

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

**JACK PICCININI, *Applicant***

**vs.**

**CITY OF SEBASTOPOL, permissibly self-insured;  
CITY OF SANTA ROSA, permissibly self-insured, *Defendants***

**Adjudication Numbers: ADJ13299780; ADJ14625110; ADJ14625129  
Santa Rosa 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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 24, 2023**

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

**JACK PICCININI  
BROWN & DELZELL  
MULLEN & FILIPPI  
MACINTYRE & WHITE**

**PAG/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  
REMOVAL/RECONSIDERATION**

**I  
INTRODUCTION**

1. Applicant's occupation: Volunteer Fire Captain (ADJ13299780 and ADJ14625110) and Fire Battalion Chief (ADJ14625129).
2. Age at time of injury: Unknown at this time as the date of injury has yet to be established. Date of birth is[.]
3. Parts of body injured: Neck.
4. Manner of injury: Moving fire hoses (ADJ14625110) and cumulative trauma (ADJ13299780 and ADJ14625129).
5. Identity of Petitioner: City of Sebastopol. The City of Sebastopol alleges that the court erred in finding a single cumulative injury rather than two separate cumulative trauma injuries one with the City of Santa Rosa and one with the City of Sebastopol. Additionally, City of Sebastopol alleges the cumulative trauma should be broken into at least two separate cumulative injuries based on specific incidents occurring in the course of work.

**II  
FACTS**

Applicant Jack [Piccinini] began his career as a firefighter in 1974 when he took full-time employment with the City of Santa Rosa. His employment there lasted some 42 years; he retired in 2016 as a Battalion Chief. For what appears to be essentially the entire duration of this period he was concurrently employed part-time by the City of Sebastopol and was still employed as of trial on October 11, 2022, where his current position is Volunteer Fire Captain. (See generally, Minutes of Hearing and Summary of Evidence dated Oct. 11, 2022 at pg. 4). In general, his work with the City of Sebastopol appears to have been both fewer hours and perhaps somewhat less arduous than his employment with the City of Santa Rosa. (See Joint Exhibit J1 report of AME Dr. Sommer dated Nov. 29, 2022 at pg. 11 - 12).

Applicant suffered a number of relatively minor incidents while employed by the City of Santa Rosa affecting his neck. These include a motor vehicle accident in May 2009 (Id. at pg. 2), a strain due to driving in the "tiller seat" of a fire truck in October 2010 (Id. at pg. 5), a strain in August, 2014 due to sleeping awkwardly and while fighting a fire (Joint Exhibit J4, March 2, 2021 report of AME Dr. Sommer at pg. 10 - 11 ), and increased neck pain due to computer work in April 2015 (Id. at pg. 11 ).

Following his retirement from the City of Santa Rosa in 2016, applicant suffered a specific injury while working for the City of Sebastopol moving hoses in January 2020. This resulted in a case number ADJ14625110, as to which Reconsideration is not sought.

The parties agreed to use Dr. Sommer as an Agreed Medical Evaluator to evaluate applicant's neck injuries. He issued his initial report March 2, 2021, and issued three supplemental reports. He was deposed October 21, 2021. He ultimately concluded that the disability should be apportioned 85% to a single cumulative trauma with the City of Santa Rosa, 5% to a single cumulative trauma with the City of Sebastopol and 10% to the specific injury with the City of Sebastopol in 2020. Although pressed repeatedly on the issue of whether the various incidents which occurred while employed by the City of Santa Rosa resulted in multiple, serial cumulative trauma injuries, Dr. Sommer concludes: "all the Santa Rosa injuries are mixed together and not reasonably separable as to contribution to ultimate disability." (Joint Exhibit J1, report of AME Dr. Sommer dated Nov. 29, 2021 at pg. 15).

### **III DISCUSSION**

The defendant makes two arguments concerning the characterization of applicant's injuries. First, defendant City of Santa Rosa urges the Board to agree with Dr. Sommer that there were two separate cumulative trauma injuries, one with the City of Santa Rosa, and one with the City of Sebastopol, despite the fact that for the vast majority of the industrial exposure the applicant had concurrent employment. Second, the City of Santa Rosa urges the Board to disagree with Dr. Sommer that the injury with the City of Santa Rosa comprised a single over-arching cumulative injury and instead break the injury into multiple injuries because the industrial exposure was periodically punctuated by instances causing need for time off and for medical treatment.

The court notes that both defendants are making arguments concerning the application of Labor Code § 5500.5 as it concerns the liability of each party. The record is not yet sufficient, in the court's view, to address this issue. This court has not been provided with sufficient evidence to determine the date of injury under Labor Code § 5412 and until that is determined, assessment of liability between the parties is premature. In any event it would appear based on the undersigned's analysis that this would possibly be a subject for arbitration under Labor Code § 5275(a)(2). Procedurally, although the court did rule that the cumulative injury was a single cumulative injury, and not two injuries, the court ordered further development of the record in order to establish the date of injury pursuant to Labor Code § 5412.

The court began with the understanding that where there is a cumulative injury which occurs during concurrent employment, there is a single cumulative injury. Although in some unusual circumstances, the nature of the industrial exposures may be so dissimilar that it makes more sense to treat them as separate cumulative traumas, in the court's opinion, that is not the case here. Applicant was employed as a firefighter by both employers and although he worked more hours with the City of Santa Rosa, and the work may have been more arduous, it appears that the type of work was overall fairly similar.

In fact, there doesn't appear to be any reason to treat those two employments separately other than to assess the relative contribution each employment had to his overall disability. However, that analysis appears more appropriate under Labor Code § 5500.5, rather than breaking a single cumulative trauma into two cumulative trauma's each associated with the two employers.

In his supplemental report of May 12, [2021], Dr. Sommer characterizes the applicant's disability as apportioned 90% to cumulative trauma with the City of Santa Rosa and 5% to cumulative trauma with City of Sebastopol, with 5% attributed to a specific injury. The specific injury is obviously a separate injury. However, there is no reason that the cumulative trauma should be separated into two injuries, one with each employer. The court interprets Dr, Sommer's assessment of an 85% -5% division as anticipating a division of disability associated with a single injury among the two employers. The court does not believe that it is appropriate to divide the injury itself into two injuries, but rather to assess the impact each employment had on the liability. Given the concurrent employment, a single injury seems more consistent with the requirement of the Labor Code; Liability is then joint and several, with the two employers having a right to contribution between themselves. The court notes that although election was made, it doesn't appear that this would have been precluded.

As far as the assessment of that cumulative injury as singular, and not broken into various periods based on the provision of medical treatment and brief periods of time off work or modified duties, the court was willing to accept Dr. Sommer's characterization.

#### **IV RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

02/16/2023

**JASON E. SCHAUMBERG**  
Workers' Compensation Judge