

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

**DANIEL WEAGLE, *Applicant***

**vs.**

**SAN LUIS OBISPO COUNTY SHERIFF'S DEPARTMENT, permissibly self-insured,  
administered by INTERCARE HOLDINGS INSURANCE SERVICES, *Defendants***

**Adjudication Number: ADJ13798479  
San Luis Obispo District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.

In the Amended Findings and Award of December 21, 2021, the workers' compensation administrative law judge ("WCJ") found that on August 21, 2020, applicant, while employed by the San Luis Obispo County Sheriff's Department as a deputy sheriff, sustained industrial injury to his psyche, and that applicant is entitled to benefits under Labor Code section 4850 ("4850 benefits") for this date of injury.

Defendant filed a timely Petition for Reconsideration of the WCJ's decision. Defendant contends that the WCJ erred in relying upon the medical opinion of Dr. Cohen, the Panel Qualified Medical Evaluator (PQME) in psychiatry, to find a connection between the industrial shooting incident in which applicant was involved on August 21, 2020 and his arrest for a "domestic incident" on October 5, 2020. Defendant further contends that the WCJ erred in relying upon *Boyd v. Santa Ana* (1971) 6 Cal.3d 393 [37 Cal.Comp.Cases 887] and *County of Los Angeles v. Workers' Comp. Appeals Bd. (Ruvalcaba)* (1997) 62 Cal.Comp.Cases 1707 (writ den.) to award 4850 benefits because unlike this case, *Boyd* and *Ruvalcaba* involved terminations whose sole cause was the underlying industrial injury. Finally, defendant contends that the WCJ erred in not allowing credit against temporary disability and 4850 benefits for payments received by applicant under the PORAC Insurance Trust.

Applicant filed an answer.

The WCJ submitted a Report and Recommendation (“Report”).

Based on our review of the record and applicable law, we conclude that further development of the medical record is required on the question whether the “domestic incident” of October 5, 2020, which resulted in applicant’s separation from employment, was caused by the industrial psychiatric injury sustained by applicant in the shooting incident of August 21, 2020. Therefore, we will affirm the WCJ’s decision in part and amend it in part, rescinding the WCJ’s award of 4850 benefits and returning that issue to the trial level for further proceedings and new determination by the WCJ.

We adopt and incorporate only section III of the WCJ’s Report, which briefly describes the relevant factual background as follows:

### **RELEVANT CASE FACTS**

The applicant was a deputy sheriff for the County of San Luis Obispo on August 21, 2020. The applicant was an experienced police officer, having previously been employed by the City of Capitola. It was stipulated at time of trial that the applicant had less than 6 months of employment with the County of San Luis Obispo.

The applicant was involved in a shooting incident and in the Findings and Award it was determined that the sudden and extraordinary exemption to the six-month preclusion contained in Labor Code §3208.3 had been met. The petitioners are not contesting the finding that the injury to the psyche occurred and that injury arise out of and occurred in the course of employment.

Following the August 21, 2020 shooting incident the applicant was placed on administrative leave and after a short period of time returned to regular duty. The applicant was then involved in a domestic incident which resulted in his arrest on October 5, 2020.

On October 9, 2020 the applicant met with Undersheriff James Voge who informed him that because of the arrest he was going to be released from probation, but offered him the option of resigning in lieu of having a termination on his record. The applicant tendered a resignation during the course of the meeting.

The panel QME, Gregory A. Cohen M.D., found the applicant to have been temporarily partially disabled on a psychiatric basis since August 21, 2020 and totally temporarily disabled since October 9, 2020. (Exhibit M).

Reviewing the applicable law, we note that because the furnishing of full salary pursuant to section 4850 is a workers' compensation benefit, an employer cannot deprive a peace officer of the benefit by terminating his or her employment on the grounds of physical fitness. (*Boyd v. City of Santa Ana* (1971) 6 Cal.3d 393, 397 [37 Cal.Comp.Cases 887].) On the other hand, an officer who voluntarily or involuntarily resigns for non-medical reasons is not entitled to leave-of-absence benefits under section 4850. (*County of San Mateo v. Workers' Comp. Appeals Bd. (Warren)* (1982) 133 Cal.App.3d 737, 745 [47 Cal.Comp.Cases 739]; *Collins v. County of Los Angeles* (1976) 55 Cal.App.3d 594, 599 [41 Cal.Comp.Cases 912]. See also, *Wycinsky v. City of Citrus Heights* (2012) 2012 Cal. Wrk. Comp. P.D. LEXIS 676 [resignation for non-medical reasons, voluntary or involuntary, precludes "leave of absence" that is basis for full salary under section 4850].)

In this case, the WCJ stated in his Opinion on Decision that according to *County of Los Angeles v. Workers' Comp. Appeals Bd. (Ruvalcaba)* (1997) 62 Cal.Comp.Cases 1707 (writ den.), the issue is whether the basis for applicant's separation from employment, i.e., applicant's arrest for the domestic incident on October 5, 2020, was related to the industrial psychiatric injury sustained by applicant in the shooting incident of August 21, 2020. We agree, but we conclude that a supplemental opinion from Dr. Cohen is required to resolve the issue.

In *Ruvalcaba*, the Board found that the applicant, a deputy sheriff who sustained an industrial psychiatric injury, was entitled to 4850 benefits where he was terminated after stealing two compact discs (CDs) at a big box store, in full view of a security guard, even though applicant did not have a CD player. The Agreed Medical Evaluator (AME) opined that applicant would not have taken the CDs but for his industrial injury, which caused a "dissociative experience" during which applicant lost control of his senses. The Board followed the AME's opinion and concluded that applicant's psychiatric disability would not have arisen absent his employment with the Sheriff's Department, and that applicant would not have engaged in the theft incident absent the stresses of his work. According to the Board, applicant met his burden of proving that the theft incident at the big box store would not have occurred but for applicant being temporarily impaired and disabled due to his employment by the Sheriff's Department; applicant's conduct at the big box store occurred during a dissociated emotional state.

In this case, however, the medical evidence is equivocal as to whether the domestic incident that resulted in applicant's separation from employment would have occurred but for the industrial shooting incident of August 21, 2020.

In his Opinion on Decision, the WCJ relied on PQME Cohen's deposition testimony of August 18, 2021, wherein Dr. Cohen reviewed the October 27, 2020 report of Dr. Friedman, applicant's treating psychiatrist. The WCJ awarded 4850 benefits based on Dr. Cohen's deposition testimony in which he apparently agreed with Dr. Friedman that the domestic incident of October 5, 2020, after which applicant was arrested and then separated from employment, had a causal connection to the industrial shooting incident of August 21, 2020.

First we review Dr. Friedman's assessment as set forth in his report of October 27, 2020:

On August 21, 2020, Officer Weagle was involved in an active shooting incident in which he shot and killed the shooter. While initially praised for his heroic efforts and bolstered by this recognition, the severe emotional consequences quickly became apparent. In the interim between the workplace shooting and the brief psychotic breakdown, the officer's panic and anxiety persisted. Despite his efforts to cope, he was aware that his symptoms were disrupting his functioning at work. He was having panic episodes on the job. He avoided the scene of the shooting. However, when his wife was driving to purchase a Halloween pumpkin, they passed by the shooting scene. Following this event, the applicant experienced an acute stress reaction and the sequelae of chronic PTSD that led to severe emotional decomposition, a brief psychotic episode involving extreme despair, a suicidal attempt and tumultuous disharmony with his wife. The claimant experienced extreme exposure to workplace violence and death but also felt responsible for causing death (to the active shooter).

Officer Weagle resigned his position when he was emotionally distraught and in a state of gross confusion. At the time of his resignation, the claimant was in a state of emotional upheaval lacked the mental capacity to make a rational decision.

As a result of the August 21, 2020 active shooting incident, the claimant now suffers from his PTSD. Sequelae of complex PTSD including extreme feelings of shame and guilt, difficulty controlling emotions, loss of control and cutting oneself off from support and relationship difficulties.

In the several weeks since the claimant killed the active shooter he repressed the extreme yet internally explosive reaction to taking

another life. He dealt with this indirectly through guilt with the February 20, 2016 bridge jumper in Santa Cruz but faced this directly following killing the active shooter. It both re-ignited his feeling about not rescuing a jumper off of a bridge several years prior and initiated the feeling of being a murderer himself.

(Defense Exhibit J, pp. 2-3.)

Although the WCJ was persuaded that Dr. Cohen agreed with Dr. Friedman's conclusions as set forth above, a careful review of Dr. Cohen's deposition testimony shows that Dr. Cohen was not altogether clear in expressing his supposed agreement with Dr. Friedman. At 41:23 through 42:23 of his deposition (Exhibit 6), Dr. Cohen testified as follows:

Q. If you read that and that summary of Dr. Friedman's, who was treating him at the time, doesn't it appear to you that the disharmony and this arrest in October was causally related to the shooting on October -- on August 21st, 2020; is that the way you read that report? Do you understand my question?

A. I do understand it. It's -- I'm going through it, so I could answer it.

Q. If you look at the bottom part, it says -- your entry indicates:

“Following that event, the applicant experienced an acute stress reaction and a chronic sequelae of chronic PTSD that led to severe emotional decomposition and brief psychotic episode involving extreme despair, suicidal attempt, and tumultuous disharmony with his wife.”

So doesn't it appear to you that the shooting in August 21st, 2020, is causative of this disharmony and his arrest in October; isn't that part and parcel of the causation? Do you understand my question?

A. That the arrest is causative?

Q. Yes. That the disharmony with his wife and his arrest was causally connected, according to this summary of Dr. Friedman's report?

A. Yes.

However, the above testimony only shows that Dr. Cohen agreed that “the arrest was causative” *according to the summary of Dr. Friedman’s report*. Dr. Cohen did not testify that *it was his own opinion* that the arrest was causative. Upon further questioning by defense counsel on this issue, Dr. Cohen testified as follows at 43:2 through 44:18:

MR. LANTERMAN: Q. Okay. Let’s expand on that a little bit.

Are you saying that this whole fight that happened with his wife was caused by the shooting? Is that what you're saying?

A. No. That’s not what I’m saying.

Q. That’s what it came across to me as.

A. Then I – if that was the question, I was – I misheard it or misunderstood it.

What I would request is, if I could take two minutes and read this thing, read this entry, and I’ll be better -- I think it would be the best thing to do, if that's okay with all parties?

MR. LANTERMAN: Yes.

MR. HERRERAS: Sure.

THE WITNESS: I think the better way to put this is that I will change my answer about this issue.

What the -- what Dr. Friedman is opining here is well, what Dr. -- or I should say, what Dr. Friedman is reporting here is that the applicant and his wife drove by an area that they were driving and they passed by the shooting scene that he had been avoiding, and that -- and that experience led him to led him to suffer PTSD symptoms, which Dr. Friedman describes, including extreme despair and suicide attempt and tumultuous disharmony.

What he’s saying is that having gone by, having yes -- gone by, driven by the area where the trauma had occurred, had led to a period of exacerbation of his symptoms, that that's the upshot of that entry there.

MR. LANTERMAN: Q. Okay. So thank you for that summary of what Dr. Freedman says.

Is it your opinion that he experienced a brief psychotic episode after driving past the area? Did he talk to you about that? Is that part of your analysis?

- A. He never – I never – he did not exhibit any psychotic symptoms when I interviewed him, and Dr. Friedman doesn't describe any psychotic symptoms, though he says -- he puts sort of like a quasi-diagnosis, although he doesn't describe any psychosis.

In the testimony excerpted above, Dr. Cohen stated that it was not his testimony that “this whole fight that happened with his wife was caused by the shooting[,]” and the doctor further stated that Dr. Friedman apparently only offered a “quasi-diagnosis” that applicant was experiencing psychosis at the time of the domestic incident on October 5, 2020. In light of Dr. Friedman’s “quasi-diagnosis” and Dr. Cohen’s conflicting deposition statements, we are not persuaded the present record establishes by a preponderance of evidence<sup>1</sup> that the domestic incident of October 5, 2020 would not have occurred but for Mr. Weagle being temporarily impaired and disabled due to the industrial shooting incident of August 21, 2020. (See *Ruvalcaba, supra.*) Therefore, we conclude that further development of the medical record is required to resolve the issue of whether applicant is entitled to 4850 benefits. (*Telles Transport, Inc. v. Workers’ Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159, 1164 (66 Cal.Comp.Cases 1290) [Board may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence].) Specifically, because Dr. Cohen is the PQME in this case and it is Dr. Cohen who has raised doubts about his own opinion and that of Dr. Friedman, we conclude that a supplemental opinion from Dr. Cohen is required to resolve the issues raised in this decision, including the issue of applicant’s entitlement to 4850 benefits, if any. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [Appeals Board en banc].)

Accordingly, we affirm the WCJ’s decision in part and rescind it in part. We will affirm the WCJ’s finding of industrial psychiatric injury on August 21, 2020 but rescind and return the issue of applicant’s entitlement 4850 benefits for further development of the medical record and new determination by the WCJ. It should be noted that we express no final opinion on whether or not applicant is entitled to 4850 benefits. When the WCJ issues a new finding on the issue, any aggrieved party may seek reconsideration as provided in Labor Code sections 5900 *et seq.*

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<sup>1</sup> Lab. Code, § 3202.5.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Amended Findings and Award of December 21, 2021 is **AFFIRMED**, except paragraphs (A), (B) and (D) of the Award and the "Orders" are **RESCINDED** and said parts of the Award and Orders are **DEFERRED**, and that Findings 5 and 6 are **AMENDED** to read as follows:

**FINDINGS OF FACT**

5. The issue of whether or not applicant is entitled to Labor Code section 4850 benefits for this date of injury is deferred pending further proceedings and new determination by the WCJ, jurisdiction reserved.

6. The issue of attorney's fees for recovery of temporary disability and/or 4850 benefits, if any, is deferred pending further proceedings and new determination by the WCJ, jurisdiction reserved.



**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that this matter is **RETURNED** to the trial level for further proceedings and new determination of the outstanding issues by the WCJ, consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**KATHERINE A. ZALEWSKI, CHAIR**  
**CONCURRING NOT SIGNING**



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

**July 14, 2023**

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

**DANIEL WEAGLE  
COLEMAN CHAVEZ & ASSOCIATES  
LAW OFFICE OF WILLIAM HERRERAS**

**JTL/ara**

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