

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

**ANNE MICHELLE GREEN, *Applicant***

**vs.**

**CITY OF LOS ANGELES, *Permissibly Self-Insured, Defendant***

**Adjudication Number: ADJ15505680  
San Francisco District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR RECONSIDERATION AND  
DECISION AFTER RECONSIDERATION**

Applicant seeks reconsideration of an arbitrator's Findings and Order of July 27, 2021, wherein it was found that, while employed as a police officer during a cumulative period ending August 28, 2019, applicant did not sustain industrial injury in the form of endometrial cancer and to her gastrointestinal system. In so finding, the arbitrator found that defendant rebutted the cancer presumption codified at Labor Code section 3212.1.

Applicant contends that the arbitrator erred in not finding industrial injury in the form of endometrial cancer and consequent injury to her gastrointestinal system, arguing that the arbitrator erred in finding that defendant successfully rebutted the section 3212.1 presumption. We have received an Answer, and the arbitrator has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, applicant met her initial burden to raise the section 3212.1 presumption, and it was not properly rebutted. Accordingly, we will grant reconsideration, find that the applicant sustained industrial injury in the form of endometrial cancer and to the gastrointestinal system and defer all other matters.

Preliminarily, we note that the Appeals Board has 60 days from the filing of a petition for reconsideration to act on that petition. (Lab. Code, § 5909.) Applicant's Petition was timely filed on August 16, 2021. However, the Petition did not come to the attention of the Appeals Board until after the expiration of the statutory time period. Consistent with fundamental principles of due process, therefore, and in keeping with common sensibilities, we are persuaded, under these

circumstances, that the running of the 60-day statutory period for reviewing and acting upon a petition for reconsideration begins no earlier than the Appeals Board’s actual notice of the petition for reconsideration. (See *Shipley v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104 [57 Cal.Comp.Cases 493]; *State Farm Fire and Casualty v. Workers’ Comp. Appeals Bd. (Felts)* (1981) 119 Cal.App.3d 193 [46 Cal.Comp.Cases 622].) In this case, the Appeals Board received actual notice of the Petition for Reconsideration on August 22, 2022, making this decision timely.

Turning to the merits, as a peace officer as defined in Penal Code section 830.1(a), which includes “police officer,” applicant was subject to Labor Code section 3212.1, which states in pertinent part:

(a) This section applies to all of the following:

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(4) Peace officers, as defined in Section 830.1, subdivision (a) of Section 830.2, and subdivisions (a) and (b) of Section 830.37, of the Penal Code, who are primarily engaged in active law enforcement activities.

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(b) The term “injury,” as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

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(d) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. 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 120 months in any circumstance, commencing with the last date actually worked in the specified capacity.

In *Faust v. City of San Diego* (2003) 68 Cal.Comp.Cases 1822 (Appeals Bd. en banc), we discussed the 3212.1 presumption in depth, and explained that it was applicant's initial burden to establish that they came into the class of employees covered by the statute, that the cancer manifested itself during the employee's period of service or during the applicable extension period, that they were exposed to an identified known carcinogen as defined by the International Agency for Research on Cancer (IARC) or the Director of the Department of Industrial Relations. (*Faust*, 68 Cal.Comp.Cases at pp. 1830-1831.) The burden then shifts to defendant to rebut the presumption. In order to successfully rebut the presumption, the defendant must establish the primary site of the cancer and show that "the carcinogen to which the applicant has demonstrated exposure is not reasonably linked to the disabling cancer." (*Id.* at p. 1831.)

Here, applicant carried her initial burden. As noted above, police officers are expressly named in Penal Code section 830.1(a), and, thus, applicant was clearly within the class of employees coming under the scope of section 3212.1. Applicant's endometrial cancer manifested itself while she was still in active service. At trial, applicant submitted an un rebutted "offer of proof" that if called to testify she would testify that her job exposed her to "urban exhaust/smog, benzene, gasoline, lead, polyaromatic hydrocarbons, diesel combustion byproducts, smoke, fumes, heated gases from fires and chemicals in meth/drug labs." (Amended Arbitrator's Minutes of Arbitration at p. 3.)

Applicant did not present evidence that the alleged carcinogens she was exposed to were known carcinogens "as defined by the International Agency for Research on Cancer, or as defined by the director." As we noted in *Faust*, "The applicant must establish that the exposure was to a 'known carcinogen' with evidence, generally documentary, that the carcinogen is defined as such by the International Agency for Research on Cancer, or otherwise so 'defined by the director.'" (*Faust*, 68 Cal.Comp.Cases at p. 1830.) However, defendant does not raise this issue in its Answer, and we take judicial notice pursuant to Evidence Code section 452(h) that "engine exhaust, diesel," "outdoor air pollution," and "benzene" are listed as "Group 1" carcinogens by the IARC on its own website. (<<https://monographs.iarc.who.int/list-of-classifications>> [as of October 21, 2022].)

“Group 1” is defined as “carcinogenic to humans,” as distinguished from Group 2A (probably carcinogenic to humans), Group 2B (possibly carcinogenic to humans), and Group 3 (not classifiable as to its carcinogenicity to humans). (<[https:// https://monographs.iarc.who.int/agents-classified-by-the-iarc](https://monographs.iarc.who.int/agents-classified-by-the-iarc) > [as of October 21, 2022].) Thus, Group 1 agents, such as diesel exhaust, benzene, and outdoor air pollution are “known carcinogens” for the purposes of section 3212.1.

The burden then passed to defendant to show the primary site of the cancer, and that the carcinogen or carcinogens that the applicant was exposed to are “not reasonably linked” to the cancer. Here, the primary site of the cancer is the lining of the uterus. (October 12, 2020 report of agreed medical evaluator internist Jeffrey A. Hirsch, M.D.) However, defendant did not present substantial medical evidence that diesel exhaust, outdoor air pollution, and benzene are not reasonably linked to endometrial cancer.

In his October 12, 2020 report, agreed medical evaluator internist Jeffrey A. Hirsch, M.D. wrote:

[B]ased on my research on this topic, Ms. Green has not been exposed to occupational carcinogens that are “reasonably linked” with endometrial adenocarcinoma.

In analyzing the peer-reviewed medical literature, one notes only estrogens and estrogenic compounds as culprit environmental agents that potentiate this type of cancer. Trichloroethylene (TCE) has been linked to squamous cell carcinoma of the uterus/cervix. However, Ms. Green does not have that type of malignancy; rather, she has adenocarcinoma of the endometrium. The only culprit carcinogen identified in this examiner’s research is estrogen and related compounds.

Therefore, I do not believe that Ms. Green’s endometrial adenocarcinoma is presumptively industrial in origin. As far as could be determined in my search of the medical literature, I did not see that lead, drug labs, emergency flares, benzene, gasoline, diesel, diesel exhaust, polyaromatic hydrocarbons, or other hydrocarbon derivatives (which are plentiful in urban air) have any known or proven effect on the development or hastening of endometrial cancer (of the adenocarcinoma type).

(October 12, 2020 report at pp. 12-13.)

However, in order to rebut the section 3212.1, “the employer must prove the absence of a reasonable link between the cancer and industrial exposure to the carcinogen. A mere showing of an absence of medical evidence that the carcinogen has been shown to cause the particular cancer contracted by the employee is not sufficient to rebut the presumption.” (*City of Long Beach v. Workers’ Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 305-306 [70 Cal.Comp.Cases 109].) “An employer does not meet its burden by showing that no studies exist showing a positive link between the exposure and the particular form of cancer. That no studies exist – perhaps because they have not been undertaken or completed, or because their results were inconclusive – does not prove or disprove anything. The *absence* of medical evidence linking a known carcinogen with a particular form of cancer simply represents a void of information, and cannot be considered proof a reasonable link does *not* exist.” (*Garcia*, 126 Cal.App.4th at p. 316.) Dr. Hirsch did not identify any studies that affirmatively disprove the link between benzene, diesel exhaust, or outdoor air pollution, to endometrial cancer.

In its Answer, defendant argues that Dr. Hirsch’s reporting rebutted the presumption by identifying estrogens and estrogenic compounds as known environmental causes of endometrial cancer. However, while the Labor Code section 3212.1 presumption may in proper cases be rebutted with evidence identifying a probable non-industrial cause of the cancer (*Sameyah v. Los Angeles County Employees Retirement Assn.* (2010) 190 Cal.App.4th 199 [75 Cal.Comp.Cases 1384]), here there was no evidence presented of applicant’s exposure to estrogens and estrogenic compounds.

Accordingly, the Labor Code section 3212.1 presumption was not properly rebutted. We therefore grant reconsideration, rescind the arbitrator’s findings and issue a decision reflecting that applicant sustained industrial injury in the form of endometrial cancer and to the gastrointestinal system, and deferring all other issues pending resolution by the arbitrator.

For the foregoing reasons,

**IT IS ORDERED** that that Applicants' Petition for Reconsideration of the Findings and Order of July 27, 2021 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board the Findings and Order of July 27, 2021 is **RESCINDED** and that the following is **SUBSTITUTED** therefor:

**FINDINGS**

- 1. Anne Michelle Green, while employed during the period April 12, 1999 through August 28, 2019 as a police officer, Occupational Group Number 490, at Los Angeles, California, by City of Los Angeles, sustained injury arising out of and in the course of employment in the form of endometrial cancer and to her gastrointestinal system.
- 2. At the time of injury, employer was permissibly self-insured.
- 3. All other issues are deferred, with jurisdiction reserved.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**October 21, 2022**

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

**ANNE MICHELLE GREEN  
 STRAUSSNER SHERMAN  
 CITY OF LOS ANGELES CITY ATTORNEY'S OFFICE  
 MARK L. KAHN, ARBITRATOR**

**DW/oo**

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