence to support a finding of causation, i.e., arising out of employment, provided it is based upon reasonable inferences that arise from the reasonable probabilities flowing from the evidence. Absolute certainty is not required. Although other inferences adverse to the applicant might be drawn, the inference favorable to the applicant does not become conjectural or speculative. Dr. Borsada, when considering all factors in their totality, concluded that the stressors of the job contributed to both the hypertension and the arteriosclerosis that lead to death.

In addition to all factors described above, Dr. Borsada opines that acute physical exertion can aggravate hypertension. Because the decedent was found dead next to his truck with the hoses detached, the reliable circumstantial evidence points to the fact that the decedent was in the middle of either attaching them or detaching them from his truck, similar to the situation where a man found dead of a heart attack next to his truck was found to have been killed due to the strain of tying down his load [see *Builders Fence Company, et al. v. Workers' Comp. Appeals Bd. (Fields)* (1998) 63 CCC 287 (writ denied)].

Adding on to this "mysterious death doctrine" is the case of *Guerra v. Workers' Comp. Appeals Bd.* (2016) 81 CCC 324, where the Court of Appeal held that an employee's death arose out of and in the course of employment when he was discovered unresponsive and bloodied after taking trash from the restaurant to the dumpster located approximately 300 feet away. The employee had tuberculosis, and the court relied on the opinion of a doctor who reported that garbage fumes and heavy lifting played a substantial factor in causing the hemorrhage in his lungs. The court went on to explain that circumstantial evidence may support an award and may be "...based on reasonable inferences that arise from the reasonable probabilities flowing from the evidence" (*Guerra*, 81 CCC at 328). In our case, the decedent was found face down on the asphalt, next to his truck, hoses detached, his key in the ignition, and heart medication in his truck. Just as the court found in *Guerra*, this court concluded here that in the absence of any other plausible explanation, it was not medically probable that Mr. Flores' death was entirely unrelated to work.

IV
RECOMMENDATION

It is respectfully recommended that the defendant's Petition for Reconsideration be denied.

DATE: June 1, 2022

TODD T. KELLY
Workers' Compensation
Administrative Law Judge