

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

EDWARD VIZCAINO, *Applicant*

vs.

CITY OF SACRAMENTO; permissibly self-insured, *Defendant*

Adjudication Number: ADJ14177811
Stockton District Office

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.¹

Defendant seeks reconsideration of the Findings of Fact & Order (F&O) issued on September 29, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found that applicant sustained an industrial injury to his throat in the form of throat cancer and that defendant failed to rebut the presumption of compensability pursuant to Labor Code section 3212.1(d).² Defendant contends that the medical evidence demonstrates non-industrial human papilloma virus (HPV) solely caused applicant to develop his throat cancer, thereby rebutting the section 3212.1(d) presumption.

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

We have considered the allegations in defendant's Petition and applicant's Answer and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and as discussed in the WCJ's Report, which we adopt and incorporate, and for the reasons discussed below, as our Decision After Reconsideration, we will affirm the F&O.

¹ Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been appointed in her place.

² Unless otherwise stated, all further statutory references are to the Labor Code.

BACKGROUND

Applicant, while employed from August 10, 2005 to December 22, 2020, as a fire captain, claimed to have sustained an industrial injury to his throat in the form of throat cancer from toxic exposure to carcinogens during his employment. He began his employment on August 10, 2005. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 08/01/2022, 5:7.) His job duties comprised suppressing residential and commercial fires exposing him to firefighting chemicals such as aqueous film-forming foam and various burning materials. (MOH/SOE, 08/01/2022, 5:21-25.)

In December 2020, he received his throat cancer diagnosis having manifesting itself by three masses of the left side of his neck. (MOH/SOE, 08/01/2022, 6:1-2.) He denied anyone telling him that he had HPV. (MOH/SOE, 08/01/2022, 6:8-9.)

On June 10, 2021, applicant was evaluated by qualified medical evaluator (QME) Massoud Mahmoudi, D.O., Ph.D., and he issued a report dated June 10, 2021. (Joint Ex. LL.) Dr. Mahmoudi noted that applicant reported that he first noted swelling on his neck in August 2020. (*Id.* at p. 2.) Dr. Mahmoudi diagnosed applicant with carcinoma of the left tonsil. (*Id.* at p. 11.)

In his supplemental report of July 1, 2021, Dr. Mahmoudi noted applicant's exposure to diesel and fumes and positive HPV diagnosis by history. (Joint Ex. MM, Supplemental Report, 07/01/2021, p. 8.)

In his supplemental report of August 16, 2021, Dr. Mahmoudi linked applicant's oropharyngeal cancer with HPV and stated that he "was not aware of [a] relationship between diesel and combustion matters and tonsillar cancer." (Joint Ex. NN, Supplemental Report, 08/16/2021 at p. 2.)

In another supplemental report of September 22, 2022, Dr. Mahmoudi stated that "such a relationship is unknown at this time." (Joint Ex. OO, Supplemental Report, 09/22/2021 at p. 3.)

In QME Dr. Mahmoudi further wrote that he "ha[s] not found any medical studies that demonstrate exposure to diesel and/or combustion matters are not reasonably linked to tonsillar cancer." (Joint Ex. QQ, Supplemental Report, 01/10/2022 at p. 2.)

On November 22, 2021, Dr. Mahmoudi was cross-examined by way of deposition. (Joint Ex. PP.) He identified the primary site for the cancer as applicant's left tonsil and base of the tongue. (*Id.* at p. 8:23-24.) He was not aware of any medical journal articles or empirical studies

associating occupational exposures with non-HPV oropharyngeal cancer. (*Id.* at p. 15:8-12.) He observed that diesel exhaust is a carcinogen pursuant to the International Agency for Research on Cancer (*Id.* at p. 22:7-8) and caused lung cancer, (*Id.* at p. 22:14-16), but no medical evidence supported it causing oropharyngeal cancer (*Id.* at pp. 22:24-25 to 23:1:10, 24:14-17, 25:25 to 26:1-5, 31:16-25 to 32:1-24.) Ultimately, he opined, “we don’t know and based on the fact that we do have available, there is no relationship. We can say it’s possible but we don’t know.” (*Id.* at p. 23:20-24.) He reviewed the Journal of Clinical Oncology dated October 10, 2025 (Def. Ex. B) and agreed that the period of latency for HPV is 30 years (*Id.* at pp. 27:12-25 to 29:1-24), but conceded that there could be carcinogenic acceleration. (*Id.* 33:24-25 to 34:1-15.) Finally, he testified that HPV is not the sole cause of applicant’s cancer but a major cause. (*Id.* at p. 40:6-10.)

The WCJ issued his F&O dated September 29, 2022 finding industrial causation of applicant’s throat cancer reasoning that the presumption of compensability as set forth in section 3212(d) applied and that defendant failed to rebut the presumption finding that there was no evidence demonstrating “no reasonable link” between the carcinogen and the cancer.

Aggrieved by this decision, defendant filed its Petition for Reconsideration.

DISCUSSION

Pursuant to section 3212.1, a firefighter exposed to a known carcinogen who develops or manifests cancer is entitled to a presumption of industrial causation. The presumption is rebuttable (1) by evidence establishing the primary site of the cancer and (2) by evidence that exposure to the recognized carcinogen is not reasonably linked to the disabling cancer.

Section 3212.1, as amended in 2010³ and operative prior to January 1, 2026, provides, in relevant part:

(a) This section applies to all of the following:

* * *

(1) Active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments:

³ The William Dallas Jones Cancer Presumption Act of 2010 amended section 3212.1(d) to extend the maximum post-employment time period within which the “developing or manifesting of a cancer” must occur in order for the presumption to apply from 60 months to 120 months and that the longer period now applies in all pending cases regarding of the dates of employment or date of the “developing or manifesting of the cancer.” (*Lozano v. Workers’ Comp. Appeals Bd.* (2015) 236 Cal.App.4th 992, 998-999 [80 Cal. Comp. Cases 407].)

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

* * *

(b) The term “injury,” as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

* * *

(d) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 120 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Manifestation occurs when an applicant first has symptoms, even in the absence of a diagnosis. (*City of Los Angeles County v. Workers' Comp. Appeals Bd. (Darling)* (2000) 70 Cal.Comp.Cases 1147 (writ denied); *County of El Dorado v. Workers' Comp. Appeals Bd. (Klatt)* (2000) 65 Cal.Comp.Cases 1437, 1438 (writ denied).)

In *Faust v. City of San Diego* (2003) 68 Cal.Comp.Cases 1822 (Appeals Board en banc) (*Faust*), the Appeals Board addressed the respective burdens placed on the parties by the 1999 amendments to section 3212.1.

In *Faust*, the Board set forth applicant’s burden as follows:

Before the presumption may be applied, section 3212.1(b) requires that applicant demonstrate that he or she was exposed to an identified known carcinogen. The applicant must establish that the exposure was to a “known carcinogen” with evidence, generally documentary, that the carcinogen is defined as such by the International Agency for Research on Cancer, or otherwise so “defined by the director.” The carcinogens “defined by the director” are those regulated by the director of the Department of Industrial Relations.

The applicant must also demonstrate actual exposure to the established known carcinogen during the period of employment as a firefighter. This may be shown by the applicant's testimony or other credible evidence that may include expert testimony. The applicant is not required to show that the exposure is the proximate cause of the injury.

No specific level of actual exposure needs to be shown; a minimal exposure is enough to satisfy the applicant's burden.

The applicant must also show the development or manifestation of the cancer, during the statutory time period, by medical evidence that must include the date of development or manifestation.

* * *

The burden of proving these initial elements lies with the applicant. When the applicant has shown: (1) that he or she was employed in an included capacity; (2) that he or she has been exposed to a known carcinogen during the employment; and (3) that he or she has developed or manifested cancer within the statutory time frames, then he or she has made a *prima facie* showing that the cancer is presumptively compensable.

(*Faust, supra*, 68 Cal.Comp.Cases at pp. 1830-1831, citations omitted.)

Here, applicant, while employed during the period August 10, 2005 to December 22, 2020 as a firefighter, sustained exposure to carcinogenic diesel exhaust fumes, developed swelling on his neck in August 2020 and received his cancer diagnosis in December 2020. Therefore, the presumption of compensability applies to his workers' compensation claim.

Having demonstrated actual exposure based on the above discussion, the burden then shifted to defendant to rebut the presumption. To rebut the presumption, defendant must establish: (1) that it has identified the primary site of the cancer; and (2) that there is no reasonable link between the carcinogen and the disabling cancer.

It is clear from the medical evidence that the primary site for the cancer is at applicant's left tonsil and base of the tongue.

However, as set forth in *Faust*:

[T]he defendant has the burden of showing that the carcinogen to which the applicant has demonstrated exposure is not reasonably linked to the disabling cancer, i.e., the defendant must provide evidence to establish that there is no reasonable link. Medical or similar expert scientific evidence is necessary to show that there is no reasonable link between the exposure and the cancer.

A defendant may establish that there is no reasonable link between the applicant's exposure and his or her illness by establishing the absence of a link between the exposure and the cancer, including establishing that the latency period of the manifestation of the specific cancer excludes the exposure as the cause of the applicant's cancer.

The defendant's burden is to prove by medical probability that there is no reasonable link between the applicant's demonstrated exposure to known carcinogens during the employment and the development of cancer. It is not enough for the defendant to show that no evidence has established a reasonable link between the known carcinogen and the cancer. Instead, the defendant must establish by evidence of reasonable medical probability that a reasonable link does not exist.

Accordingly, evidence showing that no reasonable link has been demonstrated to exist between the carcinogen or carcinogens to which the firefighter has been exposed and the development of the cancer, is not adequate to rebut the presumption of industrial causation. **To rebut the presumption, the evidence must explicitly demonstrate that medical or scientific research has shown that there is no reasonable inference that exposure to the specific known carcinogen or carcinogens is related to or causes the development of the cancer.**

(*Faust, supra*, 68 Cal.Comp.Cases at p. 1831-1832, citations omitted and emphasis added.)

In *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298 [70 Cal.Comp.Cases 109], the Court of Appeal endorsed the WCAB's holding in *Faust* and discussed how a defendant might rebut the section 3212.1 presumption:

Thus, under the current version of section 3212.1, an employer demonstrates the absence of a reasonable link if it shows no connection exists between the carcinogenic exposure, or that any such possible connection is so unlikely as to be absurd or illogical. Contrary to the City's argument, the statute does not require the employer to prove "the absence of any possible link." The statute requires proof no reasonable link exists. A link that is merely remote, hypothetical, statistically improbable, or the like, is not a reasonable link. **The employer need not prove the absence of a link to a scientific certainty; instead, it must simply show no such connection is reasonable, i.e., can be logically inferred.**

(*Garcia, supra*, 126 Cal.App.4th at p. 316, emphasis added.)

Finally, a defendant may rebut the presumption by demonstrating that "it is highly unlikely the cancer was industrially caused because the period between the exposure and the manifestation of the cancer is not within the cancer's latency period." (*Id.* at p. 317.)

Here, QME Dr. Mahmoudi opined that the medical literature determined that the carcinogenic properties of diesel engines cause lung cancer and that HPV causes throat cancer. QME Dr. Mahoudi further opined that there is no medical evidence supporting any reasonable link between diesel engine fumes and throat cancer.

However, QME Dr. Mahmoudi's opinion regarding "no reasonable link" appears based on his claim that there was a lack of medical literature suggesting any causal relationship. This alone cannot form a proper basis to determine that his opinion is substantial medical evidence given that he cannot rebut the presumption by showing that there are no studies linking exposure to a carcinogen and the development of the type of cancer at issue. (*County of Ventura v. Workers' Comp. Appeals Bd. (Bastian)* 75 Cal.Comp.Cases 513, 516 (writ denied); *City of Compton v. Workers' Comp. Appeals Bd. (Branscomb)* 76 Cal.Comp.Cases 991, 995 (writ denied); see *Garcia, supra*, 126 Cal.App.4th at p. 317 ("[i]f we were to hold that the employer met its burden under the amended section 3212.1 merely by showing the *absence* of medical studies or other evidence connecting a particular carcinogen with a particular cancer, the practical effect would be to shift the burden of proof back to the employee, in derogation of the 1999 amendments to the statute.").)

Therefore, QME Dr. Mahmoudi's claim that the absence of medical literature supported his conclusion cannot support a determination that defendant met its burden to establish that there was no reasonable link. Thus, defendant failed to rebut the application of the presumption of cancer to this disputed injury.

Finally, we are not persuaded by defendant's latency period contention, supported by the study from the Journal of Clinical Oncology dated October 10, 2025. (Def. Ex. B.) The study does not show that applicant could not have developed cancer within the latency period, even assuming carcinogenic acceleration. (*City of Pittsburg v. Workers' Comp. Appeals Bd. (Ligouri)* (2018) 83 Cal.Comp.Cases 711, 714 (writ denied).) Accordingly, defendant has not met its burden of proof that the cancer could not have arisen during the latency period.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the September 29, 2022 Findings of Fact & Order is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 31, 2025

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

**EDWARD VIZCAINO
MASTAGNI HOLSTEDT, APC
TWOHY DARNEILLE & FRYE, APLC**

DLP/md

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