

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

LEONEL GARCIA, *Applicant*

vs.

**STATE OF CALIFORNIA,
CALIFORNIA INSTITUTION FOR WOMEN, *Legally Uninsured*;
STATE COMPENSATION INSURANCE FUND/
STATE CONTRACT SERVICES, *Adjusting Agency, Defendants***

**Adjudication Number: ADJ13321226
Santa Barbara 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 24, 2023

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

**LEONEL GARCIA
ADAMS, FERRONE & FERRONE
STATE COMPENSATION INSURANCE FUND, LEGAL**

AS/mc

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

I. INTRODUCTION

Identity of Petitioner: Defendant, through their Attorney, Donna Gephart.

Timeliness: The petition was filed timely.

Verification: The petition was properly verified.

Date of Issuance of Findings & Award: May 22, 2023

II. CONTENTIONS

1. The evidence does not justify the findings of fact.
2. The findings of fact do not support the order, decision or award.

III. FACTS

Applicant, Leonel Garcia, born [], while employed during the period August 23, 2007 through June 9, 2020 as a correctional officer, Occupational Group Number 490 by California Institute for Women, sustained injury arising out of and in the course of employment to his heart.

Applicant was evaluated by Dr. Robert Weber as a PQME. Dr. Weber issued reports dated November 9, 2020 and November 24, 2021. (Joint Exhibits V & W.) Dr. Weber was also deposed on August 3, 2022. (Joint Exhibit X.)

The matter proceeded to Trial on March 1, 2023 on the issues of permanent disability, apportionment, need for further medical treatment, attorney's fees and whether defendant has rebutted the presumption of Labor Code Section 3212.10. At Trial, the parties stipulated that the presumption under Labor Code Section 3212.10 applies. Both parties submitted post trial briefs. The matter was submitted on March 24, 2023. A Findings and Award and Opinion on Decision issued and was served on May 22, 2023.

Defendant, by and through their attorney or record, timely filed a verified Petition for Reconsideration on June 9, 2023. Applicant filed a verified Answer to Defendant's Petition for Reconsideration on June 21, 2023.

IV. DISCUSSION

Defendant contends the undersigned utilized Dr. Weber's opinion finding industrial causation of heart trouble, rather than "relying on those opinions changed during the deposition." (Petition for Reconsideration page 2 line 2-7.) As a result, defendant further contends the Award "is not supported by the correct set of facts." However, it is defendant who appears to misunderstand either the facts or the effect of trial stipulation number 6. "The parties stipulate that the presumption under Labor Code Section 3210.10 applies." (MOH/SOE page 2 lines 12-13.) Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121.) Defendant has not alleged they have good cause to withdraw from their stipulation. Therefore, the stipulation establishes a prima facie case that the applicant's "heart trouble" in the form of valvular heart disease and hypertensive heart disease developed or manifested during his employment as a correction officer for the California Institute of Women. Dr. Weber opined that applicant's aortic valve disease and hypertensive heart disease represent "heart trouble under Labor Code Section 3212.2." Thus, there is no dispute that applicant was an employee with custodial duties, who had heart trouble in the form of aortic valve disease and hypertensive heart disease, which manifested or developed during the statutory timeframe relative to his employment.

The arguments set forth in the Petition for Reconsideration give the appearance that defendant misunderstands how a presumption operates. Defendant argues that Dr. Weber changed his opinion regarding industrial causation. However, once a prima facie case of heart trouble is established, the burden shifts to defendant to rebut the presumption of industrial causation. The heart trouble presumption is a presumption affecting the burden of proof and is rebuttable. (*Reeves v. Workers' Comp. Appeals Bd.* (2000) 80 Cal.App.4th 22, 30.) Accordingly, defendant "has the burden to prove that the applicant's heart trouble did not arise out of and in the course of his employment." (*Id.*) Thus, the question in this matter is whether there is substantial evidence to overcome the presumption and establish applicant's employment did not contribute at all to his "heart trouble".

Defendant failed to present substantial medical evidence that applicant's employment, as a correctional officer, had no causal relationship to his "heart trouble". There is no dispute that applicant has a congenital bicuspid aortic valve. However, applicant's first need for medical treatment for the bicuspid aortic valve occurred more than nine years after he began his employment. Defendant must prove that no reasonable link exists between the injury and the employment; merely proving that there is no evidence demonstrating a reasonable link is insufficient to rebut the presumption. The undersigned does not find any medical evidence that states the employment did not have had an impact on his conditions. It is not enough to show other causes for the injury; defendant must actively prove the employment had no causal relationship to his injuries. (*Reeves v. Workers' Comp. Appeals Bd.*, 80 Cal. App. 4th 22.)

Defendant argues Dr. Weber's deposition testimony supports rebuttal of the presumption. Although Dr. Weber addresses the question on clinical grounds and states "if somebody has a bicuspid aortic valve, that valve will progressively create clinical issues irrespective of the occupation of the individual." (Joint Exhibit X page 35 lines 17-21.) However, Dr. Weber did not make that conclusion in relation to this specific applicant. A general statement that "somebody" will have clinical issues does not definitively rule out an industrial connection and is not sufficient to rebut the presumption.

There is no doubt that applicant was "at risk" to develop symptoms. However, Dr. Weber does not make a finding anywhere in his reporting or his deposition that applicant's employment had no causal connection to the symptoms that developed and manifested during over thirteen years of employment. Labor Code Section 3212.2 states the presumption "is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it." The majority of Dr. Weber's deposition is based on hypothetical questions and general information that is not this specific case. Therefore, defendant's reliance on statements in his deposition to support rebuttal of the presumption is flawed.

Defendant argues that Dr. Weber only assigned "at most 1 percent" permanent disability for the hypertension, and of that 1 percent, he only apportioned 45% to industrial causes. (Petition for Reconsideration page 3 lines 8-10.) However, their argument actually supports that the finding that the presumption has not been rebutted. Rebuttal of the presumption requires that

there be no causal link to the employment. “In the workers’ compensation system, the industrial injury need only be a contributing cause to the disability.” (*South Coast Framing, Inc. v. Workers’ Comp. Appeals Bd.*, 61 Cal. 4th 291.) Therefore, based on the evidence presented, as Dr. Weber did provide permanent disability for heart trouble and attributed it at least in part to his employment, defendant did not rebut the presumption.

Based on the above, as well as the discussion in the Opinion on Decision, it is clear that the evidence does support the Findings of Fact, and the Findings of Fact do support the Award.

V. RECOMMENDATION

It is respectfully recommended that the Petition for Reconsideration dated June 9, 2023 be denied in its entirety.

Dated: June 23, 2023

Heather L. Hirsch
WORKERS’ COMPENSATION
ADMINISTRATIVE LAW JUDGE