WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RAMON COLLADO, *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF CORRECTIONS;
CENTINELA STATE PRISON, legally uninsured, administered by
STATE COMPENSATION INSURANCE FUND, *Defendants***

Adjudication Number: ADJ11428234
San Diego District Office

OPINION AND DECISION AFTER RECONSIDERATION

We granted reconsideration in order to study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on July 28 , 2021. The WCJ found, in relevant part, that the applicant failed to prove that he sustained an industrially caused injury during his employment from December 20, 2012 through August 14, 2018. The WCJ ordered that applicant take nothing and found all the other issues to be moot.

Applicant contends, in substance, that the WCJ incorrectly applied the law with respect to whether applicant suffered a new injury and did not distinguish whether the injury was an exacerbation of the prior injury or an aggravation of the prior injury and that as a correctional officer, he was entitled to the presumption in Labor Code section 3212.2 and/or section 3212.10.

We received an Answer from defendant.

The WCJ submitted a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration (Petition), the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we rescind the WCJ's decision and return this matter to the trial level for further proceedings and decision consistent with this Opinion.

FACTS

We will briefly review the relevant facts.

Applicant filed an Application for Adjudication of Claim claiming that while employed by defendant, Centinela State Prison, as a correctional officer from December 20, 2012 to August 14, 2018, he sustained injury arising out of and in the course of employment (AOE/COE) to his heart/hypertension. Applicant retired on August 17, 2018.

Applicant previously obtained two Awards against defendant. One Award was issued on February 5, 2008 for case VNO0531518 at 5% PD for hypertension based on the findings by the internal agreed medical evaluator (AME), Timothy Reynolds M.D. (Joint Exhibit #15.) The Award was for a specific injury on May 17, 2006 and a cumulative injury from November 6, 1993 to August 7, 2006. (*Id.*) The second Award for case ADJ8872154 was for a cumulative injury from December 19, 2011 to December 19, 2012. The Award was issued on June 5, 2014 at 41% PD for the circulatory system (heart-hypertension) and psyche based on the findings by internal AME Dr. Ernest Levister, Jr., and psychiatry AME Dr. Carl Marusak. (Joint Exhibit #10.)

The panel qualified medical evaluator (QME) Roger Acheatel M.D., evaluated the applicant for his claim of heart/hypertension on March 12, 2019. Dr. Acheatel subsequently issued several supplemental reports and was deposed on two occasions. In the initial report, the QME opined applicant's hypertension was "a continuation of a previous injury with cumulative involvement since 2005, up until retirement." (Joint Trial Exhibit #1, at p. 7.)

In a supplemental report, the QME further opined the following:

> The hypertension resulted in hypertensive heart disease dating from 2013, which is the first mention of left ventricular hypertrophy. That condition would be attributed to the hypertension. Both the hypertension, which is cumulative since 2005, and the heart involvement as a result of hypertension, which is cumulative since 2013 with the first diagnosis of left ventricular hypertrophy, persists to the current date. What is important to realize is that hypertension by itself does not result in cardiac impairment. However, when hypertension leads to left ventricular hypertrophy, as in this case, then there is, at that point, evidence of hypertensive heart disease, which as best I can determine, was first diagnosed with an echocardiogram in 2013.

(Joint Trial Exhibit #3, at p. 1.)

On May 15, 2020, Dr. Acheatel was deposed and testified in pertinent part, as follows:

> Q. Okay. Doctor, is it accurate to say that there was the presence of left ventricular hypertrophy in both of those respective echocardiograms?

A. Yes.

Q. Okay. Now, when we look at the original, or the older echocardiogram from 2013, as opposed to the six years later, 2019, was there any change in the degree of the left ventricular hypertrophy?

A. Yes.

Q. Okay. And were the measurements different?

A. Yes. That's how you know there is a difference.

Q. Okay. Just clarifying for the record, Doctor. Again, how would you characterize that change? Did it become better? Worse?

A. It became less evidence of hypertrophy. It's still there but not as prominent as it had been.

(Joint Trial Exhibit #7, deposition transcript of QME Dr. Acheatel, dated May 15, 2020, at pp. 33:14-34:5.)

He further testified as follows:

Q. I understand, Doctor. So the injury was ongoing from basically the time he developed hypertension in 2005 through the date that he retired in August of 2018?

A. Yes.

Q. Okay. And, again, I understand it's difficult and it is somewhat of a, you know, Workers' comp specific type of question, but it appears there would be microtrauma or let me ask you; would there be microtrauma on even a minute basis throughout his entire career compounding the original hypertension diagnosis?

MR. TAYLOR: What does microtrauma mean? I don't know that term.

BY MR. DOVE: Q. Well, let me couch it as cumulative trauma, that is the type of claim to be filed, essentially him continuing to perform the usual and customary duties of a correctional officer in addition to having underlying hypertensive condition.

A. Yes. He did have an underlying hypertensive condition when it was -- and it was first diagnosed in 2005.

Q. Okay. And then continuing to work as a correctional officer, that would obviously create aggravation; would that be accurate?

MR. TAYLOR: Calls for speculation. And begs the question that we're here today, whether there's new and additional injury.

THE WITNESS: Well -- and the question is, was it -- was the hypertension exacerbated by his continuing to work as a CO; is that correct?

BY MR. DOVE: Q. Is that correct, Doctor?

A. Yeah, that would be my medical opinion, yes.

Q. Okay. And, again, I'm not asking you to kind of divide that up. It seems like it would be difficult. But based on your earlier opinions you are saying there was just one long injury spanning his career, 1993 to 2018; is that correct?

A. I didn't say '93, I said 2005.

Q. I apologize, Doctor. 2005 he has the diagnosis of hypertension and, again, that continues to worsen. Would it be your opinion that condition worsened over time?

MR. TAYLOR: Calls for speculation.

THE WITNESS: Yes.

(*Id.* at 42:15-44:10.)

Q. Okay. And, Doctor, if you could just briefly explain, just for the record, how did it worsen over time?

A. You mean what was the cause of it worsening?

Q. How would you characterize the worsening? Meaning, you know, it starts at hypertension and it worsens. How did it worsen objectively?

A. Because of his heart -- his blood pressure was more difficult to control.

Q. I see. And then the blood pressure led to the development of left ventricular hypertrophy, right?

A. Yes.

Q. Okay. And ultimately we see diastolic non-compliance as well; is that correct?

A. Yes.

Q. Okay. Would the diastolic non-compliance and the left ventricular hypertrophy represent a worsening of the original hypertensive condition?

A. Well, the hypertrophy lessened. That's what we already established. It was less prominent between '13 and '19.

(*Id.* at 45:2-25.)

In the final supplemental report dated December 22, 2020, the QME opined the following:

As I indicated in my initial report of March 12, 2019, Mr. Collado was diagnosed with hypertension in 2005 as per the AME report prepared by Ernest C. Levister of September 10, 2013. Dr. Levister's report indicated that hypertension was diagnosed in 2005 by a physician at the correctional facility where Mr. Collado worked and he was placed on hydrochiorothiazide.

Consequently, it is my medical opinion that the period of hypertension dates from 2005 and continued up until the time of my report of 2019. Therefore, it is my medical opinion that my findings as of my letter of 2019 are applicable and refer you to them.

(Joint Trial Exhibit #6, at p. 1.)

On May 10, 2021, the parties proceeded to trial. The issues raised were the following:

1. Whether there was injury arising out of and in the course of employment.

2. Whether there is a finding of permanent disability.

3. Whether there is a need for further medical treatment.

4. Liability for self-procured medical treatment.

5. Whether applicant's attorney is entitled to attorney's fees and the amounts and appropriateness thereof.

6. Whether or not there has been a new injury to the claimed body parts.

7. Whether the heart trouble presumption applies pursuant to Labor Code Section 3212, including 3212.2 and 3212.10.

8. If it is determined that applicant has an injury to his heart/hypertension, whether or not such industrial issues are a continuous of his prior Award of 41% from case no. ADJ8872154 and/or a continuous of his hypertension injury from prior case VNO0531518.

(Minutes of Hearing (MOH), 5/10/2024, at pp. 2-3.)

Exhibits were offered and admitted consisting of medical reporting relating to applicant's claim for heart/hypertension, and the matter was submitted on the existing record, without testimony. Both parties submitted post-trial briefs.

On July 28, 2021, the WCJ issued the F&O. In pertinent part, the WCJ found applicant failed to meet his burden of proof to establish an industrial injury of December 20, 2012 through August 14, 2018. The WCJ ordered applicant take nothing on his claim and that all other issues were moot.

It is from this F&O that applicant seeks reconsideration.

DISCUSSION

Any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) In order to constitute substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Whether an employee's injury arose out of and in the course of employment is generally a question of fact to be determined in light of the particular circumstances of the case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346 [67 Cal.Comp.Cases 51].) The burden of proving injury AOE/COE rests with the employee and must be met by a preponderance of the evidence. (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644 [63 Cal.Comp.Cases 253].)

An aggravation is an increase in the severity of a pre-existing condition where the underlying pathology is permanently moved to a higher level. An exacerbation is a temporary increase in the symptoms of a pre-existing condition that returns to its prior level within a reasonable period of time. The industrial aggravation of a pre-existing condition constitutes an injury for workers' compensation purposes. (*Tanenbaum v. Industrial Acc. Com.* (1935) 4 Cal.2d 615, 617 [1935 Cal. LEXIS 590]; *Zemke v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358]; *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd.* (*Buckner*) (1966) 65 Cal.2d 438 [31 Cal.Comp.Cases 421].) The Appeals Board has previously held that the aggravation of a prior condition constitutes an injury when the aggravation causes a need for medical treatment and a period of temporary disability. (*City of Los Angeles v. Workers'*

Comp. Appeals Bd. (*Clark*) (2017) 82 Cal.Comp.Cases 1404 (writ denied)*; Johnson v. Cadlac, Inc.*, 2021 Cal. Wrk. Comp. P.D. LEXIS 194.)

A problem sometimes arises where an employee has had an industrial accident causing or precipitating a particular condition and thereafter sustains another strain on the job. If the subsequent strain indeed aggravates and worsens that original condition, then it may be considered a new injury, to the extent of the aggravation or worsening. However, if the subsequent strain does not rise to the dignity of an aggravating injury, but rather is a mere exacerbation or recurrence of the original injury, then no new industrial injury has occurred. Another important distinction between an aggravation and an exacerbation is that if the second incident causes disability it is, by definition, an aggravation. That is because an aggravation causes the temporary or permanent disability while an exacerbation does not. (See *Clark*, *supra*, 82 Cal.Comp.Cases 1404.] Thus, if a second injury causes no additional temporary or permanent disability, it is likely a mere exacerbation.

In the instant case, the QME's opinion regarding whether the applicant's current claim for his heart/hypertension is an exacerbation of the prior injuries or an aggravation, and thus a new injury, is unclear. Dr. Acheatel has opined that applicant's hypertension was "a continuation of a previous injury with cumulative involvement since 2005, up until retirement." (Joint Trial Exhibit #1, at p. 7.) In his deposition, Dr. Acheatel testified that it is his medical opinion that applicant's hypertension exacerbated by continuing to work as a correctional officer for defendant. (Joint Trial Exhibit #7, at p. 43.) However, Dr. Acheatel then also testified that applicant's hypertension worsened over time because "his blood pressure was more difficult to control." (*Id.* at p. 45.) It appears that Dr. Acheatel may misunderstand the legal distinction between an exacerbation and an aggravation. The QME's testimony and reporting is at times, contradictory, and consequently is not substantial medical evidence.

A medical opinion is not substantial medical 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. (*Hegglin v. Workmen's Comp. Appeals Bd. (*1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378–379 [35 Cal.Comp.Cases 525*]; Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 798 [33 Cal.Comp.Cases 358].) The function of the court on review is to determine whether the evidence, if believed, is substantial and supports the findings. (*Le Vesque v. Workers'*

Comp. Appeals Bd. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]; *Foster v. Ind. Acci. Com.* (1955) 136 Cal. App. 2d 812, 816.) There must be a solid and reasonable basis in the medical report for the physician's final conclusion. It is not sufficient for the WCJ to blindly accept a medical opinion that lacks a solid underlying basis. Instead, they must carefully judge the report's weight and credibility; the evidence must have some degree of probative force. (*National Convenience Stores v. Workers' Comp. Appeals Bd.* (*Kesser*) (1981) 120 Cal.App.3d 420 [46 Cal.Comp.Cases 783].) In other words, the Appeals Board must look to the underlying facts of a medical opinion to determine whether or not that opinion constitutes substantial evidence, and accordingly, the expert's opinion is no better than the facts on which it is based. (*Turner v. Workers' Comp. Appeals Bd.* (1974) 42 Cal.App.3d 1036, 1044 [39 Cal.Comp.Cases 780].)

Here, the QME must answer the question of whether applicant's current heart/hypertension condition is an aggravation and thus, a new injury, or an exacerbation of the prior injuries that applicant has already settled. That is, there must be a clear discussion of whether or not there is new impairment or an increased need for medical treatment.

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see also *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; Lab. Code, §§ 5701, 5906.) The Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The "Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (*McKernan*) (1999) 74 Cal.App.4th 928, 937-938 [64 Cal.Comp.Cases 986].) The preferred procedure to develop a deficient record is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

If, following development of the record, the QME is unable to appropriately address the necessary issues including whether applicant's current claimed injury is an aggravation as opposed

to an exacerbation of his prior injuries, the WCJ should consider augmenting the record. Although the preferred procedure to develop the record is to return applicant to the physicians that have already reported, per *McDuffie,* if the existing physicians cannot cure the need for development of the record, the selection of an AME should also be considered by the parties. In addition, the WCJ may appoint a regular physician pursuant to Labor Code section 5701.

We note that although the issue was submitted at trial, the WCJ did not determine whether applicant, as a correctional officer, was entitled to the presumption under Labor Code section 3212.2 or 3212.10. "In order for [an injured worker] to be entitled to the presumption embodied in section 3212, he must first show that his disability can be characterized as 'heart trouble.' As stated in *Baker v. Workmen's Comp. Appeals Bd*. (1971) 18 Cal.App.3d 852, 859 [36 Cal.Comp.Cases 431]: "The presumption is one of occupational causation; it is not a presumption that a disability is attributable to heart trouble." (*Muznik v. Workers' Comp. Appeals Bd*. (1975) 51 Cal.App.3d 622, 632 [40 Cal.Comp.Cases 578].)

The *Muznik* court reviewed the appellate cases that had found the existence of "heart trouble," and concluded as follows:

> [T]he phrase 'heart trouble' assumes a rather expansive meaning. This result is further evidenced by the Legislature's decision not to utilize a medical term or to list or require any specific malady for the presumption of section 3212 to become operative, but rather, to employ a lay term which is not necessarily related to physical deterioration or 'disease' at all. As defined in Webster's Dictionary, the term 'trouble' when used as a noun covers a wide range of meanings, including distress, affliction, anxiety, annoyance, pain, labor, or exertion. The intent of the authors of the amendment adding the phrase 'heart trouble' to section 3212 was no doubt to have the meaning of that phrase encompass any affliction to, or additional exertion of, the heart caused directly by that organ or the system to which it belongs, or to it through interaction with other afflicted areas of the body, which, though not envisioned in 1939, might be produced by the stress and strain of the particular jobs covered by the section. [Citation].

(*Id.* at p. 635.)

Thus, in *Muznik*, the court found that the section 3212 presumption arose in a case that hypertension contributed to, among other things, ventricular irritability which caused the heart to skip beats. (*Id.* at p. 637.)

It is applicant's burden to establish the presumption. Unless controverted, however, the Appeals Board is bound to find in accordance with the presumption. Thus, if the presumption applies, the burden shifts to the defendant to establish, by a preponderance of the evidence, that

applicant's injury is not entitled to a presumption of compensability pursuant to Labor Code section 3212.2 or 3212.10. (Lab. Code, §§ 3202.5, 5705.) Here, we are unable to determine from the record before us whether the presumption would apply, and we do not decide the issue. (Lab. Code, §§ 5903, 5952(d); *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Board en banc).) Upon return, that issue should be decided by the WCJ, and the WCJ may determine if further development of the record is necessary.

We rescind the July 28, 2021 F&O, accordingly, and return the matter to the trial level for further proceedings consistent with this opinion. When the WCJ issues her new decision, any party aggrieved thereby may seek reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of July 28, 2021 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 17, 2025

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

RAMON COLLADO
ADAMS, FERRONE & FERRONE
STATE COMPENSATION INSURANCE FUND

JL/abs

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