WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DOUG STONE, *Applicant*

vs.

CITY OF UKIAH, permissibly self-insured; administered by ATHENS ADMINISTRATORS, *Defendants*

Adjudication Number: ADJ12812555
Santa Rosa District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted applicant's Petition for Reconsideration of the "Findings and Order" (F&O) issued on March 17, 2022, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues.[1] This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that applicant did not sustain injury to his psyche on an industrial basis and that applicant's injury to the psyche is barred by Labor Code[2] section 3208.3(b)(1) because the predominant cause of psychiatric injury was not connected to events occurring with applicant's current employer.

Applicant contends that the WCJ erred because applicant's current employment is merely a continuation of employment from Ukiah Valley Fire District to the City of Ukiah pursuant to a joint powers agreement.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

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[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 substituted in her place.

[2] All future references are to the Labor Code unless noted.

We have considered the allegations of the Petition for Reconsideration and the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration, we will rescind the March 17, 2022 F&O and return this matter to the trial level for further proceedings.

FACTS

Applicant claims to have sustained a single cumulative injury to his psyche while working as a fire engineer. (Minutes of Hearing and Summary of Evidence (MOH/SOE), June 9, 2021, p. 2, lines 26-32.) Applicant was employed by Ukiah Valley Fire District ("District") from 2009 through December 16, 2017, and by City of Ukiah ("City") from December 17, 2017, through 2019. (*Id*. at p. 2, lines 42-44.)

On November 15, 2017, the District and City entered into a transfer agreement where employees of the District would transfer to become employees of the City. (Joint Exhibit J2, Ukiah Valley Fire District and City of Ukiah Employee Transfer Agreement, November 15, 2017.) The agreement repeatedly refers to the employees of the District as "transferring employees." Applicant's rank did not change. (MOH/SOE, *supra* at p. 4, lines 26-27.) His job duties did not change. (*Id*. at p. 4, line 15.) Applicant signed a piece of paper to transfer to the City. (*Id*. at p. 4, lines 16-17.)

The transfer agreement contained the following passage regarding workers' compensation claims:

> The City shall not be responsible for the payment of insurance coverage, claims, or benefits to any District Employee or Transferring Employee arising out of their employment with the District prior to the date of transfer, The District agrees to fully indemnify and hold the City, its officers, employees and agents harmless from any claim, benefit, expense or cost incurred for such employees.

(Joint Exhibit J2, at p. 2.)

Applicant sustained a prior accepted psyche injury while working for the state in 2004. (MOH/SOE, at p. 4, 31-34.) He was diagnosed with PTSD and returned to work in May 2005. (*Ibid*.)

Applicant was evaluated by Daniel Mandelbaum, M.D., who issued two reports and are in evidence. Dr. Mandelbaum took a history of applicant last working on March 12, 2019. (Joint Exhibit 1, Report of Daniel Mandelbaum, M.D., November 25, 2019, p. 2.) Applicant was

diagnosed with multiple disorders including posttraumatic stress disorder and major depressive disorder. (*Id*. at p. 43.)

Dr. Mandelbaum ascribed causation as follows:

> In my original report, under the title of "Causation," I stated the following. Thirty-five percent of his causation is viewed as caused by the original injury in 2004 while working for Cal .Fire. This was described in detail in my interview with Mr. Stone. Forty-five percent of his causation is viewed as caused by his experience working during the 2017 Redwood Complex Fire and the death of his neighbors and friends. It should be of note that after the original injury in 2004, he continued to work at Cal Fire and experienced many incidents which undoubtedly contributed to maintaining and exacerbating his symptoms of PTSD and alcohol abuse. Likewise, during his work at the Ukiah Valley Fire Department since 2009, he has experienced multiple incidents, both before the 2017 fires and afterwards. a While these incidents stand out in terms of causation, there certainly is an aspect of cumulative trauma to both of his occupations. Twenty percent of his causation is viewed by his current feelings about the safety in working for the Department. Some of this involves his interactions with Mr. Adair, but some of them involve changes in the Department in staffing and changes in the personnel that he is currently working with.
>
> As I read over the causation, I realize that, although I had mentioned aspects of cumulative trauma both in his Cal Fire job and in the Ukiah Valley Fire Department, these were not described in terms of percentages, and should they be given a percentage of causation, there would be more than 100 percent causation. It is, therefore, my opinion that causation is as follows. Thirty-five percent of causation is still viewed as caused by the original injury in 2004, as described in detail. Forty-five percent of causation would be viewed as caused by his experiences working during the 2017 Redwood Complex Fire. The Redwood Complex Fire was most impactful in causing and [exacerbating] P.T.S.D. for the following reasons: It was a very extensive fire that lasted many days; it occurred in the community where Mr. Stone lived. . . and some close friends were injured or died.
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> Five percent of causation would be viewed as cumulative trauma from his continued employment at Cal Fire, and 5 percent would be viewed as caused by his work for the Ukiah Valley Fire Department both prior to and after the 2017 Redwood Complex Fire. These events are described in my report. Ten percent of causation would be viewed as caused by his interactions with Mr. Adair and his feelings of lack of safety at work because of the many new employees and his lack of confidence in his immediate supervisors.
>
> As Mr. Stone was experiencing significant symptoms of P.T.S.D. and alcohol abuse some of his difficulties at work could have been [exacerbated] by these illnesses. There do not appear to be non [industrial] components to these problems Mr. Stone's account of his work problems is detailed in my report. I do not have any accounts from his employer.

> Some of this 10 percent may, indeed, be excluded by good faith personnel actions based on some type of employer investigation and [decision] by the trier of fact.

(Exhibit 1, Report of Daniel Mandelbaum, M.D., January 3, 2022, pp. 3-4.)

DISCUSSION

The question in this case is simple: whether applicant sustained an industrial cumulative injury to his psyche. The answer is complicated solely by the fact that applicant transferred employers during the period of injurious exposure. It is important to understand that separate and distinct analyses are used to determine causation of injury under section 3208.3(b), date of injury under section 5412, and liability for cumulative injury under section 5500.5(a).

1. Causation under section 3208.3(b).

First, we must analyze causation of injury under section 3208.3.

Per section 3208.3(b):

> (b) (1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.
>
> (2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.
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> (3) For the purposes of this section, "substantial cause" means at least 35 to 40 percent of the causation from all sources combined.

In *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 245-246 (Appeals Board en banc), we addressed the factors that a psychological evaluator must consider in opining on causation of psychological injury and disability under section 3208.3. Per *Rolda*, the evaluator is required to list all factors causing psychological injury and address the percentage of causation that each factor contributes to psychological injury, then list all factors causing psychological permanent disability and address the percentage of causation that each factor contributes to permanent disability.

Once the evaluator issues a *Rolda* compliant report, the WCJ should then determine whether the alleged injury involved actual events of employment, and whether each actual event of employment constituted a lawful, non-discriminatory, good faith personnel action. (Cal. Lab.

Code, § 3208.3(h).)[3] If the psychological injury is predominantly caused (51% or more) by actual events of employment (or 35% or more in cases of injury caused by violent act or exposure to a violent act), the psychological injury is compensable, unless the injury is substantially caused by lawful, nondiscriminatory, good faith personnel actions, in which case the injury is not compensable. (§ 3208.3.)

> An 'actual event of employment' has been defined by the Court of Appeal as follows:
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> First, the factor must be an "event"; i.e., it must be "something that takes place" (American Heritage Dict. (4th ed. 2000) p. 616) in the employment relationship. Second, the event must be "of employment"; i.e., it must arise out of an employee's working relationship with his or her employer.

(*Pacific Gas & Electric Co. v. Workers' Comp. Appeals Bd*. (*Bryan*) (2004) 114 Cal.App.4th 1174, 1181 [69 Cal.Comp.Cases 21].)

A cumulative injury is defined as ". . . occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment." (§ 3208.1.) We look at "all causes combined" when determining whether applicant meets their burden of proving either predominant or substantial causation. The "phrase 'all causes combined' in section 3208.3(b)(1) has been interpreted to mean '**the entire set of causal factors**.' (Citation.)" (*San Francisco Unified School Dist. v. Workers' Comp. Appeals Bd*. (*Cardozo*) (2010) 190 Cal.App.4th 1, 10 [75 Cal.Comp.Cases 1251] (emphasis added).) Thus, when determining whether applicant meets the causation standard for section 3208.3 for purposes of a cumulative injury claim, we look at the combined effect of *all industrial exposure*. For cumulative injuries spanning years of employment, this may involve multiple employers.

In her Report, the WCJ cites to a panel decision in *Lewis v. Workers' Comp. Appeals Bd*. (2011) 77 Cal.Comp.Cases 108.[4] The WCJ cited *Lewis* for the proposition that a cumulative

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[3] All future references are to the Labor Code unless noted.

[4] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal. App. 4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citeable authority and the Appeals Board may consider these decisions to the extent that their reasoning is found persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228, fn. 7 (Appeals Board En Banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal. App. 3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to the cited panel decision because it considered a similar issue. We recommend that practitioners proceed with caution when citing to a panel decision and verify its subsequent history.

psychological injury which spans multiple employers cannot be combined to establish predominant causation. However, *Lewis* appears to present a different factual scenario. In *Lewis*, applicant's psychological injury was caused as two individual sequelae of multiple distinct physical injuries, each of which occurred with a distinct employer, each of which was ascribed causation. This is factually distinct from a single cumulative injury spanning applicant's entire career. While a cumulative injury was pled in *Lewis*, the AME's reporting did not ascribe causation to cumulative trauma. (*Id*. at *110.) Furthermore, another panel decision has criticized the holding in *Lewis* as it may not have been factually correct. (See *Delgado v. County of Ventura*, 2023 Cal.Wrk.Comp. P.D. LEXIS 344, at *11.)

Although we need not determine the issue as a cumulative trauma necessarily looks at the span of employment, applicant argues that his employment between the District and the City was one continuous employment. We agree. The agreement in evidence clearly states that the employees were merely transferred from the District to the City. Applicant continued in the same job, with the same position and salary, at the same location. The *Lewis* panel addressed this exact issue:

> Applicant presents a hypothetical situation in which an employer sells its business and applicant sustains an injury on the last day of operation by the original owner and a second injury on the first day of operation of the successor in interest, second owner.
>
> Applicant asserts that the Court's ruling would lead to the "absurd" finding that the two injuries could not be combined under the holding in *Matea v. WCAB* (2006) [144 Cal. App. 4th 1435, 51 Cal. Rptr. 3d 314] 71 CCC 1522.
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> The Court disagrees. Under applicant's scenario the two injuries would clearly be combined under *Matea, supra*, in that applicant did not change employment and was employed in the same job at the time of both injuries. A scenario, as described by applicant, would be akin to a change of insurance carriers and as such is clearly distinguishable from the facts of the case at hand.

(*Lewis*, *supra* at *110.)

The WCJ found that the indemnity agreement between the City and the District precluded a finding of a continuous period of employment. The fact that the District has agreed to hold the City harmless for workers' compensation liability incurred during periods of employment with the District does not impact the analysis of whether the employment was continuous.[5]

[5] The indemnity agreement may be germane to contribution proceedings; however, that issue is not before us.

Here the evaluator opined on causation as follows:

35% 2004 accepted injury with Cal Fire (prior industrial)

5% Continued employment with Cal Fire (prior industrial)

45% Redwood Complex Fire while working for the District (current industrial)

5% Duties while working for City (current industrial)

10% Interactions with his supervisor at the City (current industrial)

0% Non-industrial

The WCJ analyzed applicant's claim based on predominant causation, however here it would appear that applicant's current industrial injury was sustained, in part, while fighting one of the largest wildfires in California history, which resulted in multiple deaths. This would constitute "direct exposure to a significant violent act," and thus, applicant need only establish 35% industrial causation, which has clearly been met. Applicant's psychological injury appears to be industrial.

2. Date of injury under section 5412.

The injury claimed in this matter is a cumulative psychological injury. Date of injury for cumulative injury claims is established under section 5412, which states: "The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment." (§ 5412; see also § 3208.1 ["date of a cumulative injury shall be the date determined under Section 5412"].)

As used in section 5412, "disability" means either compensable temporary disability or permanent disability. (*Chavira v. Workers' Comp. Appeals Bd*. (1991) 235 Cal.App.3d 463 [56 Cal.Comp.Cases 631]; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (*2004*) 119 Cal.App.4th 998 [69 Cal.Comp.Cases 579].) Medical treatment alone is not "disability" for purposes of determining the date of a cumulative injury pursuant to section 5412, but it may be evidence of compensable permanent disability. (*Rodarte*, *supra*, 119 Cal.App.4th at p. 1005.) Likewise, modified work is not a sufficient basis for finding compensable temporary disability, but it may be indicative of a compensable permanent disability, especially if the worker is permanently precluded from returning to their usual and customary job duties. (*Id*.)

The existence of disability is a medical question beyond the bounds of ordinary knowledge, and, as such, will typically require medical evidence. (*City & County of San Francisco v. Industrial Acc. Com*. (*Murdock*) (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers'*

Comp. Appeals Bd. (1977) 68 Cal.App.3d 988 [42 Cal.Comp.Cases 114].) Knowledge requires more than an uninformed belief. Because the existence of disability typically requires medical evidence, an "applicant will not be charged with knowledge that his disability is job related without medical advice to that effect unless the nature of the disability are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability." (*City of Fresno v. Workers' Comp. Appeals Bd.* (*Johnson*) (1985) 163 Cal.App.3d 467, 473 [50 Cal.Comp.Cases 53].)

The dates of injurious exposure under section 5500.5 and the date of injury under section 5412 **are separate analyses**. While the two dates may coincide, **they are not synonymous**.

It appears based upon our reading of the medical file that the QME has indicated that applicant sustained a single cumulative injury through 2019; however, the record is not clear on this issue, and out of an abundance of caution, we will return that issue to the trial level for the parties to adjust, and absent an agreement, the WCJ may decide the issue of whether this is a single cumulative injury. (See *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd*. (*Austin*) (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323]; see *Aetna Cas. & Surety Co. v. Workmen's Comp. Appeals Bd*. (*Coltharp*) (1973) 35 Cal.App.3d 329, 341 [38 Cal.Comp.Cases 720] [number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB].)

3. Liability for cumulative injury under section 5500.5(a).

If applicant has proven that they sustained an industrial cumulative injury under section 3208.3, the parties must then determine who is liable to provide benefits. We emphasize that determination of liability is a separate and distinct analysis from determination of compensability.

Under section 5500.5(a), liability for cumulative injury claims is limited to those employers who employed the employee during a period of one year immediately preceding either the date of injury, as determined pursuant to section 5412, or the last date on which the employee was employed in an occupation exposing them to the hazards of the occupational disease or cumulative injury, whichever occurs first.

Liability for cumulative injury is statutory, and the statute focuses solely upon injurious exposure in the last year of employment. Section 5500.5 clearly states:

> If, based upon all the evidence presented, the appeals board or workers' compensation judge finds the existence of cumulative injury or occupational disease, **liability** for the cumulative injury or occupational disease **shall not be apportioned to prior or subsequent years**; however, in determining the liability,

> evidence of disability due to specific injury, disability due to nonindustrial causes, or disability previously compensated for by way of a findings and award or order approving compromise and release, or a voluntary payment of disability, may be admissible for purposes of apportionment.

(§ 5500.5(a).)

While application of section 5500.5 may appear unfair in specific cases, such unfairness is spread across all cases equally. Furthermore, when balanced against the complexity of litigation spanning an employee's entire working career, the Legislature has chosen to limit liability to a single year.

It would appear that applicant has met the requirements for causation under section 3208.3 regardless of whether applicant's employment was considered continuous, because applicant's injury was substantially caused by his employment. It would further appear that applicant's date of injury under section 5412 may have occurred in 2019, however we will defer that issue to the parties to adjust with jurisdiction at the trial level reserved in the event of a dispute. Finally, it would appear that applicant's employment with the City would constitute the last year of injurious exposure, assuming a date of injury exists in 2019, however again, we will defer that issue. To the extent that the City has entered into an indemnification agreement with the District, the issue of contribution is not before us and the District has not been joined in these proceedings.

Accordingly, as our Decision After Reconsideration, we rescind the March 17, 2022 F&O and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on March 17, 2022, by the WCJ is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 11, 2026

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

DOUG STONE
JONES CLIFFORD
MULLEN & FILIPPI

EDL/mt

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