

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

ALONZO PADILLA, *Applicant*

vs.

**NORTH KERN STATE PRISON;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ12812042
Bakersfield 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/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 18, 2022

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

**ALONZO PADILLA
LAW OFFICE OF ADAMS, FERRONE & FERRONE
STATE COMPENSATION INSURANCE FUND**

PAG/abs

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**

INTRODUCTION

Trial in the primary proceedings of the above-captioned case was held on October 8, 2021. The matter was thereafter submitted on November 1, 2021 to Workers' Compensation Judge Christopher M. Brown. A Findings of Fact, Awards and Orders; Opinion on Decision was issued on November 23, 2021. Defendant filed a timely, sufficiently served and verified Petition for Reconsideration on December 20, 2021.¹ The Petition does not state the legal basis for its filing but the arguments are consistent with Labor Code § 5903 (a), (c) and (e).

Specifically, Petitioner contends that the Panel Qualified Medical Examiner's expert medical opinion does not constitute substantial medical evidence in the absence of a cardiac MRI.

Applicant has not filed an Answer to Defendant's Petition at this time.

STATEMENT OF FACTS

The parties stipulated that Applicant suffered an injury to his heart that arose out of and in the course of his employment as a Correctional Officer, Occupational Group Number 490, with the California Department of Corrections at North Kern State Prison. (MOH Page 2 Lines 21 – 26)

Applicant's admitted heart injury was evaluated by Dr. Robert Noriega Jr., M.D. as a Panel Qualified Medical Examiner in the specialty of Internal Medicine. Dr. Noriega examined Applicant on March 26, 2020 and issued reports dated April 18, 2020, October 21, 2020, February 18, 2021 and August 23, 2021. (Joint Exs. 1, 2, 3 & 4) Dr. Noriega was deposed on July 7, 2021. (Joint Ex. 5)

Dr. Noriega's fourth report indicate that Defendant's claims adjuster, Kelly Pfiffner, called his office requesting a written prescription for a heart study. (Joint Ex. 4 Page 1) Dr. Noriega has never indicated that he believes a cardiac MRI is required to determine Applicant's level of Whole Person Impairment.

Dr. Noriega's diagnosis of heart trouble with left ventricular hypertrophy is based on his examination of Applicant, his accurate review of the medical records provided and diagnostic tests he requested. Dr. Noriega has indicated a cardiac MRI is not required despite the claims adjuster's request. Dr. Noriega's has explained both how and why he reached his expert medical opinion which is substantial medical evidence. (OOD Page 4)

¹ December 18, 2021 was a Saturday so Defendant had until Monday December 20, 2021 to file a timely Petition for Reconsideration.

DISCUSSION

DEFENDANT FAILED TO ESTABLISH A BASIS FOR RECONSIDERATION PURSUANT TO LABOR CODE § 5903(a)

The basis for Defendant's asserting of a Labor Code § 5903(a) argument is unclear. The Board has jurisdiction over controversies between and employer and employee and shall resolve the disputes upon request of either party.² The parties clearly submitted this issue for decision to the WCJ. (MOH Page 3 Lines 11 – 13) Title 8 CCR § 10330 states:

In any case that has been regularly assigned to a workers' compensation judge, the workers' compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case, including the fixing of the amount of the bond required in Labor Code section 3715. Orders, findings and decisions and awards issued by a workers' compensation judge shall be the orders, findings, decisions and awards of the Workers' Compensation Appeals Board unless reconsideration is granted. (Title 8, CCR § 10330)

Defendant has not established that the issuance of a determination that the reports of Dr. Noriega constitute substantial medical evidence exceeds the authority of the WCJ.

DR. NORIEGA'S REPORTING IS SUBSTANTIAL MEDICAL EVIDENCE SUPPORTING THE FINDINGS OF FACT AND THE FINDINGS OF FACT DO SUPPORT THE AWARDS AND ORDERS

Applicant's Whole Person Impairment caused by his hypertensive heart disease resulting in heart trouble by changes in structural geometry of the heart is determined by application of chapter 4.1 of the AMA Guides to the Evaluation of Permanent Impairment 5th Edition. (AMA Guides) Dr. Noriega gave his expert medical opinion that Applicant's disability is best described as a Class 3 impairment of Table 4-2 and that he has 36% WPI as a result of his cardiovascular disease.

Dr. Noriega's second report reviewed a February 28, 2015 transthoracic echocardiogram that indicated Applicant had left atrial enlargement and he requested an updated image. (Joint Ex. 2) His third report documents review of a December 15, 2020 transthoracic echocardiogram that documented left ventricular hypertrophy and increased LV internal cavity size and septal thickness. (Joint Ex. 3 Page 2) Dr. Noriega did not request a cardiac MRI.

Use of Table 4-2 of Chapter 4.1 of the AMA Guides is appropriated for determining Applicant's level of WPI resulting from his admitted industrial injury. A Table 4-2 Class 3 finding may be based on:

² Labor Code §4604

Asymptomatic; stage 3 hypertension despite multiple medications
or
antihypertensive medication with any of the following: (1) proteinuria, urinary sediment abnormalities, renal function impairment as measured by the BUN and serum creatinine, and a decreased creatinine clearance of 20% to 50% normal; (2) LV hypertrophy by ECG or echocardiography but no symptoms of HF; either abnormality suggests more extensive end-organ damage (AMA Guides Table 4-2 Page 66)³

The AMA Guide makes no reference to the use of a cardiac MRI.

Dr. Noriega gave his expert medical opinion that Applicant's factors of impairment included hypertension with antihypertensive medication with elevated blood pressure, increased LV mass, LV internal cavity size and septal thickness, eccentric LV hypertrophy, increased left atrial (LA) dimension with a normal LA volume index and mild dilation of the ascending aorta. He expressly stated, "Hypertension has troubled the heart". (Joint Ex. 3 Page 4) He confirms this expert opinion during his deposition when he stated:

As I reported, I believe, in this report, hypertension has resulted in heart trouble by changes in structure and geometry of the heart. ... when there has been structural changes in the heart and his geometry configuration, for all intents and purposes, it can be considered heart trouble. (Joint Ex. 5 Page 14 Lines 10 – 24)

Dr. Noriega has not requested a cardiac MRI or indicated one is necessary. He requested the test he determined was necessary, reviewed the results and gave his expert medical opinion.

Dr. Noriega took a history from Applicant, examined Applicant, reviewed the relevant medical records provided, requested and reviewed the diagnostic test he believed appropriate and then explained in detail how and why he reached his expert medical opinion that Applicant has 36% WPI pursuant to the AMA Guides based on hypertension that changed the shape of Applicant's heart. Therefore, Dr. Noriega's expert medical opinion was found to be substantial medical evidence that established Applicant's level of WPI and that the presumption of injury created by Labor Code §§ 3212.2 and 3212.10 apply. (OOD Page 4)

CONCLUSION

Defendant stipulated that Applicant suffered an injury arising out of and in the course of his employment to his heart in the form of hypertensive heart disease. (MOH Page 2 Lines 21 – 26) Defendant also stipulated that Applicant requires medical care to treat his industrial injury. (MOH Page 2 Line 44)

Defendant's claims adjuster appears to be the first person requesting a cardiac MRI as a diagnostic test. Dr. Noriega's fourth report indicates the adjuster issued electronic correspondence between herself and the doctor's office as well as making calls on August 12, 2021 and August 23, 2021 requesting a written prescription for a heart study. (Joint Ex. 4) There is no evidence that a treating physician or qualified medical examiner requested a cardiac MRI. The persistent request

³ HF references heart failure. LV references left ventricular. (AMA Guides Page 66)

of Defendant for a prescription for a diagnostic test not referenced by the AMA Guides and not requested by the Panel Qualified Medical Examiner is irrelevant as they are not the medical experts treating or evaluating Applicant's admitted industrial injury.⁴ These communications border on improper ex parte communications.

Dr. Noriega's reports are based on medical science and reliable diagnostic tests that establish Applicant's heart has physically changed after years of exposure to increased blood pressure caused by hypertension. He gave his expert opinion that these changes in the shape of Applicant's heart constitute "trouble". His expert medical opinion supports Finding of Fact 1 which in turn supports the Awards and Orders.

DATE: DECEMBER 22, 2021

Christopher M. Brown
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

⁴ Defendant seems to be indifferent to the legislative intent behind Labor Code §§ 3212.2 and 3212.10, the statutes that create the presumption of industrial injury that in turn prevent apportionment of permanent disability pursuant to Labor Code § 4663.