

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

THOMAS SANTIAGO, *Applicant*

vs.

**CALIFORNIA HIGHWAY PATROL, legally uninsured; administered by STATE
COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11644990
Pomona District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant California Highway Patrol seeks reconsideration of the March 17, 2022 Findings, Award and Order, wherein the workers' compensation administrative law judge (WCJ) found that defendant is not entitled to apportionment under Labor Code¹ section 4664(a) as the anti-attribution provision of section 4663(e) prohibits it.

Defendant contends that the anti-attribution clause in section 4663(e) does not prohibit apportionment under section 4664(b) (a different subdivision of the statute than the one mentioned in the March 17, 2022 Findings) because section 4663 governs unadjudicated medical apportionment and section 4664 governs fully adjudicated prior awards. Moreover, defendant contends that section 4663(e) makes no mention of section 4664 in its anti-attribution provision.

We received an answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer and the contents of the Report, and we have reviewed the record in this matter. Based on the WCJ's Report, which we adopt and incorporate, except for the last paragraph under the section "Discussion," and for the reasons discussed below, we deny reconsideration.

The analysis in the Report, which adopts the analysis in *Bates v. County of San Mateo*

¹ All statutory references are to the Labor Code unless otherwise noted.

(ADJ7497019, March 14, 2019) 2019 Cal. Wrk. Comp. P.D. LEXIS 72, is equally applicable to section 4664(b). The “[f]undamental rules of statutory interpretation require that a statute be read as a whole, and that the parts of a statute be read together and harmonized, when possible, in order to give effect to the intent of the Legislature.” (*Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 759 citing *County of Orange v. Flourney* (1974) 42 Cal.App.3d 908, 914.) It would be illogical to find that the anti-attribution provision in section 4663(e) applies to apportionment under section 4664(a) but not to apportionment under section 4664(b). Furthermore, the “conclusive presumption” language in section 4664(b) and the analysis found in *Kopping v. Workers’ Comp. Appeal Bd.* (2006) 142 Cal.App.4th 1099 is only applicable if section 4664(b) applies, which we agree with the WCJ that it is not because of section 4663(e).

Lastly, we note that the WCJ, in following the approach in *Bates, supra*, allowed credit for the dollar amount paid for the previous injury. Because applicant actually recommended this approach and there is no dispute as to this issue, we do not reach the merits of this credit issue.

For the foregoing reasons,

IT IS ORDERED that defendant California Highway Patrol's Petition for Reconsideration of the March 17, 2022 Findings, Award and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 23, 2022

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

**THOMAS SANTIAGO
O'MARA & HAMPTON
STATE COMPENSATION INSURANCE FUND**

LSM/pc

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I INTRODUCTION

1. Applicant's Occupation: California Highway Patrol Officer
Applicant's Age: 47
Date of Injury: 9/17/97-9/24/18
Parts of Body Injured: heart, in the form of hypertension
Manner in which injury occurred: cumulative trauma
2. Identity of Petitioner: Defendant
Timeliness: it is timely
Verification: it is verified
3. Date of Issuance of Order: March 17, 2022
4. Petitioner's Contentions: Defendant contends the court erred by relying on the anti-attribution clause contained in Labor Code 4663 for presumed compensable injuries under Labor Code Section 3212 in not allowing apportionment under 4664 for applicant's prior disability award.

II FACTS

Applicant had a prior cumulative trauma claim from 6/7/10 to 6/7/11 which resolved by Stipulations with Request for award at 43% of which 18% was attributable to heart trouble approved on October 15, 2012. Applicant subsequently filed a cumulative trauma claim September 17, 1997 to September 24, 2018 which parties agree rates at 55% due to heart trouble. Parties do not dispute that there is overlap between the permanent disabilities given for the two injuries. The only issue is whether applicant's prior 18% heart trouble award should be subtracted from the current 55% award under Labor Code Section 4664 or whether said subtraction is precluded by the anti-attribution language contained in Labor Code Section 4663(e) for specified public employees under Labor Code Section 3212.

III DISCUSSION

There is no dispute that defense has proven overlap between the prior and current disability. Normally, this would have entitled the applicant to an apportioned award of 37% via subtraction of percentages of the overlap. (55% - 18%) (Labor Code § 4664(b); *Kopping v. W.C.A.B.* (2006) 71 Cal. Comp. Cases 1229) However, this applicant's injury falls under the heart trouble presumption

in Labor Code Section 3212, a specified type of injury for public safety personnel which is entitled to the presumption of industrial causation.

Applicant contended that such apportionment is precluded based on *Bates vs County of San Mateo*, 2019 Cal. Wrk. Comp. P.D. LEXIS 72. The court acknowledges while not binding, panel decisions, can be cited as authority on issues of contemporaneous administrative construction of statutory language. (*Griffith v. WCAB* 54 Cal. Comp. Cases 145.) *Bates* involved two cumulative dates of injury: May 10, 2009 through May 10, 2010, which applicant reopened, and May 10, 2010 through April 18, 2012. The issue was whether *Benson* should be applied to result in two separate awards to the applicant or whether the anti-attribution clause precluded such apportionment. *Bates* found that such apportionment was precluded. *Bates* acknowledged that while 4663(e) did not expressly refer to section 4664(a), the general apportionment to causation provisions of 4664(a) did not trump 4663(e), stating that it was well established that where a general statute conflicts with a specific statute, the specific statute controls over the general one. The Board further went to state that 4663 and 4664 have long been viewed as a single unified legislative approach to apportionment to find that the applicant's award was not apportionable.

Therefore, under this single unified approach, the apportionment under Labor Code Section 4664 would also be precluded in this case. *Bates* noted that AB 1368 added the language contained in section 4663(e) effective January 1, 2007. The court reviewed the legislative history of this bill which indicated that,

Existing law further establishes a disputable presumption in this regard and prohibits these medical conditions from *being attributed to any disease existing prior* to the development or manifestation of that medical condition. (Legislative Counsel Digest)(Emphasis Added by Court)

In addition, the Senate Rule Committee Analyses indicated that,

This bill clarifies the law relating to presumptive cause of certain medical conditions of specified public employees, *nullifying the requirement with respect to these employees - that other potential causes be identified and apportioned.*

Senate Rules Committee AB 1368 -Office of Senate Floor Analyses 8/23/06 (Emphasis Added by Court)

Legislative History of the Assembly Floor Analysis noted,

This Bill requires the Commission on Health and Safety and Workers' Compensation (Commission) to study the impact of the apportionment requirement on permanent disability ratings for

specified public safety workers' compensation claims for presumptive injuries.

Health and Safety and Workers' Compensation to prepare a report to the Legislature, by January 1, 2007, identifying public safety workers' compensation claims for presumptive injuries that have been rated for permanent disability pursuant to the SB 899 (Chapter 34 of the Statutes of 2004) apportionment requirements, and *identifying the extent to which these changes reduced permanent disability ratings.*

Assembly Floor Analysis 6/1/05 (Emphasis added by Court)

Applying this rationale, the applicant's current heart trouble would be precluded from being attributed to other potential causes, which in this case includes a prior existing award as a potential cause. Especially, since such apportionment would result in decreased permanent disability rating to these specified public employees, which was a concern, as noted in the legislative history of the bill.

In addition, the court acknowledges that the language of 4664(a) provides that the employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment. However, in this case it is the *same employer* with presumption causation. Therefore, the employer is not assuming permanent disability caused by a different employer. As the legislative intent references not reducing permanent disability value for these specified workers, and the unified legislative approach referred to in *Bates*, the court found that apportionment under Section 4664 was prohibited. This approach does not conflict with the employer only being liable for the percentage directly caused by the industrial injury as the entire amount of permanent disability has been caused by the same single employer.

IV **RECOMMENDATION**

It is respectfully requested that the Petition be denied.

DATE: March 25, 2022
Monika Reyes
WORKERS' COMPENSATION JUDGE