

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

NANCY CZEKALA, *Applicant*

vs.

**REGENTS OF THE UNIVERSITY OF CALIFORNIA; STATE COMPENSATION
INSURANCE FUND; ZOOLOGICAL SOCIETY OF SAN DIEGO; LIBERTY MUTUAL
INSURANCE COMPANY; FEDERAL INSURANCE COMPANY; CALIFORNIA
INSURANCE GUARANTEE ASSOCIATION For FREMONT INSURANCE COMPANY,
*in Liquidation, Defendants***

**Adjudication Number: ADJ10172107
(San Diego District Office)**

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

Defendant California Insurance Guarantee Association (CIGA) seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of April 25, 2024, wherein it was found that while employed by the Zoological Society of San Diego during a cumulative period ending January 1, 1997, applicant sustained industrial injury in the form of myeloma. It was found that the sole carrier insuring the employer during the Labor Code section 5500.5 liability period was Fremont Insurance Company. On July 2, 2003, Fremont went into liquidation, and CIGA took over its California claims. CIGA is an entity created by statute in 1969 to create a fund from which insureds can seek recourse if their insurer becomes insolvent. CIGA is not an insurance company, but is required to pay statutorily defined covered claims. (*Industrial Indemnity Co. v. Workers' Comp. Appeals Bd. (Garcia)* (1997) 60 Cal.App.4th 548, 556-557 [62 Cal.Comp.Cases 1661].) In the instant case, it was found that CIGA was solely liable for any benefits due to the applicant as a result of the industrial injury.

CIGA contends that the WCJ erred in finding that applicant's period of injurious exposure ended on January 1, 1997, arguing that the cumulative injury period continued until her retirement in 2006, at which point the employer was insured by Federal Insurance Company. We have received an Answer from Liberty Mutual Insurance Company (who insured the employer from

March 1998 to March 2001) and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

We will affirm the substance of the WCJ's findings for the reasons stated in the Report, which we adopt, incorporate, and quote below. However, we grant reconsideration and amend the WCJ's decision to make non-substantive technical changes. We amend Finding 2 where CIGA is erroneously referred to as employer's insurer, and we amend the Award to refer solely to CIGA.

The WCJ's Report, which we adopt and incorporate is as follows:

I
INTRODUCTION

- | | | |
|----|-----------------------------|--|
| 1. | Applicant's Occupation: | Laboratory Technician to 1983, Supervisor to 1996 (in lab) and Then Supervisor (out of lab) to 2000, in a different facility to 2006 |
| | Applicant's Age: | 60 |
| | Dates of Injury: | July 1, 1970 to September 1, 2006 |
| | Parts of Body Alleged: | Multiple Myeloma (cancer) |
| 2. | Identity of Petitioner: | SAN DIEGO ZOOLOGICAL SOCIETY; CIGA |
| 3. | Timeliness: | Petition was timely. |
| 4. | Verification: | The Petition was verified. |
| 5. | Date of Issuance of Order: | April 25, 2024 |
| 6. | Petitioner's Contention(s): | |

A. The Findings of Fact do not justify the Finding that the last period of injurious exposure was from January 1, 1996 through January 1, 1997.

II
STATEMENT OF FACTS

The applicant was exposed to benzene and 2,2,4-Trimethylpentane while employed with UCSD from 1970 to 1976 in her work as a laboratory technician in the endocrine department at UCSD. She was exposed to the same chemicals at the Zoological Society of San Diego where she worked as a laboratory technician in the Department of Reproductive Medicine from 1976 to 1983, and

then as a supervisor where she had a desk in the laboratory to 1996 where her desk was moved to another area outside the laboratory.

She continued to work as a Laboratory Supervisor until 2000 when the Endocrinology/Reproductive Medicine department was moved to another facility (Wild Animal Park) which is still a part of the Zoological Society. At that point she was engaged in research, including writing papers and working on foreign field assignments including Africa (Rhinos and Gorillas) and China where she was studying Pandas.

There was never really any issue as to industrial causation for the multiple myelomas as the medical experts concur that the applicant sustained her cancer (multiple myelomas) as a result of exposure to chemicals, including benzene, 2, 2, 4-Trimethylpentane, dioxane, and hexane. (See Jt. Ex. 5, 6, and 7 (deposition) (John E. Horareas 7/26/2021, 2/23/2023, and 3/22/2022, respectively); Jt. Exhibit 9 (Prakash Jay 10/24/2019); Jt. Exs. 10 and 11 (Sriram Mummaneni 8/25/2020 and 2/17/2021, respectively); and Jt. Exhibit 14 (Dr. Naumann Brautbar 5/22/2019).

The dispute in this case is the period of injurious exposure pursuant to Labor Code Section 5500.5. The WCJ found the period of injurious exposure to be January 1, 1996 to January 1, 1997 based on the fully credible testimony of the applicant, the declaration of Gregory Fetter (a co-employee and lab technician with the Zoological Society and the opinions of the medical doctors. Unfortunately, this period implicated only CIGA for liability to the industrial injury. Unfortunately, the trial took place 18 years after the applicant last date of work in 1996, with multiple changes in exposure and techniques during the period of the various employments. However, the WCJ relied on the concurrence between the testimony of the applicant and the evidence, including medical reports in this case. The Findings and Award issued April 25, 2024. It from this Finding and Award that CIGA has filed its timely, verified appeal.

III
DISCUSSION

CONTENTIONS

CONTENTION A: THE FINDINGS OF FACT DO NOT JUSTIFY THE FINDING OF FACT THAT THE LAST PERIOD OF INJURIOUS EXPOSURE WAS FROM JANUARY 1, 1996 THROUGH JANUARY 1, 1997.

1. PERIOD OF INJURIOUS EXPOSURE PER LC §5500.5

Labor Code §5500.5(a) states that “for claims filed or asserted on or after...January 1, 1981 and thereafter” liability of the employers shall be limited

to one year immediately preceding the date upon which the employee was employed in the occupation exposing him, or her to the hazards of occupational disease or cumulative injury whichever comes first.

The gravamen of defendant's complaint is that the applicant's exposure continued through the end of employment. However that is not what the plain terms of Labor Code §5500.5 requires. It is not *any exposure* but *injurious exposure*.

2. EVIDENCE SUPPORTING THE PERIOD OF INJURIOUS EXPOSURE FROM JANUARY 1, 1996 THROUGH JANUARY 1, 1997

The evidence presented at trial demonstrated that the applicant was exposed to benzene and 2,2,4-Trimethylpentane while employed with UCSD from 1970 to 1976 in her work as a laboratory technician in the endocrine department at UCSD. She was exposed to the same chemicals at the Zoological Society of San Diego where she worked as a laboratory technician in the Department of Reproductive Medicine from 1976 to 1983, and then as a supervisor where she had a desk in the laboratory to 1996. In 1996 they moved her desk to another area outside the laboratory. During that period, they used chromatography as a separation tool. She used Benzene, Hexane, cyclohexane, ether, and scintillation fluid. The feces and urine samples were placed in test tubes into which the chemicals were poured, and, following immunoassay, scintillation fluid was used in all the tubes. She did not work under a hood, and there were no masks or gloves. She was exposed to benzene and other chemicals 100% of the time. The applicant **stopped working** with the chemicals in 1983 as she had developed another methodology for doing the chromatography. However the applicant's desk was in the laboratory at that time where other workers were working with the chemicals until her desk was moved out of the laboratory in 1996. (MOH/SOE 2/13/2024 Czekala testimony 5:20-6:22).

From 1983 to 1998, the applicant went from technician to supervisor. She also did tests as a supervisor, but the methodology changed. They now used a "direct" method of radio-immunoassays which conjugates directly from the urine and feces samples. She still used scintillation fluid, but this was manufactured and purchased. They no longer made the fluid in the lab. Further, in 1996 there was a complete remodel of the laboratory. After the remodel she was no longer in the lab and she was working from a desk across the hall from the lab. She had much less exposure and then only from the scintillation fluid. Also the new lab had a hood. (MOH 2/13/2024 Czekala testimony 6:23-7:3). After 1983, there was no exposure to Benzene except in the scintillation fluid. However, they were buying it at that time. Prior to 1983, they made the scintillation fluid by taking drums and pouring in benzene along with 2,2,4-Trimethylpentane and other chemicals. At UCSD they purchase scintillation fluid (MOH/SOE 2/13/2024 Czekala testimony 7:7-13).

The exposure period was further clarified by Gregory Fetter who was hired as a lab technician in the 1995 to 1996 time frame. He worked in the Department of Reproductive Medicine. The applicant worked with him and directed him what to do but she did not work in the lab (MOH/SOE 2/14/2024 Czekala testimony 7:14-16). Gregory Fetter swore under penalty of perjury in his declaration of May 29, 2018, that he worked at the Zoo as a part-time volunteer in the lab in 1996 under the supervision of the applicant. In 1997 he was made a full-time employee and put under the supervision of a different boss. The applicant did not work in the lab from 1996 to 2000. The applicant did walk into the lab to give instructions to a technician and then leave. From 1997 on, Mr. Fetter never saw the applicant working at a bench in the lab.

In 2000 the research in reproductive medicine moved from the location in Balboa Park in San Diego to the Wild Animal Park, another Zoological Society facility, which was in Escondido. The applicant's office moved there as well. At that location, she was designing experiments and doing field work. Her office was across the hall from the lab. The office door and lab doors were always closed. In that time frame the applicant also did field studies in places like Africa and China. She collected samples from pandas and mountain gorillas. In 2006 she retired from the Zoo. (MOH/SOE 2/13/2024 Czekala testimony 7:4-6).

Ms. Czekala believes that she developed multiple myeloma because of the exposure to benzene and other toxic chemicals during the years when she worked directly with the chemicals as part of work as a laboratory technician. The use of benzene decreased after 1983. According to Mr. Fetter, the exposure ended in 1997 when the applicant no longer worked in the laboratory. Furthermore, hoods were installed and protective equipment used.

Dr. Naumann Brautbar opined that the period of injurious exposure ended by 1997 (Jt. Ex. 12, page 7), based on the history given by the applicant and the declaration of Mr. Fetter (Def. Ex. A). Similarly, Dr. Prakash Jay opined in his report dated October 24, 2019 (Jt. Ex. 9, page 21) that the period of injurious exposure ended in 1997. Dr. Sriram Mummaneni opined in her February 17, 2021 report and August 25, 2020 report (Jt. Ex. 10, page 19) that she agreed with Dr. Brautbar and Dr. Jay that the exposure to Benzene contributed to the development of the multiple myeloma. Dr. Mummaneni also opined that the latency period for multiple myeloma was up to 30 years. The median time was between 18 years. In Ms. Czekala's case, Dr. Mummaneni opined that the latency was 4-30 years prior to 2013. (Jt. Ex. 11, page 51). Dr. Hortareas opined that the exposure to benzene caused the multiple myelomas. He further opined that the latency period was 4-20 years and then amended that in his deposition of March 22, 2022 to 1-40 years with the median being 35 years. (See Jt. Ex. 5, pages 8, 9, 10, and 11; Jt. Ex. 6, page 3, and Jt. Ex. 7 (deposition 3/22/2022 pages 7:24-8:4, 11:15-22, 13:18-14:1, 15:9-15, 24:21-25:4, and 26:2-5)

Therefore, based on the fully credible testimony of Nancy Czekala, the sworn statement of Mr. Fetter, and the opinions of Dr. Brautbar, Dr. Jay, Dr. Hortareas, and Dr. Mummaneni, the cause of the multiple myelomas were due to her work. Furthermore, based on the above, the period of industrial exposure was 1/1/1996 through 1/1/1997.

IV **RECOMMENDATION**

It is recommended that the Petition for Re[consideration] be denied.

For the foregoing reasons,

IT IS ORDERED that CIGA's Petition for Reconsideration of the Findings and Award of April 25, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of April 25, 2024 is **AFFIRMED** except that it is **AMENDED** as follows:

I **STIPULATED FACTS**

1. Applicant NANCY CZEKALA, while employed during the period of July 1, 1970 through September 1, 2006 at San Diego, California by the UNIVERSITY OF CALIFORNIA AT SAN DIEGO, and ZOOLOGICAL SOCIETY OF SAN DIEGO, claims to have sustained out of and in the course of employment to multiple myeloma (cancer).

2. UCSD was insured by STATE COMPENSATION INSURANCE FUND from 1970 to July 1, 1975. ZOOLOGICAL SOCIETY OF SAN DIEGO was insured by CIGA FOR FREMONT INDEMNITY INSURANCE COMPANY IN LIQUIDATION from March 1, 1970 through March 1998; by LIBERTY MUTUAL INSURANCE COMPANY from March 1, 1998 through March 1, 2001; and by FEDERAL INSURANCE COMPANY administered by GALLAGHER BASSETT SERVICES from March 1, 2001 through September 30, 2006

3. The employer(s) have provided no medical treatment; the primary treating physician is Dr. Nachman Brautbar.

II **FINDINGS OF FACT**

1. Applicant sustained injury AOE/COE in the form of multiple

myeloma (cancer) as a result of her employment with UCSD and the ZOOLOGICAL SOCIETY OF SAN DIEGO.

2. The last year of injurious exposure pursuant to Labor Code §5500.5 was 1/1/1996 to 1/1/1997 during applicant's employment with the ZOOLOGICAL SOCIETY OF SAN DIEGO, and during said employer's coverage with FREMONT INSURANCE COMPANY. FREMONT is in liquidation and thus CALIFORNIA INSURANCE GUARANTEE ASSOCIATION is liable for benefits due as a result of the industrial injury.

AWARD

AWARD IS HEREBY MADE in favor **NANCY CZEKALA** against **CALIFORNIA INSURANCE GUARANTEE ASSOCIATION** as follows:

- A) Injury AOE/COE.
- B) All other issues are deferred with the WCAB retaining jurisdiction in case of a dispute.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 15, 2024

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

**NANCY CZEKALA
VERDICK CHAMBERS
STATE COMPENSATION INSURANCE FUND
OSTIN & KOTHARY
LAUGHLIN, FALBO, LEVY & MORESI
ENGLAND, PONTICELLO & ST. CLAIR**

DW/oo

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