

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

JULIO RAMIREZ (deceased) / JULISSA MURILLO, *Applicant*

vs.

**MAURICE KARIEM & COMPANY, INC. and SENTINEL INSURANCE COMPANY,
LTD / THE HARTFORD FINANCIAL SERVICES GROUP, INC., *Defendants***

**Adjudication Number: ADJ13315589
Van Nuys District Office**

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

Defendant seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on May 23, 2022, wherein the WCJ found in pertinent part that Julio Ramirez sustained injury arising out of and occurring in the course of employment (AOE/COE) in the form of COVID-19, resulting in injury to his internal organs and causing his death.¹

Defendant contends that Julissa Murillo (applicant) did not submit substantial evidence that applicant's spouse was infected with COVID-19, nor did she submit substantial evidence that if he was infected with COVID-19 it was the result of his employment with defendant.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We did not receive an Answer from applicant.

We have considered the allegations in the Petition, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O and return the matter to the WCJ for further proceedings consistent with this

¹ We will hereafter refer to Julio Ramirez as applicant's spouse.

opinion, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

Applicant claimed that while employed by defendant as an executive sales representative her spouse sustained injury to his internal organs and other body systems in the form of COVID-19, which resulted in his death on March 16, 2020.

Applicant's spouse's job duties, while employed by defendant, included travelling to various locations around the country to meet with customers and conduct jewelry shows. On March 2, 2020, applicant's spouse flew from Los Angeles to Kentucky to meet with a customer, and he subsequently drove to Indiana to do a "trunk show." (See Minutes of Hearing and Summary of Evidence (MOH/SOE), January 24, 2022, p. 6, testimony of Gina Renteria.) On March 8, 2020, he returned to Los Angeles and "developed body aches, dry cough and a fever." (MOH/SOE, January 24, 2022, p. 3, testimony of applicant Julissa Murillo.) Applicant's spouse passed away on March 16, 2020. John C. Hiserodt, M.D., performed an autopsy on March 26, 2020, and concluded:

Mr. Ramirez died as a result of acute viral pneumonia likely secondary to infection with COVID-19 virus. Lung pathology revealed diffuse alveolar damage (DAD) with many hyaline membranes and intense congestion. Abundant fibrin strands were also present in most alveoli. Post mortem molecular testing revealed the presence of COVID-19 virus, indicating this was a death likely due to COVID-19.

(App. Exh. 1, Dr. Hiserodt, March 26, 2020, p. 1.)

The parties proceeded to trial on November 29, 2021. The issue to be submitted for decision was, injury AOE/COE "resulting in death due to COVID-19." (MOH/SOE, November 29, 2021, p.2.) The matter was continued and at the January 24, 2022 trial applicant and Gina Renteria testified; the matter was submitted for decision. (MOH/SOE, January 24, 2022.)

DISCUSSION

Labor Code section 3600, subdivision (a) provides that workers' compensation liability "shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment..." The California Supreme Court has explained that it is the applicant's burden to establish that industrial causation is reasonably

probable. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291, 297 [80 Cal.Comp.Cases 489].) The concept of “in the course of employment” “ordinarily refers to the time, place, and circumstances under which the injury occurs.” For an injury to “arise out of” the employment, “... it must ‘occur by reason of a condition or incident of [the] employment.’ ...” [Citation.] That is, the employment and the injury must be linked in some causal fashion. (Citations.)” The Labor Code §3600 proximate cause requirement “‘has been interpreted as merely elaborating on the general requirement that the injury arise out of the employment.’ [Citation.] The danger from which the employee's injury results must be one to which he was exposed in his employment. [Citation.] ‘All that is required is that the employment be one of the contributing causes without which the injury would not have occurred.’ [Citations.]” (*Ibid* at 297-298.)

The Supreme Court had previously stated that:

[I]n the area of nonoccupational disease, ‘[t]he fact that an employee contracts a disease while employed or becomes disabled from the natural progress of a nonindustrial disease during employment will not establish the causal connection.’ The narrower rule applicable to infectious diseases arises from the obvious problems of determining causation when the source of injury is of uncertain etiology, the product of invisible and often widespread viral, bacterial, or other pathological organisms. The potentially high costs of avoidance and treatment for infection diseases, coupled with the fact that such illnesses often cannot be shown with certainty to have resulted from exposure in the workplace, also explain the different line-drawing by our courts in the area of nonoccupational disease.

(*La Tourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644, 654 [63 Cal.Comp.Cases 253, 258 – 259] citations omitted.)

Any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) Here, the only medical record pertaining to the cause of Mr. Ramirez's death is the March 26, 2020 autopsy report. (App. Exh. 1.) As a pathologist performing an autopsy, Dr. Hiserodt would not be expected to address the issue of injury AOE/COE, and in the autopsy report he did not address that issue.

We agree with the WCJ that the Labor code section 3212.86 presumption is not applicable in this matter because applicant's spouse passed away on March 16, 2020 (prior to the March 19,

2020 start date of the presumption). (F&O, Opinion on Decision, p. 4; see Lab. Code, § 3212.86.) Also, the WCJ correctly noted that there was no evidence presented in this case that would “warrant the application” of the Labor code section 3212.88 presumption. (F&O, Opinion on Decision, p. 4; see Lab. Code, § 3212.88.)

In light of the fact that neither of the above mentioned presumptions is applicable, applicant must show, at a minimum, that it is reasonably probable that applicant’s spouse’s employment with defendant was a causative factor in his development of COVID-19, and that the COVID-19 was a causative factor as to his death. (*McAllister v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660].) “The applicant in a workers' compensation proceeding has the burden of proving industrial causation by a ‘reasonable probability.’ (citation) 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, 1700 – 1701 [58 Cal.Comp.Cases 313].)

Although Dr. Hiserodt concluded that applicant’s spouse’s death was “likely due to COVID-19” (App. Exh. 1, p. 1), as noted above his report does not address the issue of injury AOE/COE. In turn, our review of the trial record indicates there is no medical evidence regarding the issue of injury AOE/COE. The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence pertaining to a threshold issue, or when it is necessary in order to fully adjudicate the issues. (Lab. Code §§ 5701, 5906; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].)

Normally, when the medical record requires further development, the record should first be supplemented by physicians who have already reported in the case. (See *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) However, as the WCJ noted, unfortunately, under the circumstances of this matter, “there was no opportunity for the parties to secure a medical-legal examination to assist in determining causation.” (F&O, Opinion on Decision, p. 5.) Therefore, upon return of this matter, we recommend that the parties request that an epidemiologist agreed medical examiner or regular physician (Lab. Code § 5701) review the available record and submit a medical-legal report addressing the issues of the risk factors inherent in traveling in March of 2020, the likelihood that

Applicant's spouse was exposed to and developed COVID-19 as a result of his traveling to Kentucky and Indiana, and whether the COVID-19 was a contributing cause of his death.

Accordingly, we grant reconsideration, rescind the F&O and return the matter to the WCJ for further proceedings consistent with this opinion, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Order issued by the WCJ on May 23, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 23, 2022 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 12, 2022

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

**JULISSA MURRILO
L.A. LAWYERS
LAW OFFICES OF LYDIA B. NEWCOMB**

TLH/pc

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

CS