

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

**LEWIS ROBERTS (Deceased), *Applicant***

**vs.**

**COUNTY OF INYO; PRISM PUBLIC RISK INNOVATION SOLUTIONS AND  
MANAGEMENT, administered by SEDGWICK, *Defendants***

**Adjudication Numbers: ADJ10659089; ADJ16617729  
San Bernardino District Office**

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

Decedent's widow, Kristina Roberts (applicant), seeks reconsideration of the Findings of Fact and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on August 22, 2023. In ADJ10659089, the WCJ found that applicant did not meet her burden to show that decedent Lewis Roberts sustained a psychological injury arising out of and in the course of employment (AOE/COE) resulting in his death by way of suicide while employed by defendant as a chief investigator on September 21, 2016; and that decedent did not sustain psychological injury AOE/COE on September 21, 2016. In ADJ16617729, the WCJ found that applicant did not meet her burden under Government Code section 21166 to prove that there was an industrial injury, disability, or death AOE/COE decedent's employment with defendant; and that decedent did not sustain an industrial injury, disability or death AOE/COE decedent's employment with defendant.

Applicant contends that the WCJ's finding that decedent did not sustain a psychological injury AOE/COE under Labor Code section 3208.3<sup>1</sup> is not based upon substantial medical evidence since the reporting of the agreed medical evaluator (AME) is silent as to a DSM IV<sup>2</sup> diagnosis, and the proper remedy is to develop the record; and that the evidence demonstrated that

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

<sup>2</sup> American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 4th Edition.

the work components of decedent's injury were "real and measurable" under Government Code section 21166 so that she is entitled to special death benefits from the California Public Employees' Retirement System (CalPERS).

We received an Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return this matter to the WCJ for further proceedings and decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

## **FACTS**

Applicant filed two Applications for Adjudication following the death of her husband, Lewis Roberts. Applicant's first claim, ADJ10659089, alleged that decedent sustained an industrial psychiatric injury resulting in death by suicide on September 21, 2016, compensable under section 3208.3. In the second claim, ADJ16617729, applicant sought special death benefits from CalPERS pursuant to Government Code section 21166. (Minutes of Hearing and Summary of Evidence and Order of Consolidation (MOH), January 18, 2023, p. 2.)

Defendant contended that 1) the workers' compensation claim was barred under section 3208.3(h), because decedent's suicide was caused by his emotional reaction to a lawful, good-faith, nondiscriminatory personnel action, i.e., a proposed termination following an internal affairs investigation, and 2) the claims were barred under section 3600(a)(6), as decedent's suicide was performed willfully and deliberately. (MOH, January 18, 2023, p. 3.)

During trial, a large number of records relating to the internal affairs investigation against, and proposed termination of, decedent were introduced into evidence, including, but not limited to, transcripts of interviews with decedent, multiple law enforcement officers, employees at the District Attorney's Office, and civilian witnesses regarding incidents of potential work-related misconduct by decedent; a Final Investigative Report outlining findings of misconduct sustained against decedent; and two Notices of Intent to Terminate Decedent, dated July 13, 2016 and August

10, 2016. Other evidence included testimony from applicant and a report issued by the AME in forensic psychiatry, Katalin Bassett, M.D., as well as deposition testimony from Dr. Bassett.

In her report, Dr. Bassett opined that decedent's suicide was predominantly caused by industrial factors, stating: "It is my opinion with reasonable medical probability that the personnel actions that he was facing were the predominant cause of decedent's suicide...." (Board Exh. X, p. 4.) Dr. Bassett also opined that decedent's suicide was not the result of an "irresistible impulse," and that the "substantial cause of the psychiatric injury is the deceased's exposure to personnel actions." (Board Exh. X, pp. 4-5.)

During Dr. Bassett's deposition, defense counsel questioned Dr. Bassett about her opinion that decedent's suicide was not the result of an "irresistible impulse." Dr. Bassett confirmed that this was her opinion. (Board Exh. Y, pp. 7-11.) Defense counsel did not question Dr. Bassett regarding the specifics of her decision to apportion predominant causation, i.e., more than 50%, of decedent's suicide to industrial factors.

On August 22, 2023, the WCJ issued the disputed F&O denying applicant's claims in full. The WCJ first rejected applicant's claim under section 3208.3, finding that applicant failed to satisfy her burden to show that decedent sustained an industrial psychiatric injury that resulted in his death. (F&O, p. 1.)

In the Opinion on Decision, the WCJ explained:

Applicant carries the initial burden of proving an industrial injury to decedent's psyche. "Thus, prior to any analysis as to the compensability of a psychiatric injury, the evaluator must diagnose the psychiatric injury pursuant to section 3208.3(a)."

\* \* \*

In her June 11, 2021 report, Dr. Bassett discusses decedent's psychological distress, emotional downward spiral, and emotional symptoms. (Board Exhibit X.)...[However], Dr. Bassett does not opine that any of decedent's symptoms met any of the diagnostic criteria for a disorder. Dr. Bassett mentions emotions in her reporting, but does not provide a formal diagnosis of any psychiatric condition which caused either disability or a need for treatment...No medical evidence was offered to substantiate that decedent had a diagnosed psychiatric injury. Without a psychiatric diagnosis, there is no industrial injury pursuant to Labor Code Section 3208.3(a) and therefore, decedent's suicide cannot be found to be a compensable consequence.

Applicant did not meet the burden to show there was an industrial psychiatric injury or that decedent's suicide was a consequence of a compensable psychiatric

injury...Consequently, the undersigned finds applicant has not met the burden of proof and shall take nothing under the workers' compensation system.

(Opinion on Decision, pp. 2-3.)

The WCJ also found that applicant failed to prove industrial injury under Government Code section 21166. (F&O, p. 2.) In the Opinion on Decision, the WCJ explained that, again, Dr. Bassett's reporting failed to provide any psychological diagnosis. The WCJ also found that the evidence showed that decedent's death was non-industrial for the purposes of Government Code section 21166, based upon Dr. Bassett's testimony that decedent's suicide "was motivated by monetary concerns for his family...." (Opinion on Decision, pp. 4-5, quoting Board Exh. Y, p. 15; see *Pearl v. Workers' Comp. Appeals Bd.* (2001) 26 Cal.4th 189, 194 [66 Cal.Comp.Cases 823] [for the purposes of the Public Employees' Retirement Law (Gov. Code, § 20000 et seq.), an injury is compensable if the "industrial component was 'real and measurable.'"].)

## DISCUSSION

Here, the WCJ concluded that decedent did not sustain a psychiatric injury, and thus, the claim that his death was a consequence of that injury was not compensable. The WCJ's decision to deny applicant's section 3208.3 and Government Code section 21166 claims was based almost exclusively upon Dr. Bassett's report and deposition testimony. (Opinion on Decision, pp. 2-6.) As stated above, regarding section 3208.3, the WCJ found that applicant failed to prove that decedent's suicide was a compensable consequence of a diagnosed psychiatric injury. (Opinion on Decision, p. 3.) The WCJ also rejected applicant's Government Code section 21166 claim based upon the lack of any psychiatric diagnosis, as well as Dr. Bassett's testimony that decedent's death was motivated by concerns for his family (a non-industrial factor), rather than work stress. (Opinion on Decision, pp. 4-5, quoting Board Exh. Y, p. 15.)

Hence, our inquiry in this instance is whether there is substantial evidence based on the entire record to support the WCJ's finding that decedent did not sustain a psychiatric injury AOE/COE and that decedent's death was non-industrial. (*Garza v. Workmen's Comp. Appeals Bd.* (*Garza*) (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500] ["[A]ny award, order or decision of the board must be supported by substantial evidence in the light of the entire record".]) It is well established that decisions by WCJs and the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (*Lamb*) (1974)

11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza, supra*; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635-636 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) The parties presumably choose an AME because of the AME's expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) Thus, we will follow the opinions of the AME unless good cause exists to find their opinion unpersuasive. (*Ibid.*)

However, applicant argues, and we agree, that the reporting and testimony of Dr. Bassett was incomplete and did not constitute substantial medical evidence upon which the WCJ could rely to reach *any* decision on industrial injury.

In addressing the concept of substantial medical evidence, the Appeals Board explained in its en banc decision, *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc) (*Escobedo*):

[I]n order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. [Citations.] Also, a medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. [Citations.] Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. [Citations.]

(*Escobedo, supra*, at pp. 620-621; see *Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97].)

As noted by the WCJ, Dr. Bassett first failed to issue a determination regarding a psychiatric diagnosis (or absence thereof) for decedent – without a diagnosed disability or injury, a conclusion whether the disability, injury, or death is industrial cannot be reached. (See Lab. Code, § 3208.3(a).) Additionally, despite the existence of almost 700 pages of evidentiary records, Dr. Bassett only provided a two-page chronology of the events leading up to decedent's death. Without additional detail of the records reviewed and an explanation of the impact of the recorded events on decedent's psyche, a well-reasoned medical opinion on the pertinent issues could not

have been reached. For these reasons, we conclude that the medical evidence was insufficient to reach a determination on industrial injury.

The Appeals Board has the discretionary authority to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924].) In our en banc decision, *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc) (*McDuffie*), we explained: "Where the medical record requires further development either after trial or submission of the case for decision," the medical record should first be supplemented by physicians who have already reported in the case. "Only if the supplemental opinions of the previously reporting physicians do not or cannot cure the need for development of the medical record, should other physicians be considered." (*Id.* at pp. 139, 142.) Based on *McDuffie*, we recommend that the parties provide Dr. Bassett any additional records, as appropriate, and request that she submit a supplemental report clarifying and explaining her opinions as to the issues discussed herein. If Dr. Bassett cannot cure the need for development of the record, the parties may select a different AME, or the WCJ may appoint a physician pursuant to section 5701. (Lab. Code, § 5701.)

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

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the August 22, 2023 F&O is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 22, 2023 F&O is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**NOVEMBER 13, 2023**

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

**KRISTINA ROBERTS  
MASTAGNI HOLSTEDT  
HANSON BRIDGETT  
HANNA, BROPHY, MacLEAN, McALEER & JENSEN**

**AH/cs**

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