

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

MICHAEL STAINBROOK, *Applicant*

vs.

**CITY OF WILLITS, permissibly self-insured by CIRA, administered
by LWP CLAIMS SOLUTIONS, INC., *Defendants***

**Adjudication Number: ADJ15874650
Santa Rosa District Office**

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

Applicant seeks reconsideration of the Amended Findings and Order, issued by the workers' compensation administrative law judge (WCJ) on August 16, 2023, wherein the WCJ found in pertinent part that applicant did not sustain his burden of proof to establish industrial causation of his COVID-19 infection.

Applicant contends that his testimony was uncontradicted, and that he presented substantial evidence to show that as a police dispatcher he was subjected to an increased risk of contracting COVID -19 compared with the general public.

We received an answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the answer, and the contents of the Report with respect thereto.

Based on our review of the record, and for the reasons discussed below, we will rescind the Amended Findings and Order, and substitute new findings to find that applicant sustained injury in the form of COVID-19 and that the issue of injury to other body parts is deferred, and all

other issues are deferred, and we will return the matter to the trial level for further proceedings consistent with this decision.

BACKGROUND

Applicant claimed injury to his respiratory system and psyche while employed by defendant as a police dispatcher on August 20, 2021.

On June 14, 2022, applicant testified by way of deposition. (Exhibit J4, Deposition of Michael Stainbrook, June 14, 2022.) Applicant testified, in pertinent part, as follows:

Q. And has your daughter been diagnosed with COVID?

A. My wife and my daughter got COVID after I did.

(Exhibit J4, at 9:6-9.)

Q. What date was she diagnosed with COVID?

A. I'm sorry, I don't know that. Let me work out the timeline in my head. I went to the hospital on the 28th of August, and from what I learned, after I got out of the hospital, was that she got sick within few days after I went into the hospital. So I would estimate around the 25th of August. I don't know the exact date. I was -- I was quarantining here at home and trying to avoid my family as much as possible and was also feeling the effects of the COVID pretty severely. So my sense of time and dates are -- they were, at the time, very skewed.

Q. So you don't know for sure when your daughter was diagnosed with COVID?

A. I do not know the exact date, but I know that it was after -- it was after I got sick and was quarantining at home, but before I went -- before I was hospitalized. And that was an eight-day period when I began my quarantine at home until I went into the emergency room.

(Exhibit J4, at 9:23-10:18.)

Q. And does your daughter know where she got COVID?

A. Where she got it? She got it from either myself or from my wife.

(Exhibit J4, at 11:3-6.)

Q. Do you know if he [Damien, applicant's daughter's boyfriend] was ever diagnosed with COVID?

A. He caught COVID after my daughter did, presumably, from her, but I don't know if -- I don't know if any contact tracing was ever done with him. I know that they did some contact tracing after I got it, and then after my wife and daughter got it, but I don't know how Damien's illness was involved other than he caught it after Elish did.

(Exhibit J4, at 13:1-9.)

Q. When were you first tested positive for COVID?

A. That was on August 20, 2021, I believe.

Q. And where was this test?

A. At Howard Memorial Hospital.

Q. And when did you first feel ill?

A. On August 19th.

Q. And were you at work on August 19th when you started feeling ill?

A. I had got off work. I had got off work that morning after having worked the night of the 18th.

Q. So you worked, it looks like, from 6:00 p.m. to 6:00 a.m. on August 19th?

A. Yes.

Q. And didn't go back to work after that?

A. That is correct.

Q. And you said you first started feeling symptoms on August 19th; is that correct?

A. Right. When I -- after I got home from having worked that shift. And that's when I began my quarantine process.

Q. Now, you clearly feel that you got COVID at work. How do you feel you contracted it at work?

A. By having proximal contact with two officers who were infected.

Q. Who were those officers?

A. Officer Cody Pearson, P-E-A-R-S-O-N, and Officer Rodrigo Avalos, A-V-A-L-O-S.

Q. Did you work on the 18th?

A. I'm sorry?

Q. August 18th?

A. I believe so. I believe that was the last scheduled night shift that I worked, and I went from there, to quarantine, to the ER, to being admitted as a patient.

Q. And did you work on August 17?

A. Yes, I believe so.

(Exhibit J4, at 33:3-34:9.)

Q. So after you woke up from your coma someone told you Officer Avalos was positive for COVID?

A. I was told that Officer Avalos and -- later Officer Pearson told me personally that he had been sick with COVID and that he believes that he was the one who infected Officer Avalos.

Q. When did Officer Pearson tell you that he thinks he infected Officer Avalos?

A. After I resumed my duty in dispatch in December of last year.

Q. But are you saying you had a conversation with Officer Pearson after you woke up from your coma, and at that time Pearson told you that he infected Avalos?

A. No. Pearson told me that after I came back to work in December. When I was in the hospital I had electronic communication via texting and phone calls with my supervisor, Debbie Tonelli.

Q. Would you spell that?

A. T-O-N-E-L-L-I.

Q. So before you were hospitalized with COVID were you aware that anyone in the police department had tested positive for COVID in August of 2021?

A. While I was in quarantine between August 20 and 28, through texts or phone calls again with co-workers, I was told that not only was I at home quarantining but that the two officers, Avalos and Pearson, had been sick prior to that, and that also one of the other dispatchers, Rebecca Ford, was also home and quarantining sick with COVID --

Q. And you don't believe the other dispatcher was the source of your contamination?

A. I mean, I only don't believe so only in the sense, with the other employees talking about them getting sick, it seemed like Rebecca and I got sick at the same time, and Cody and Rodrigo had been sick days or even a week prior. There wasn't a specific timeline but only a generalized sense that Cody said it seemed like he had gotten sick first. He came to work sick. Rodrigo then became sick. He came to work sick. And then Rebecca and I got sick.

Q. When did Cody Pearson become sick?

A. I don't know. You would have to ask him.

Q. And do you know what days he came to work sick?

A. I don't know. And I don't know how long he was -- I don't know how long he had been sick before he started feeling, you know, symptoms and had to go off work. Had to quarantine. I don't know any of those specifics.

Q. And Rodrigo Avalos, do you know when he became sick?

A. No, I don't know.

Q. Do you know when he came to work sick?

A. I believe he came to work sick because he said so. I don't have -- I never worked with him and said "You look sick."

Q. Do you know what days he came to work with COVID?

A. Well, I believe that the last shift that I worked, the 18th and the 19th, he was at work and -- and sick from it.

Q. And why do you believe that?

A. Again, because the conversation had afterwards.

Q. And what were those conversations?

A. My supervisor explaining to me what had happened.

Q. What did your supervisor explain to you?

A. That -- that Rodrigo had come to work ill and infected Rebecca and myself because we worked on the same shift as him.

Q. And when did your supervisor tell you that?

A. I'm sorry I can't tell you a date. It was -- it was after I was removed from the ventilator and was conscious.

Q. This person, Tonelli -- was that her name?

A. Debbie Tonelli, correct.

Q. She told you after you came out of your coma that Officer Avalos came to work sick and infected you and Rebecca Ford? That's the basis of your knowledge?

A. Yes.

(Exhibit J4, at 39:17-42:24.)

Q. Were you observing the six feet required for social distancing?

A. When possible but, again, because of some of the cramped quarters, like we have to pass each other in the hallway, for example, being six feet apart is impossible. So, again, social distancing when we can.

Q. You wore masks at work?

A. No, we did not. A decision that I regret.

Q. What?

A. I decision that I regret.

Q. Did anybody wear masks at work?

A. No. Nobody did. All the way from the chief down to the dispatchers.

(Exhibit J4, at 46:13-25.)

Q. When was your wife diagnosed with COVID?

A. While I was in quarantine between the 20th and the 28th, but I don't know what day.

(Exhibit J4, at 57:18-20.)

Q. Your daughter, when was she diagnosed with COVID?

A. She was diagnosed after I was hospitalized, and I wasn't made aware that she had even been sick until I got out of the hospital. She purposely told my wife not to tell me about it because she did not want me to feel guilty, or something like that, while I was in the process of recovering. So I didn't find out until I got home.

(Exhibit J4, at 58:11-19.)

Q. And in August of 2021, other than being at home or going to the grocery store or going to work, was there any other place around town you would go?

A. I believe I had social contact with a few friends outside of work in public. We were masked. And only for like a brief encounter -- you know, seeing somebody in passing. That sort of thing. I can't recall any planned outing where I got together with anybody else.

Q. Do you remember who you might have had social contact with in August of 2021?

A. Some friends who I know socially. One of them is a mechanic. Another one is a guitarist in a band, but --

Q. Do you know if either of them had COVID?

A. I know that -- I know that my friend who is a mechanic caught COVID, but he caught COVID like in February of this year. Nobody else that I knew socially had contracted COVID before I did, or contracted COVID at the same time as me, or even directly after me.

(Exhibit J4, at 59:16-60:11.)

[] Friends who I know socially either have not gotten it or contracted it sometime this year when they got the Omicron variant.

Q. Do you know anyone who contracted COVID prior to August of 2021 other than people at work?

A. That is correct.

Q. You don't know anyone?

A. That is correct, I do not.

(Exhibit J4, at 60:18-25.)

On June 29, 2022, Panel Qualified Medical Evaluator (PQME) Andrew McClintock Greenberg, M.D., Ph.D., performed a physical examination of applicant, took a detailed history, reviewed applicant's deposition transcript, and reviewed medical records and numerous radiology reports. (Exhibit J1, Report of PQME Dr. Greenberg, dated June 29, 2022, pp. 2-7, 7-24 (hereafter Exhibit J1, June 29, 2022 report).

Dr. Greenberg also reviewed a peer-reviewed article titled Shorter Incubation Period among Unvaccinated Delta Variant Coronavirus Disease 2019 Patients in Japan. (Exhibit J1, June 29, 2022 report, p. 28).

Relevant herein, Dr. Greenberg diagnosed applicant as follows:

DIAGNOSES:

- 1) COVID-19
- 2) COVID-19 long hauler manifesting chronic dyspnea
- 3) COVID-19 long hauler manifesting chronic concentration deficit
- 4) COVID-19 long hauler manifesting chronic fatigue

(Exhibit J1, June 29, 2022 report, p. 26.)

Based on his review of the record and available research, Dr. Greenberg noted the following:

The applicant tested positive for COVID-19 on 8/20/21; he began having symptoms two days prior. The predominant strain of COVID-19 at that time was the delta variant. The mean incubation period between exposure to someone who has COVID-19 and the development of symptoms is 3.7 days,

with 97.5% of cases testing positive within 6.9 days []. This indicates that Mr. Stainbrook's exposure was from 8/11/21 to 8/14/21.

(Exhibit J1, June 29, 2022 report, p. 27.)

With respect to causation, Dr. Greenberg opined as follows:

In my evaluation from 6/29/22, I reviewed with the examinee his potential COVID-19 contacts. He did not have any significant contact with other individuals outside of work. Mr. Stainbrook did not go grocery shopping during the period of 8/11/21 to 8/14/21, which in my expert opinion excludes a non-industrial etiology of his COVID-19 infection. He had significant contact with coworkers who tested positive for COVID-19 while at the police department. It is medically probable that he experienced a higher risk of work-related exposure causing COVID-19 due to his work duties compared to the risk of exposure to the general public. I opine that Mr. Stainbrook's COVID-19 infection is industrial in causation.

(Exhibit J2, Supplemental report of PQME Dr. Greenberg, dated September 7, 2022, p.2 (hereafter Exhibit J2, September 7, 2022 supplemental report).)

On May 23, 2023, the matter proceeded to trial on the following issues: injury arising out of and in the course of employment to applicant's respiratory system and psyche. (Minutes of Hearing and Summary of Evidence (MOH/SOE), May 23, 2023 trial, p. 2.)

The WCJ admitted the following exhibits into evidence:

- J1: Report of panel QME Dr. Greenberg, dated June 29, 2022
- J2: Supplemental report of QME Dr. Greenberg, dated September 7, 2022
- J3: Deposition transcript of Dr. Greenberg, dated January 26, 2023
- J4: Deposition transcript of applicant Michael Stainbrook, dated June 14, 2022

(MOH/SOE, pp. 2-3.)

The WCJ ordered that applicant take nothing in connection with case ADJ15874650 and made the following findings of fact:

1. Applicant Michael Stainbrook, born [], was employed on August 20, 2021 as a police dispatcher, occupational group number 111, at Willits, California, by the City of Willits.
2. Applicant has not sustained his burden of proof to establish industrial causation of his COVID-19 infection.

(Amended Findings and Order, p. 1.)

DISCUSSION

To be compensable, an injury must arise out of and occur in the course of employment (AOE/COE). (Lab. Code, § 3600.¹) The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].) “That burden manifestly does not require the applicant to prove causation by scientific certainty.” (*Rosas v. Worker's Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

Turning to whether there is substantial medical evidence of industrial causation, a medical opinion must be well-reasoned, based on an adequate history and examination, and it must disclose a solid underlying basis for the opinion. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc).)

Here, applicant was evaluated by QME Dr. Greenberg, on June 29, 2022. Dr. Greenberg performed a physical examination of applicant, took a detailed history, reviewed applicant's deposition transcript, and reviewed medical records and numerous radiology reports. (Exhibit J1, June 29, 2022 report, pp. 2-7, 7-24). Dr. Greenberg also reviewed a peer-reviewed article titled Shorter Incubation Period among Unvaccinated Delta Variant Coronavirus Disease 2019 Patients in Japan. (Exhibit J1, June 29, 2022 report, p. 28). Dr. Greenberg issued a report dated June 29, 2022 (Exhibit J1), a supplemental report, dated September 7, 2022 (Exhibit J2), and was deposed on January 26, 2023 (Exhibit J3, Dr. Greenberg's deposition transcript).

As discussed by Dr. Greenberg in his report, the predominant strain of COVID-19 at this time was the Delta variant. The mean incubation period between exposure to someone who has the Delta variant of COVID-19 and the development of symptoms is 3.7 days, with 97.5% of cases testing positive within 6.9 days, which indicates that applicant's exposure was between August 11, 2021 and August 14, 2021. (Exhibit J1, June 29, 2022 report, p. 27.) Dr. Greenberg determined that in the relevant timeframe, applicant had significant contact with co-workers who tested

¹ All statutory references are to the Labor Code unless otherwise noted.

positive for COVID-19, whereas he did not have significant contact with other individuals outside of work. (Exhibit J1, June 29, 2022 report, pp. 25-27; Exhibit J2, September 7, 2022 supplemental report, p. 2.) He further concluded that it was medically probable that applicant experienced a higher risk of work-related exposure to COVID-19, compared to the risk of exposure to the general public. (Exhibit J2, September 7, 2022 supplemental report, p. 2.) Thus, it was Dr. Greenberg's opinion that, within reasonable medical probability, applicant's COVID-19 infection was industrial. (Exhibit J1, June 29, 2022 report, p. 27; Exhibit J2, September 7, 2022 supplemental report, p. 2.) Dr. Greenberg provided a detailed analysis, his opinion is well-reasoned, based on an adequate history and examination, and he disclosed a solid underlying basis for the opinion, thus it is substantial medical evidence. (*Gatten, supra*; *Escobedo, supra*.)

With respect to his deposition testimony, Dr. Greenberg did not contradict his opinions as set forth in his reports. Dr. Greenberg's reports are supported by applicant's deposition testimony, as quoted above, as well as his evaluation of applicant and the medical evidence. Moreover, while defendant presented Dr. Greenberg with hypotheticals at his deposition, these hypotheticals were inconsistent with applicant's testimony and the record as a whole and thus did not elicit relevant testimony.

Turning to the issue of applicant's testimony, we observe that the parties agreed to submit the transcript, and neither party raised any issue as to the accuracy of applicant's testimony. Moreover, the Appeals Board must accept as true the intended meaning of testimony both uncontradicted and unimpeached. (*LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 639 [35 Cal.Comp.Cases 16]; *McAllister, supra*, at 417.) Applicant testified that the last shift he worked was on August 19, 2021. He began having symptoms on August 18th or 19th, he tested positive for COVID on August 20th, and he quarantined at home from August 20th until he was admitted to the hospital on August 28th. (Exhibit J4, at 32:23-34:9; 58:22-25.) Applicant's co-worker Cody Pearson (Officer Pearson) told applicant that he and another co-worker, Rodrigo Avalos (Officer Avalos) tested positive for COVID prior to applicant. (Exhibit J4, at 39:17-40:9.) Based on conversations with co-workers and his supervisor, applicant learned that Officer Pearson came to work with COVID, then Officer Avalos became sick and came to work, and thereafter applicant and another co-worker became sick. (Exhibit J4, at 39:17-42:24.) Specifically, applicant's supervisor told him that Officer Avalos came to work sick and infected applicant. (Exhibit J4, at 42:11-24.) Although they tried to observe social distancing in the workplace,

applicant testified that they worked in cramped quarters and it was often impossible maintain a distance of six feet. (Exhibit J4, at 46:13-18.) They did not wear masks at work. (Exhibit J4, at 46:19-20.) With respect to non-occupational exposure, applicant's family members contracted COVID after applicant. His wife and daughter were diagnosed during the time he was quarantining at home. (Exhibit J4, at 10:11-18; 57:18-20; 58:11-15.) Applicant's daughter's boyfriend contracted COVID after applicant's daughter, so he is not a potential source of exposure. (Exhibit J4, at 13:1-9.)

He saw two friends in passing in August 2021, but they were all masked and he does not believe that either of them had COVID. (Exhibit J4, at 59:16-60:11.) Other than his co-workers, applicant does not know anyone who contracted COVID prior to August 2021. (Exhibit J4, at 60:21-25.)

Here, the only witness testimony is that of applicant. Defendant did not identify any witnesses other than applicant and did not offer any rebuttal witnesses at trial. This is especially significant in light of applicant's testimony regarding his co-workers and their illness due to COVID-19. Thus, as to the issue of whether applicant sustained injury AOE/COE in the form of COVID-19, in all material respects, his testimony is uncontradicted and unimpeached and thus must be accepted as true. Based on the record, there is no evidence that applicant went anywhere other than work in the week prior to the onset of symptoms and that he was exposed to his co-workers while at work.

The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The "Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 937-938 [64 Cal.Comp.Cases 986].)

Here, while the WCJ could have ordered further development of the record with respect to applicant's COVID-19 injury, we conclude, based on the record before us, that the record is sufficient to find that applicant's COVID-19 injury is industrial. With respect to whether applicant

sustained industrial injury to any other body parts, it appears that the record requires further development. Thus, we will defer the issue of injury to any other body parts.

Accordingly, we rescind the Amended Findings and Order, substitute new Findings of Fact, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Amended Findings and Order issued by the WCJ on August 16, 2023 is **RESCINDED** and the following **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Applicant Michael Stainbrook, while employed on August 20, 2021 as a police dispatcher, occupational group number 111, at Willits, California, by the City of Willits sustained injury in the form of COVID-19. The issue of injury to other body parts is deferred.
2. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ NATALIE PALUGYAL, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 31, 2023

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

**MICHAEL STAINBROOK
FOWLER & BALL
MULLEN FILIPPI**

JB/cs

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