

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

**LYNETTE PARKER, *Applicant***

**vs.**

**CITY OF RICHMOND;  
ACCLAMATION INSURANCE MANAGEMENT SERVICES (SACRAMENTO),  
*Defendants***

**Adjudication Numbers: ADJ15490866, ADJ15490865, ADJ15312491  
Oakland 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 A. ZALEWSKI, CHAIR**

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**October 6, 2023**

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

**LYNETTE PARKER  
BOXER GERSON  
RTGR LAW FIRM**

**LN/pm**

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**

1. Applicant's Occupation: Police Sergeant
    - a. Applicant's Age : 44 years old
    - b. Date of Injury : November 4, 2020
    - c. Parts of Body Injured: Covid-19
  2. Identity of Petitioner : **Defendant** filed the Petition.
    - d. Timeliness : The Petition is timely filed.
    - e. Verification : The Petition is verified.
  3. Date of Findings of Fact: July 11, 2023
2. **Petitioner's contentions:**
- a. Defendant contends: The facts do not support a finding of industrial causation because;
  - b. The undersigned considered an applicant who was on administrative leave to be in the same situation as the applicant who was on administrative leave with a back injury;
  - c. Applicant's belief that she needed to use the gym to maintain physical fitness for her job was not objectively reasonable.

**II  
FACTS**

Lynette Parker (herein after Applicant), while employed as a sergeant for Richmond police department, was put on paid administrative leave on [in] March 2019. While out on leave, she was required to be home from 8 am to 5pm and was required to report to her supervisor any vacation or court appearance. While out on administrative leave, she was not allowed to use the police gym. In 2020, a shelter in place due to the covid-19 pandemic closed many businesses, including gyms, for several months. During the shelter in place, applicant gained weight and had pain in her back. In November 2020, businesses started reopening and applicant went to a 24-hour fitness gym. Pursuant to the stipulation by the parties, if working out in the gym is found to be part of employment, defendant agreed to pick up the covid-19 claim. Therefore, it is not disputed that she caught covid-19 at the gym.

The matter proceeded to trial on June 15, 2023, with applicant and Captain Eric Smith testifying. The sole issue for trial was whether applicant catching covid-19 while out on administrative leave at 24 Hour Fitness, was AOE/COE.

### **III** **DISCUSSION**

Section 3600, [all statutory references not otherwise identified are to the California Labor Code.] at subd. (a), provides that an employer is liable for workers' compensation for any injury "arising out of and in the course of the employment..." It requires, at subd. (a)(2), as a condition of employment, that "at the time of injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment" and, at subd. (a)(3), that the injury be "proximately caused by the employment, either with or without negligence."

Injuries arising out of certain off-duty activities are compensable "where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment," under subd. (a)(9).

In *Ezzy v. WCAB*, the Court of Appeal established a two-pronged test for whether an employee's participation in an off-duty recreational, social, or athletic activity constitutes a reasonable expectancy of employment. It stated that courts must look at: (1) whether the employee subjectively believed that his or her participation in an activity was expected by the employer; and (2) whether that belief was objectively reasonable. *Ezzy v. WCAB* (1983) 48 CCC 611, 614.

Applicant was placed on leave on March 19, 2019, [and] was on paid *administrative* leave during an investigation. Prior to being put on *administrative* leave, applicant continued to work for the Richmond Police department and any potential modifications, if any, were apparently complied with [The back injury was not set for trial and no medical reports were submitted to show a change in work restrictions or severity of the injury]. There is no information that while

out on administrative leave, the work restrictions changed or would prevent her from completing a physical.

In defendant's petition for reconsideration, defendant raises a pre-existing back injury to argue applicant's belief that it was expected to go to the gym to stay in shape was not objectively reasonable. Applicant was not on medical leave or out on temporary disability at the time she caught covid-19. Defendant asserts that "if she had been required to be tested on her return from leave, she could not have completed the testing because of the back injury." There is no evidence that supports this contention, and it is purely speculative. Nor does the back injury go to whether applicant believed going to the gym was expected and whether that belief was reasonable.

Defendant further contends that applicant was not able to complete some of her duties because of her back injury and that should have been considered by the undersigned. However, it is unclear why that would change the analysis nor do defendant's make that clear. Applicant was not on medical leave, and despite the back injury, worked up to the point of being placed on leave. There is no evidence that her work restrictions for her back injury changed while out on administrative leave or that it would be objectively unreasonable that she believe[d] she needed to get back into shape to work.

The *Ezzy* test is clear that there is a twofold test. First, whether applicant had a reasonable belief that going to the gym was expected by the employer and 2) whether that belief was objectively reasonable. Defendant admits that both applicant and Captain Smith testified that officers are required to maintain physical fitness while on leave and there was a possibility applicant would undergo perishable skills testing. Applicant was unable to use the police gym because it was closed and because while out on administrative leave, she was prohibited from using it. In order to maintain physical fitness while out on leave, it is reasonable that she should use the gym paid for by the Richmond Police department.

Next, applicant needed to show her belief that working out in the gym was objectively reasonable. Here, defendants paid for the gym. Captain Smith admitted that officers are required to maintain physical fitness and that the gym at the police station was not accessible because applicant was on administrative leave. As society, we expect officers to put their lives on the line and have the ability to chase and subdue suspects at a moment's notice. Chasing and subduing are two physical activities that require fitness. It is reasonable that in order to maintain that fitness, a person works out and believes that they need to work out.

Defendant appears to want to establish one standard for a person on administrative leave and another standard of reasonableness for a person on administrative leave with an unrelated back injury. Applicant having a pre-existing back injury is not relevant to the issue at hand which is applicant had a reasonable belief that after over a year on administrative leave she would be returning to work and needed to get back into shape.

#### **IV** **RECOMMENDATION**

For the reasons stated above and in my opinion on decision, it is respectfully requested that defendant's Petition for Reconsideration be denied.

Date: August 9, 2023

**Erin Finnegan**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE