

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

JEREMY SIMMONS, *Applicant*

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS REHABILITATION
CENTER, legally uninsured; STATE COMPENSATION INSURANCE FUND/STATE
CONTRACT SERVICES, adjusting agency, *Defendants***

**Adjudication Number: ADJ11394208
San Bernardino District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and the Opinion on Decision 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 and Opinion on Decision, which are both adopted and incorporated herein, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 18, 2021

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

**JEREMY SIMMONS
LEWIS, MERENSTEIN, WICKE, SHERWIN & LEE
STATE COMPENSATION INSURANCE FUND**

PAG/bea

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

The Applicant, by and through his attorney of record, Lewis Marenstein [et al.] filed a timely, verified Petition for Reconsideration.

STATEMENT OF FACTS

The Applicant began employment as a correctional officer with the Department of Corrections in September 2008. Dr. Green, the panel QME, noted Mr. Simmons first manifested left ventricular hypertrophy (hereafter LVH) in 2012. The Applicant underwent a kidney transplant in June 2012. While responding to an alarm at work on May 22, 2018 the Applicant suffered a heart attack. Dr. Green found the Applicant suffered from both Coronary Artery Disease (CAD) and Hypertensive Heart Disease (LVH). Dr. Green opined the CAD was industrial while he found the LVH was non-industrial and was due to renal failure. The matter proceeded to trial and was submitted on July 13, 2020. Submission was vacated on September 9, 2020 to develop the medical record. The matter proceeded to hearing again, on June 14, 2021 at which time the case was submitted. A Findings and Award, which found the Applicant sustained Hypertensive Heart Disease (LVH) on a non-industrial basis, issued on August 6, 2021. It is from the Findings and Award that Applicant now seeks reconsideration.

CONTENTION A

A. The WCJ erred finding Applicant's Hypertensive Heart Disease (LVH) non-industrial.

The undersigned relied on the opinion of Dr. Green. In Exhibit J-3, page 8-9 Dr. Green stated:

I did note on page 6 of my February 25, 2019 report, that the patient also had hypertension with probable hypertensive heart disease. The hypertension actually began prior to the patient's employment with the Department of Corrections. The blood pressure readings were increased in 2005 with hypertension treatment thereafter. The patient then had kidney failure with the kidney function actually decreasing even prior to the patient's employment as per the laboratory studies July 14, 2008. Jeremy began working for the State of California Department of Corrections on

September 2, 2008. The patient, thus, already had the start of kidney failure at that time due to hypertension. The patient, as per the medical records as above, had progression of kidney failure such that by the spring of 2011, Jeremy was in acute renal failure requiring dialysis. The patient then had a kidney transplant in 2012 which was successful.

The pre-op cardiac work up in 2012 indicated that Mr. Simmons had left ventricular hypertrophy. That would be the first manifestations of “heart trouble” though that was within the first five years of employment, and I do not believe that the patient’s job duties from 2008 to 2012 would have brought about the hypertensive heart disease given the fact that the strain on the heart was a direct result of the renal failure. With the patient having renal failure in 2011, the blood pressure basically shot through the roof which led then to the hypertrophy. In other words the hypertrophy in this case is related to the underlying kidney failure which is related to the pre-exist non-industrial hypertension. (Emphasis added) Thus, this is a case where the hypertension is pre-existing leading to non- industrial kidney failure leading to the non-industrial hypertrophy diagnosed within the first five years of employment. I recognize that Jeremy was under stress working as a correctional officer but the data in this case is quite clear that, again, with kidney failure, the blood pressure being so high damaged the heart unrelated to the patient’s job duties.

Thus, the coronary disease is an industrial problem but the Hypertensive heart Disease is not an occupational condition.

In Exhibit J-4, on page 2, Dr. Green noted:

In my recent supplemental report of April 18, 2019, I indicated that Mr. Simmons had nonindustrial left ventricular hypertrophy (Hypertensive Heart Disease)...

With regard to the hypertensive heart disease, this is nonindustrial with the patient, as per page 66 of the guidelines, being a 30% whole person impairment. This is due to left ventricular hypertrophy and hypertension being treated with medications. Apportionment is 100% non-industrial with the reasons for that assessment as per my April 18, 2019 report. (Emphasis added)

In Exhibit J-6, page 2, Dr. Green clarified his earlier comment on apportionment in Exhibit J-4, page 2. He stated:

I then had medical records for review and issued a very comprehensive report April 18, 2019. In that report, I had noted that Mr. Simmons had “heart trouble” with regard to Hypertensive Heart Disease in 2012 which I stated was a result of the nonindustrial kidney failure. I had come to the

conclusion as per page 9 of my April 18, 2019 report that the Hypertensive Heart Disease was not an occupational condition but the coronary artery disease was in industrial condition.

...

With regard to the question that Ms. Harrison ask as to the addition vs. combination of the impairments, I need to clarify that, again, the Hypertensive Heart Disease was non-industrial. ...

It appeared to the undersigned that Dr. Green cleared up any confusion between apportionment of [permanent] disability pursuant to Labor Code Section 4663, and stated unequivocally the Applicant's Hypertensive Heart Disease (LVH) was non-industrial.

In Dr. Green's final report, J-7, he was asked to consider the Labor Code Section 3212.10(sic) presumption he stated on page 2:

... I did note the first manifestation of left ventricular hypertrophy and "heart trouble" was in 2012. I do believe, however, that within reasonable medical probability, I can, indeed, eliminate work stressors from 2008 to 2012 causing at least 1% impact on the "heart trouble." I state that because the kidney disease was so severe, it put such a strain on the heart that this was the entire cause of the left ventricle hypertrophy. I state this from the medical perspective, again, as we know that patients with kidney failure develop high blood pressure, and hypertrophy is the result. Hypertension was diagnosed prior to the patient's employment with the Department of Corrections. As I noted on page 8 of my April 18, 2019 report, the blood pressure readings were increased in 2005 with hypertensive treatment thereafter. Jeremy did not start working for the State until September 2008. Thus, my conclusions remain unchanged with regard to causation of the Hypertensive Heart Disease.

Based on the medical evidence noted above, I found Dr. Green's opinion constituted substantial evidence to support a finding of non-industrial injury for Hypertensive Heart Disease (LVH).

CONTENTION B

The WCJ erred by failing to add the Applicant's impairment.

Applicant's council appeared to rely on Dr. Green's opinion that the CAD and LVH should be combined for rating impairment. However, in light of the discussion above and Dr. Green's opinion that the Hypertensive Heart Disease (LVH) was non-industrial, the undersigned found the disability for Hypertensive

Heart Disease (LVH) could not be combined with CAD as the CAD was only permanent disability as a result of industrial causation.

RECOMMENDATION

It is respectfully recommended that the Petition for Reconsideration be denied.

Date: 08/30/2021

TRACY L. HUGHES
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

On the morning of trial, the following issues were raised:

1. Application of Labor Code section 3212.2
2. Parts of body injured
3. Permanent Disability
4. Apportionment
5. Need for further medical treatment
6. Attorney fees

APPLICATION OF LABOR CODE SECTION 3212.2

The parties raised the issue of whether Labor Code section 3212.2 applies in this case. Labor Code section 3212.2 states in relevant part “In the case of officers and employees in the Department of Corrections having custodial duties, ... the term “injury” includes heart trouble which develops or manifests itself during a period while such officer or employee is in the service of such department or hospital. ... Such heart trouble so developing or manifesting itself in such cases shall be presumed to arise out of and in the course of the employment. This 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. ...” Labor Code section 3212.2 does not require the applicant to be employed for a period of five years to benefit from the presumption.

The applicant began employment with the Department of Corrections as a correctional officer in September 2008. The applicant suffered a heart attack on May 22, 2018 while at work. The applicant was an employee of the Department of Corrections, and working in the capacity of a correctional officer, on the day the heart trouble manifested. Dr. Green opined the left ventricular hypertrophy first manifested in January 2012 while working as a correctional officer for the Department of Corrections. The applicant is entitled to the disputable presumption provided in Labor Code section 3212.2. However, as will be discussed below Dr. Green’s opinion on Hypertensive Heart Disease (Left Ventricular Hypertrophy) rebutted the presumption.

PARTS OF BODY INJURED

The applicant did not testify at trial. Therefore, based on the medical reports of Dr. Green dated February 25, 2019, February 8, 2019, April 18 2019, May 14, 2019, September 9, 2019, October 24, 2019, November 2, 2019, and deposition transcripts dated April 3, 2020, February 16, 2021; it is found the applicant did not sustain his burden of proof, in light of the presumption, and establish injury AOE/COE in the form of Hypertensive Heart Disease (Left Ventricular Hypertrophy).

In Exhibit J-3, page 9, Dr. Green stated:

Thus, this is a case where the hypertension is pre-existing leading to non-industrial kidney failure leading to the non-industrial hypertrophy diagnosed within the first five years of employment. I recognize that Jeremy was under stress working as a correctional officer but the data in this case is quite clear that, again, with kidney failure, the blood pressure being so high damaged to heart unrelated to the patient's job duties.

Thus, the coronary disease is an industrial problem but the hypertensive heart disease is not an occupational condition.

In Exhibit J-6, a supplemental report dated October 24, 2019, page 2, Dr. Green reiterated his opinion that the applicant's Hypertensive Heart Disease (Left Ventricular Hypertrophy) was the result of the non-industrial kidney failure.

In Dr. Green's final report, J-7, dated November 2, 2019, page 2 he stated:

... I did note the first manifestation of left ventricular hypertrophy and "heart trouble" was in 2012. I do believe, however, that within reasonable medical probability, I can, indeed, eliminate work stressors from 2008 to 2012 causing at least 1% impact on the "heart trouble." I state that because the kidney disease was so severe, it put such a strain on the heart that this was the entire cause of the left ventricle hypertrophy. ...

The undersigned found Dr. Green's opinion constituted substantial evidence to rebut the Labor code section 3212.2 presumption, and support a finding the Hypertensive Heart Disease (Left Ventricular Hypertrophy) occurred on a non-industrial basis.

PERMANENT DISABILITY/APPORTIONMENT

Based on the medical reports of Dr. Green dated February 25, 2019, February 8, 2019, April 18, 2019, May 14, 2019, September 9, 2019, October 24,

2019, November 2, 2019, and deposition transcripts dated April 3, 2020, February 16; it is found the applicant sustained permanent impairment. I did not find it necessary to refer this matter to the Disability Evaluation Unit for a rating. I have rated the applicant's disability as follows:

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In light of my review of the evidence in its totality, I find this total level of disability to accurately, and appropriately address the disability resulting from the injuries herein. Permanent disability of 28 percent equates to 118.75 weeks of disability at the rate of \$290.00 per week for a total dollar value of \$34,437.50, payable commencing February 25, 2019, less attorney fees, and less credit for permanent disability paid.

NEED FOR FURTHER MEDICAL TREATMENT

Based on the medical reports of Dr. Green dated February 25, 2019, February 8, 2019, April 18, 2019, May 14, 2019, September 9, 2019, October 24, 2019, November 2, 2019, and deposition transcripts dated April 3, 2020, February 16 2021, the applicant is in need of further medical treatment to cure or relieve from the effects of the injury herein.

ATTORNEY'S FEES

It is found that a reasonable attorney fee is \$5,165.00, which shall be commuted from the final weekly payments of the award to the extent necessary to pay as one lump sum.

DATE: 08/06/2021

Tracy L. Hughes
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE