

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

**SAYVANH LOR, *Applicant***

**vs.**

**CALIFORNIA MEDICAL FACILITY, administered by  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ16999983; ADJ17107739  
Sacramento District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant California Medical Facility, administered by State Compensation Insurance Fund (defendant) seeks reconsideration of the September 25, 2024 Findings of Fact, Awards & Orders (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a Correctional Officer on August 18, 2022, sustained industrial injury in the form of hypertension with heart problems, stroke, and damage to internal organs. The WCJ found that applicant sustained permanent and total disability (PTD).

Defendant contends that the Qualified Medical Evaluator requested but did not obtain and review a cardiac MRI and that the QME reporting is not substantial medical evidence as a result.

We have 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. For the reasons discussed below, we will deny reconsideration.

## FACTS

In Case No. ADJ16999983, applicant claimed injury in the form of hypertension, internal organs, and stroke, while employed as a correctional officer by defendant California Medical Facility from January 1, 2018 to August 18, 2022.

In Case No. ADJ17107739, applicant claimed injury in the form of hypertension, heart, and stroke, while employed as a correctional officer by defendant California Medical Facility on August 18, 2022.

The parties have selected Roger Nacouzi, M.D., to act as the Qualified Medical Evaluator (QME) in the specialty of internal medicine.

On August 28, 2024, the parties proceeded to trial and framed issues including, in relevant part, injury arising out of and in the course of employment (AOE/COE), parts of body injured, temporary and permanent disability, need for further medical treatment, and attorney fees. The WCJ ordered the matter submitted for decision as of September 6, 2024.

On September 25, 2024, the WCJ issued his decision, determining in relevant part that applicant sustained a cumulative injury in case no. ADJ16999983 from January 1, 2018 to August 18, 2022, but did not sustain a specific industrial injury in case no. ADJ17107739 on August 18, 2022. (Finding of Fact No. 2.) The WCJ determined that applicant sustained injury in the form of hypertension with heart problems, stroke, and damage to internal organs, resulting in permanent and total disability. The WCJ's Opinion on Decision explained that the medical reporting of QME Dr. Nacouzi supported the attachment of the presumptions of causation found in Labor Code<sup>1</sup> sections 3212.2 and 3212.10, and that defendant had not overcome those presumptions.

Defendant's Petition contends that QME Dr. Nacouzi equivocated as to whether applicant's findings on echocardiogram were clinically significant and had further opined that a cardiac MRI was a more accurate test. (Petition, at p. 5:25.) Defendant contends that the QME reporting thus relies on "inadequate measurements" and is not substantial evidence. Defendant requests that we grant reconsideration and order development of the record to include a cardiac MRI study. (*Id.* at p. 6:24.)

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<sup>1</sup> All further references are to the Labor Code unless otherwise noted.

Applicant’s Answer avers the medical record establishes the existence of heart trouble, as described in section 3212.2, and that applicant has consequently sustained injury that is presumptively industrial. With respect to defendant’s assertions regarding the need for additional diagnostic studies, applicant notes that the QME has repeatedly opined that applicant sustained “heart trouble” as discussed in section 3212.2, and that defendant has not overcome that presumption. (Answer, at p. 7:21.)

The WCJ’s Report explains that “[t]he presumption of industrial causation created by sections 3212.2 and 3212.10 apply as a matter of law because Applicant has heart troubles that manifested while he was working as a correctional officer for Defendant.” (Report, at p. 3.) The WCJ also notes that Dr. Nacouzi offered his considered opinion that applicant had sustained “heart trouble” based upon his review of an echocardiogram. (*Id.* at p. 2.) The WCJ thus recommends that we deny defendant’s Petition.

## DISCUSSION

### I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
  - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
  - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on October 16, 2024 and 60 days from the date of transmission is Sunday, December 15, 2024. The next business day that is 60 days from the date of transmission is Monday, December 16, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on December 16, 2024, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on October 16, 2024, and the case was transmitted to the Appeals Board on October 16, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 16, 2024.

## II.

The WCJ has determined that the medical-legal opinions of internal medicine QME Dr. Nacouzi establish that applicant sustained cumulative injury through August 18, 2022, while employed as a correctional officer by defendant. (Finding of Fact No. 1.) The WCJ's Opinion on Decision explains that the opinions of Dr. Nacouzi establish that applicant's injury included "heart trouble" as contemplated by sections 3212.2 and 3212.10, and as such, that the injury was presumptively compensable. (Opinion on Decision, at p. 3.) In addition, the applicability of sections 3212.2 and 3212.10 obviated issues of medical apportionment as set forth in section

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<sup>2</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

4663(e). (*Ibid.*) Following his review of the entire medical record, the WCJ concluded that applicant's disability was both permanent and total. (Finding of Fact No. 6.)

Defendant contends the medical opinions and reporting of Dr. Nacouzi are not substantial medical evidence. In support of this contention, defendant cites to the deposition testimony of Dr. Nacouzi in which the physician noted that his findings of left ventricular hypertrophy were based on echocardiogram studies which the QME characterized as "borderline." (Petition, at p. 6:1.) In response to an inquiry submitted by defendant, Dr. Nacouzi subsequently issued a report in which he agreed that a "cardiac MRI offers greater soft tissue detail than does the echocardiography and can provide unique information with regard to scarring, viability and masses within the myocardium." (Ex. 2, Report of Roger Nacouzi, M.D., dated June 3, 2024.) Defendant asserts that the physician "stated his medical opinions are not based on adequate measurement," and to the extent that conclusions reached rely on an inadequate medical history or examination, the reports are not substantial medical evidence. (Petition, at p. 6:13, citing *Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93].)

The WCJ's Report observes, however, that "Dr. Nacouzi's reports and deposition testimony combine to establish that the cardiac MRI requested by defendant was not required for him to provide a substantial expert medical opinion." (Report, at p. 2.) Rather, "[d]efendant requested the cardiac MRI after Dr. Nacouzi had given his expert medical opinion that Applicant has mild left ventricular hypertrophy as defined by the American Society of Echocardiography and European Association of Cardiovascular Imaging [and] Dr. Nacouzi issued a prescription based on Defendant's request." (*Id.* at p. 3.) The WCJ's review of the evidentiary record revealed no evidence that any of the medical-legal physicians "requested a cardiac MRI or indicated one was required to form their expert medical opinions prior to Defendant's prompting."

We agree. The reporting and deposition testimony of Dr. Nacouzi establishes that applicant's echocardiogram study results were a reasonable basis upon which the QME could reach the reasoned and carefully explicated opinion that applicant had suffered "heart trouble" within the meaning of sections 3212.2 and 3212.10. The QME has offered extensive testimony regarding his analysis of the echocardiogram testing, as summarized in the following deposition excerpt:

- Q. So you reviewed an echocardiogram of his in this case; correct?
- A. That's correct.
- Q. And the echocardiogram you had showed evidence of mild left ventricular hypertrophy; correct?

- A. It showed evidence of a borderline measurement for left ventricular hypertrophy.
- Q. So I think we kind of went back and forth, so what do you consider to be the upper limits of normal for wall measurements for the posterior wall?
- A. It would be 1.1 centimeter.
- Q. So in your last deposition you testified that the American Society of Echocardiography defines it as 1.0; is that correct?
- A. That's correct.
- Q. And then you go on to mention that anything below 1.1 is considered normal and 1.1 and above is considered to be hypertrophy. Do you recall that?
- A. Yes.
- Q. So I guess what I'm asking is: So that 1.1 measurement that we have does show evidence of mild hypertrophy; correct?
- A. Strictly speaking you are correct.
- Q. So I don't want to hold a gun to your head on it, but I guess if we're looking at diagnosing left ventricular hypertrophy based off of that wall measurement he has left ventricular hypertrophy, correct, albeit mild?
- A. Strictly speaking you are correct.
- Q. Got it. So he has evidence of a heart injury that caused the cerebrovascular issue; correct?
- A. That contributed to the cerebrovascular injury, that's correct.

(Ex. 7, Transcript of the Deposition of Roger Nacouzi, M.D., dated March 7, 2024, at p. 52:9.)

Following our independent review of the record, we concur with the WCJ's determination that "Dr. Nacouzi's reports and deposition testimony combine to establish that the cardiac MRI requested by defendant was not required for him to provide a substantial expert medical opinion ... Dr. Nacouzi has not stated, as Petitioner asserts, 'that his medical opinions are not based on adequate measurement' ... Dr. Nacouzi actually gave deposition testimony that says echocardiogram established heart trouble." (Report, at p. 2.)

Here, the record provides ample evidence that applicant's disability is both permanent and total. Dr. Nacouzi has thoroughly reviewed the relevant medical history and the submitted medical record and documented a comprehensive clinical evaluation of applicant. From his initial report, the QME has observed, "to a reasonable degree of medical probability that the work emotional stress contributed, but to a lesser degree, to the causation of the cerebrovascular accidents or strokes," and that "the hypertensive vascular disease with related cerebrovascular accidents left Officer Lor with 100% whole person impairment." (Ex. 5, Report of Roger Nacouzi, M.D, dated May 11, 2023, at p. 20.) Moreover, applicant's "work-related emotional stress was of such nature,

intensity and got protracted for enough time to permanently aggravate the preexisting hypertension and contribute to the causation of the strokes on January 13, 2022 and August 18, 2022.” (Ex. 4, Report of Roger Nacouzi, M.D., dated August 8, 2023, at p. 4.) Dr. Nacouzi has testified that in his considered medical opinion, applicant’s echocardiogram results were “abnormal” (Ex. 7, Transcript of Deposition of Roger Nacouzi, M.D., dated November 1, 2023, at p. 8:18), leading the physician to conclude that “there is evidence that the storm of high blood pressure leading to the stroke left damage onto the heart in the form of mild left ventricular hypertrophy.” (Ex. 6, Transcript of the Deposition of Roger Nacouzi, M.D., dated March 7, 2024, p. 68:17.)

On this record, we agree with the WCJ’s conclusion that Dr. Nacouzi appropriately reviewed and analyzed applicant’s echocardiogram findings and based thereon concluded that applicant sustained “heart trouble” within the meaning of sections 3212.2 and 3212.10. We observe that the existence of additional testing modalities that offer the potential for greater detail in their studies do not invalidate the existing echocardiogram results which the QME has extensively analyzed and which form the basis of the QME’s substantive and nuanced medical opinions.

We therefore conclude that because applicant sustained “heart trouble” developing or manifesting during applicant’s service as a corrections officer, his injury is presumed to have arisen out of and in the course of employment. (Lab. Code, §§ 3202.2; 3202.10.) Following our independent review of the record occasioned by defendant’s Petition, we agree with the WCJ that the defendant has not rebutted the presumption of compensability, and that applicant is therefore entitled to an unapportioned award of permanent and total disability. (Lab. Code, § 4663(e).) We will deny reconsideration, accordingly.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

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



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

**December 16, 2024**

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

**SAYVANH LOR  
FERRONE LAW GROUP  
STATE COMPENSATION INSURANCE FUND**

**SAR/abs**

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