WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SAGE COOPER, *Applicant*

vs.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, CALIFORNIA MEN'S COLONY; legally uninsured and administered by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ19100202
San Luis Obispo District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant filed a Petition for Reconsideration (Petition) in response to the Findings of Fact, Order (F&O) dated June 30, 2026 in which the presiding workers' compensation administrative law judge (PWCJ) found in pertinent part that applicant, while employed during the period of February 7, 2007, through September 21, 2022, as a Correctional Officer by defendant claims to have sustained injury arising out of and in the course of employment to brain, neurologic system, bilateral lower and upper extremities, and exposure to JC Virus; that the blood-borne pathogen presumption of Labor Code section 3212.8 does not apply; and that applicant did not prove injury arising out of and in the course of employment (AOE/COE), and ordered that applicant take nothing in this case.

Applicant contends that the blood-borne pathogen presumption applies and that the presumption has not been rebutted.

Defendant filed an Answer. The WCJ's Report and Recommendation (Report) recommends that reconsideration be denied.

We have reviewed the allegations in the Petition, the Answer, and the contents of the Report. After review of the record and for the reasons discussed below, we will grant the Petition for Reconsideration, rescind the F&O and substitute new Findings of Fact to find that the Labor

Code section 3212.8 blood-borne infectious disease presumption applies; that defendant did not rebut the presumption; that applicant sustained injury AOE/COE to the brain; and that all other issues are deferred.

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909,[1] which states 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 August 6, 2026, and 60 days from the date of transmission is Monday, October 5, 2026. This decision is issued by or on Monday, October 5, 2026, 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 shall be notice of transmission.

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

Here, according to the proof of service for the Report, the Report was served on August 6, 2026, and the case was transmitted to the Appeals Board on August 6, 2026. 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 August 6, 2026.

II.

As found by the WCJ, applicant, while employed during the period of February 7, 2007 through September 21, 2022, as a correctional officer claims to have sustained injury arising out of and in the course of employment to the brain, neurologic system, bilateral lower and upper extremities, and exposure to JC Virus.

On May 31, 2023, Panel Qualified Medical Evaluator (PQME) Jeffrey Lundeen, M.D., issued a report in orthopedics and concluded that he was "not able to provide any definitive opinions on causation as it relates to the left-sided spastic hemiparalysis condition." (Exhibit GG, PQME Jeffrey Lundeen, M.D., May 31, 2023, p. 7.)

On September 27, 2023, PQME Daniel Franc, M.D., Ph.D., issued a report in neurology and stated that progressive multifocal leukoencephalopathy (PML) "was present in September 2022 at the time of her traumatic fall. There is a possibility that PML contributed to her fall." (Exhibit EE, PQME Daniel Franc, M.D., Ph.D., September 27, 2023, p. 3.)

On April 5, 2024, the deposition of PQME Dr. Franc was taken. The doctor explained:

> Well, so the concept is that JC virus is a virus that most people have that is latent in our nervous system, and it doesn't cause any problems throughout our entire life. We coexist with it. It doesn't become symptomatic unless there's an issue with our immune system, which became an issue during the HIV era where full blown AIDS would suppress the immune system, and the JC virus would reactivate and then lead to PML, which is a florid condition affecting the brain that can cause paralysis, death. It's a very serious infection, and unless – it doesn't occur unless we have a very profound immunodeficiency. HIV was the one where this became a issue.
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>
> [I]f you use certain types of immunosuppressive agents for multiple sclerosis, it can suppress the part of the immune system which keeps JC virus in check, and you can develop PML as a result of this.

(Exhibit FF, Deposition of PQME Dr. Franc, April 5, 2024, p. 7, ln 20 to p. 8, ln 8; 12-17.) And then:

> Q. Okay, if I can break that up a little bit. Also want to help lay some foundation here. When I look at page 20 of your report, that's the significance of entry No. 71. This is a April 16, 2020 Quest diagnostic laboratory noting high JC virus antibodies.
>
> A. That's correct.
>
> Q. Okay, so we can go back and see that as of 2020, she's carrying the antibody, which means chances are she's carrying this virus in her system?
>
> A. She has the virus, almost certainly.

(*Id*. at p. 11, lns 1-11.) Then the following exchange occurred:

> Q. Okay. And two, is there any doubt that she has actually developed the PML?
>
> A. At this stage of 10-4-22?
>
> Q. No, I'm going to say ever. I'm broadening out, so I'm saying, it looks like she does -- had at one point a diagnosis of PML?
>
> A. Yes, 10-26-2022, we have the MRI that shows restrictive defusion. They did the lumber puncture. One thing I forgot to mention, that was an important distinction is, they did a PCR test, which is on 10-26-2022. It's documented that shows active infection, so the antibody test goes [sic] exposure of the immune system, but PCR test shows active infection. We kind of went through this in the Covid test. This was a very important distinction during Covid, whether someone has a antibody test or PCR test. The PCR test means you've got virus that's replicating currently.

(*Id*. at p. 17, ln 16, to p. 18, ln 7.) Then:

> A. Yes, I mean essentially every virus that affects the brain has to get through the blood brain barrier, whether the virus initially enters the body through the respiratory tract or the GI tract or directly into the skin, there's really not a way to infect the central nervous system directly, and bypass the blood brain barrier, and so the expectation is that every virus, including JC virus, is going to have to find that same route.
>
> My understanding is that it is through the respiratory tract or the GI tract that we come into contact with JC virus. It's fairly ubiquitous which is why a big majority of people do carry this virus.
>
> Q. Okay. And so that's where we have the initial insult, so to speak, through the respiratory system or the GI system; right?

A. That's correct.

Q. Okay. But in order to get to the brain, it has to travel through the blood?

A. Of course, yes.

(*Id*. at p. 21, lns 4-23.) And then:

> A. Yes. I could not say with reasonable medical certainty that the workplace led to exposure to JC virus. I would say it's more likely than not that she was exposed to this virus before her first day of work, but I would say that the final opinion would be probably more suited for an internal medicine expert, especially someone who has knowledge of JC virus. This is not a virus, frankly, that infectious disease doctors think about very much, because it only is relevant in the context of a neurological emergency like this, and we're not treating the virus. In any case, we're treating the immunosuppressive case. So I'm not sure that the infectious disease doctor would have a lot of experience with JC virus, but in terms of viral transmission, relationship to the workplace, I think a QME or AME infectious disease doctor would be the appropriate expert to ask for a final opinion on that.

(*Id*. at p. 24, ln 14, to p. 25, ln 6.) On cross examination the doctor testified in part:

A. I believe it's up to 90 percent of people are carrying this virus latently.

Q. So people live with it without a problem; right?

A. Absolutely.

Q. So the actual cause of the PML is actually the medication that triggers --

A. Medication is the cause, yes.

Q. The medication that triggers the virus; correct?

A. That's correct.

(*Id*. at p. 26, lns 3-13.) Then on re-direct:

> Q. Okay, subtle distinction there. It didn't trigger the virus itself. It triggered the aggravation of the virus that was already there?
>
> A. Yes. I should have been a little bit more precise with my answer. It doesn't trigger the virus. It suppresses the natural -- it inactivates the natural suppression of JC virus for being active. In that way the cause of PML is the treatment for multiple sclerosis, which is in this case Tysabri, but it doesn't necessarily influence the virus. It just keeps the body from fending it off as it normally does for the rest of us.
>
> Q. So without the virus she doesn't develop PML?

A. There would be no PML without a JC virus latently affecting her brain.

(*Id.* at p. 26, ln 17, to p. 27, ln 6.) Then also:

> Q. And in terms of the JC virus, at this point we don't know when and where she picked that up?
>
> A. It would be impossible to know exactly at what point she picked this up. Again, the expectation was that JC virus is picked up in many cases in adolescence, early adulthood, and there's no overt sign of that infection.

(*Id*. at p. 26, ln 17, to p. 27, ln 6.) And finally on re-cross:

> Q. I didn't hear quite, the last part, Doctor. The virus is usually picked up in teen-age years or adolescence; is that what you said?
>
> A. Yeah, it could be picked up at any point during the life span, but because of the ubiquitous nature of the infection, in most cases exposure to this is earlier in life, whether that's in adolescence, teenage years or early adulthood. But exposure to this could be later in life and then there may be no outward sign of the infection. The likelihood of the time of the infection that's where infectious disease or internal medicine physician might be able to shed more light on the timing of the exposure to the JC virus.
>
> Q. We know that she was, according to the test that you plan to, she had the virus at least two years before that fall; right?
>
> A. Yes. I don't have medical records that the JC virus antibody test was performed prior to two years, but we know with reasonable medical certainty that in 2020 she had had exposure to it.

(*Id*. at p. 28, lns 1-21.)

On July 27, 2024, PQME Omar Tirmizi, M.D., FCCP, issued a report in internal medicine in which the doctor noted under history that applicant "worked as a correctional officer from 2001," and her "work involved transporting prisoners, and she would carry a shotgun, wear a bulletproof vest, and also carry other equipment. She would be required to run, apprehend, and handcuff inmates, and do body searches, as well as be prepared for altercations." (Exhibit CC, PQME Omar Tirmizi, M.D., July 27, 2024, pp. 1-2.)

In his August 13, 2024 supplemental report, PQME Dr. Tirmizi reviewed extensive medical records. (Exhibit BB, PQME Omar Tirmizi, M.D., August 13, 2024, p. 36.)

On September 29, 2024, PQME Dr. Tirmizi issued a second supplemental report, and he opined that:

> JCV is ubiquitous to the human population. Primary infection normally occurs during childhood and is followed by lifelong persistent infection. The main mode of transmission remains unknown, and there is no data or any scientific literature indicating that this is a bloodborne infection. Authors have hypothesized that JCV transmissions occur through the respiratory route, and the respiratory system could be the source of viral particle inhalation. It is known that more than 70% of individuals present with JCV specific antibodies, and that primary infection is typically asymptomatic and occurs during childhood and is usually followed by a lifelong latency period in immunocompromised subjects. This virus may reactivate under conditions of immunosuppression, which is what has happened in [applicant's] case.
>
> It is therefore my opinion that JCV is not known to be a bloodborne pathogen. It likely does enter the brain through the blood-brain barrier; however, it is not acquired as a bloodborne infection. I am unable to identify when the applicant contracted JCV. However, as discussed above, it is acquired in childhood, possibly through respiratory inhalation.

(Exhibit AA, PQME Omar Tirmizi, M.D., September 29, 2024, p. 2.)

During the July 29, 2025 deposition of PQME Dr. Tirmizi, there are the following exchanges:

> Q. And just to kind of lay the foundation, so we have that primary infection normally occurs during childhood and is followed by a lifelong persistent infection?
>
> A. Correct.
>
> Q. First off, what I'd like to make sure that we establish is that's a generalized comment to the population at large and not specific as it relates to [applicant]; is that correct?
>
> A. Yes.
>
> Q. Okay. So at this point we don't have any evidence or know when, in fact, she did contract the JC virus.
>
> A. Correct. We don't know in any patients.

(Exhibit DD, deposition PQME Omar Tirmizi, M.D., July 29, 2025, p. 8, lns 1-14.) Further, regarding the JC virus the doctor testified:

> Q. How does it get to lungs to brain?

A. It crosses into the bloodstream from the lungs, which the lungs are a sieve, and they have a lot of blood supply.

And I think the right word would be something like "trans-location," but I think that refers more to gastrointestinal. But basically it enters the bloodstream from the lungs. That's the hypothesis.

And then from there, wherever the blood goes, it can go and sit in its favorite corner, in this case probably somewhere in the brain cells.

(*Id*. at p. 12, lns 2-14.) And also:

Q. Okay. Now, in terms of the JC virus itself, it would be considered a pathogenic microorganism in a broader sense; right?

A. Yes.

Q. Okay. Obviously it can be present in human blood because obviously it has to be able to get to -- or from the lungs to the brain?

A. Yes.

(*Id*. at p. 13, lns 18-25.) Then:

Q. Okay. And so, when we're looking at your statement in your supplemental report that says "It is therefore my opinion that JCV is not known to be a bloodborne pathogen," it seems like you are more focused on the fact of transmissibility of the disease via blood; is that correct?

A. That is correct.

Q. Okay.

A. In my knowledge base a bloodborne pathogen is pathogens that are transmitted from one human or nonhuman species to another species using a bloodborne mechanism, which typically means inoculation. So that's what I was basing my statement on.

Q. Okay. And so to the extent that the law has perhaps a broader definition, you would defer that to the trier of fact on whether or not it would meet the true criteria for a bloodborne pathogen?

A. Yes.

Q. Okay. And I just wanted to make sure that I understood that nuance. But there's no question that the JC virus can be in the blood; right?

> A. I don't see any other way for it getting into the brain except through being carried through the bloodstream.

(*Id.* at p. 14, ln 4, to p. 15, ln 2.) And finally:

> A. The only other way it would get into the brain would be if it somehow entered through the spinal fluid -- and I see no reason to believe that she would have a virus introduced into her spinal fluid -- or a direct injury to her brain where it would come from the outside skin or trauma.
>
> So since those two criteria are not met, the only way it gets to a brain is through crossing the blood-brain barrier when it's -- from its reservoir, wherever it could be, maybe from the lungs, till it gets to the brain.
>
> Q. Okay.
>
> A. That's my reasoning.

(*Id.* at p. 15, lns 8-20.)

On January 28, 2026, the case proceeded to trial. The parties stipulated that at the time of claimed injury, applicant was employed by defendant as a correctional officer. (Minutes of Hearing and Summary of Evidence (FIRST MOH), p. 2, lns 8-11.) Issues included injury arising out of and in the course of employment, parts of body injured including the brain, and applicability of "Bloodborne Pathogen Presumption - Labor Code Section 3212.8." (FIRST MOH, p. 2, lns 35-42.) Exhibits were admitted. (FIRST MOH, p. 3.) Applicant testified in part:

> [She became] a Med Tech Assistant for Salinas Valley State Hospital, followed by becoming a Correctional Officer for CMC. During intervening periods, she also worked as an MTA for Vacaville State Prison. As an MTA, she was a Correctional Guard/Psyche Tech. The MTA position qualified for Peace Officer status per Penal Code Section 830.5. As a Correctional Officer, she also qualified for Peace Officer status under Penal Code Section 830.5.

(FIRST MOH, p. 4, lns 16-22.) The bulk of applicant's testimony was related to possible exposure to pathogens at work.

At the second day of trial on April 7, 2026, additional exhibits were admitted. (Minutes of Hearing and Summary of Evidence (SECOND MOH), p. 2.) Applicant continued to testify about possible pathogen exposure. (SECOND MOH, pp. 3-5.)

In the June 30, 2026 F&O the PWCJ found, as relevant here, that applicant while employed during the period of February 7, 2007 through September 21, 2022 as a correctional officer by

defendant claims to have sustained injury AOE/COE to brain; that the "Blood-borne Pathogen Presumption- Labor Code Section 3212.8 does not apply"; and that "applicant has not proven by a preponderance of the evidence that her alleged injuries arose out of and were sustained in the course of her employment by the defendant employer." Finally, the PWCJ ordered that applicant "take nothing against the defendants for this case."

In denying the presumption, the PWCJ noted in the Opinion on Decision (Opinion) that "the PQMEs serving in this matter found that the medical definition for 'blood-borne' did not apply to the pathogen in this case" and that "the pathogen in question is not blood-borne as plainly defined." (Opinion, p. 4.) Separately the PWCJ also stated "applicant has failed to carry her burden of proving that her injury is industrial." (Opinion, p. 5.)

It is from the June 30, 2026 F&O that applicant seeks reconsideration.

III.

An applicant has the burden of establishing an industrial injury by a preponderance of the evidence. (Lab. Code, §§ 3202.5, 5705.)

Here, applicant asserts she has met her burden to establish an industrial injury by operation of the blood-borne infectious disease presumption contained in section 3212.8.[2]

It is well established that "a presumption becomes operative at trial when the basic facts giving rise to the presumption are established by the pleadings, by stipulation, by judicial notice, or by evidence. [citations]." (*Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 [67 Cal.Comp.Cases 236].) "Whenever the presumption's underlying conditions are established by the pleadings, stipulations, judicial notice, or evidence, the trier of fact *must* adopt the" presumption. (*Gee*, *supra*, at p. 1426, emphasis in original.)

We therefore initially review this matter to determine whether the presumption's underlying conditions are established because, if so, we are bound to adopt the presumption of injury.

Section 3212.8 provides as relevant here provides:

> (a) In the case of . . . individuals described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whether those persons are volunteer, partly paid, or fully paid, . . . the term "injury" as used in this division, includes a blood-borne infectious disease . . . when any part of the blood-borne

[2] Current section 3212.8 is effective until January 1, 2027, and has been reenacted effective January 1, 2027, in substantially the same form with only minor changes that are not relevant to the case before us.

> infectious disease . . . develops or manifests itself during a period while that person is in the service of that office, staff, division, department, or unit.
>
> (b)(1) The blood-borne infectious disease . . . so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it.

(Lab. Code, § 3212.8(a) and (b)(1).)

Therefore, for the presumption to apply under section 3212.8, applicant must establish that she is an individual: 1) "described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code," 2) who has a "blood-borne infectious disease," 3) that "develops or manifests itself during a period while that person is in the service," and 4) these facts are not "controverted by other evidence." (*Id.*) Here then, the admittedly oversimplified question presented is: When a correctional officer carrying the dormant JC virus that is common throughout the general population is treated for a non-industrial medical condition with a medication that allows the JC virus to develop into PML, is the resulting injury presumed industrial?

1.

As to the first requirement, it does not appear to be contested that applicant is a correctional officer who is covered by the section 3212.8 presumption.[3]

To be complete, however, we note that within the relevant part of Chapter 4.5 of the Penal Code is Penal Code section 830.5 which states "[t]he following persons are peace officers" after which is included a "correctional officer employed by the Department of Corrections and Rehabilitation." (Penal Code, § 830.5(b).) Therefore, correctional officers are described in the relevant part of the Penal Code and are subject to the presumption in section 3212.8.

Here, the parties stipulated that at the time of claimed injury applicant was employed by the Department of Corrections as a correctional officer. (FIRST MOH, p. 2, lns 8-11.) In addition, applicant testified at trial with respect to her work as a correctional officer. (FIRST MOH, p. 4, lns 13-22.) The PWCJ found applicant to be a Correctional Officer employed by the CDCR. Indeed, even an evaluating physician noted that applicant "worked as a correctional officer from 2001,"

[3] We wish to acknowledge the parties and PWCJ for presenting the record before us in a concise and clear way that facilitates review.

and her "work involved transporting prisoners, and she would carry a shotgun, wear a bulletproof vest, and also carry other equipment. She would be required to run, apprehend, and handcuff inmates, and do body searches, as well as be prepared for altercations." (Exhibit CC, at pp. 1-2.)

Thus, it is clear that applicant was employed as a correctional officer, which is a class of employee covered by section 3212.8.

2.

The next requirement of section 3212.8 is that applicant have a "blood-borne infectious disease" which defined in the statute as follows:

> (d) For the purposes of this section, "blood-borne infectious disease" means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

(Lab. Code, § 3212.8(d).)

In his Opinion, the PWCJ concluded that the presumption did not apply because "the PQMEs serving in this matter found that the *medical definition* for 'blood-borne' did not apply to the pathogen in this case" and that "the pathogen in question is not blood-borne as plainly defined." (Opinion, p. 4, emphasis added.)

Contrary to the standard applied by the PWCJ, "blood-borne infectious disease" in this context is not to be interpreted by *medical definition* but is instead defined by *the statute*.

Although decisions of the Appeals Board must be supported by substantial medical evidence, that evidence must still be based on the correct legal standard in order to be substantial. That is because "[m]edical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, *or on incorrect legal theories*. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workers' Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93], emphasis added.)

Interpretation of a statute begins "with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent." (*People v. Watson* (2007) 42 Cal.4th 822, 828.)

Starting with the statutory phrase "blood-borne infectious disease," we discern there is no dispute or misunderstanding as to the common meaning of blood and therefore first turn to the definition of "borne" which commonly means "transported or transmitted by."[4] In turn "infectious disease" commonly means "a disease (such as influenza, malaria, meningitis, rabies, or tetanus) caused by the entrance into the body of pathogenic agents or microorganisms (such as bacteria, viruses, protozoans, or fungi) which grow and multiply there."[5]

This is consistent with the statute's own definition of blood-borne infectious disease as "a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, *including* those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations." (Lab. Code, § 3212.8(d), emphasis added.)

The use of the word "including" when referencing the Department's definition of blood-borne pathogens clearly indicates that the Department's definition is a lesser subset of the possible universe of "blood-borne infectious disease." Therefore, the Department's definition of blood-borne pathogens as "pathogenic microorganisms that are present in human blood and can cause disease in humans" that "include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV) and human immunodeficiency virus (HIV)" is a baseline definition and not limiting. (Cal. Code Regs., tit. 8, § 5193(b)(3).)

Based on the language of the statute, it is clear that the Legislature provided an expansive definition for blood-borne infectious disease, and that therefore, section 3212.8 describes a virus carried by the blood that causes a disease.

Here, when providing final opinions at deposition, PQME Dr. Franc stated during questioning:

> A. Yes, I mean essentially every virus that affects the brain has to get through the blood brain barrier, whether the virus initially enters the body through the respiratory tract or the GI tract or directly into the skin, *there's really not a way to infect the central nervous system directly, and bypass the blood brain barrier, and so the expectation is that every virus, including JC virus, is going to have to find that same route.*

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[4] See: https://www.merriam-webster.com/dictionary/borne.

[5] See: https://www.merriam-webster.com/dictionary/infectious%20disease.

Q. Okay. *But in order to get to the brain, it has to travel through the blood?*

A. *Of course, yes.*

(Exhibit FF, p. 21, lns 4-12; 21-23, emphasis added.)

Thereafter at deposition PQME Dr. Tirmizi succinctly testified regarding the JC virus: "*I don't see any other way for it getting into the brain except through being carried through the bloodstream*." (Exhibit DD, at p. 14, ln 25, to p. 15, ln 2, emphasis added.)

Here it is clear that applicant's PML is a disease caused by exposure to a pathogenic microorganism, the JC virus, that is present and carried in human blood and therefore meets the definition of "blood-borne infectious disease" contained in section 3212.8.

Further, this conclusion is consistent with our prior panel decisions.[6] (See *Molar v. State Dep't of Corr. & Rehab.* (2018) 83 Cal.Comp.Cases 929, 934 [herpes/Epstein-Barr virus covered by section 3212.8 because "the statutory definition does not require that pathogenic microorganisms such as the bacteria at issue here must *originate* in the blood or in a disease of the blood, (emphasis added)" citing with approval *County of Orange v. Workers' Comp. Appeals Bd.* (*Azoulay*) (2017) 82 Cal.Comp.Cases 378, 381 (writ den.)]; and see *Lelong v. Beverly Hills Police Department* (2023) 88 Cal.Comp.Cases 918, 926 [applicant sustained an infection as a result of a bacteria that can be carried in the blood, and applicant's infectious disease caused by "exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans"].)

It has long been understood that the presumption statutes "show a purpose of the Legislature to provide additional benefits for certain public employees whose services are both vital to the public interest and hazardous." (*Saal v. Workers' Comp. Appeals Bd.* (1975) 50 Cal.App.3d 291, 297 [40 Cal.Comp.Cases 456].) We conclude here that application of the section 5812.8 presumption in this case is consonant with the legislative intent of providing additional benefits to those employees who through the hazard of their labor serve the public interest.

Therefore, applicant has established exposure to a "blood-borne infectious disease" within the meaning of section 3212.8.

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[6] 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, 1424 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority, and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board En Banc).)

3.

Next, applicant must establish that the blood-borne infectious disease "develops or manifests" during employment. (Lab. Code, § 3212.8(a).)

The meaning of "develops or manifests" with respect to the application of the statutory presumptions is well-settled. In a case considering the heart presumption contained in section 3212.5, the court stated:

> In *State Employees' Retirement System v. Workmen's Comp. App. Bd.* (1968) 267 Cal.App.2d 611, 616 [73 Cal.Rptr. 172], we observed: "Obviously, heart disease may develop without manifesting itself. It may develop as an unrecognized, *undiagnosed*, asymptomatic condition, displaying or manifesting itself only after the commencement of employment." (Italics added.) In *Stephens v. Workmen's Comp. Appeals Bd.* (1971) 20 Cal.App.3d 461, 465 [97 Cal.Rptr. 713], the court said: "the presumption is available . . . in cases where heart trouble has 'manifested' itself (i.e., has produced definite symptoms such as angina attacks or abnormal electrocardiograms) . . . ." (Italics added.)

(*Smith v. Workers' Comp. Appeals Bd.* (1989) 212 Cal.App.3d 22, 28 [54 Cal.Comp.Cases 259].)

Here, we see no reason why such definitions are also not applicable to the section 3212.8 presumption. As such, applicant need only show the JC virus developed or manifested during the stipulated period of her employment of February 7, 2007 through September 21, 2022.

PQME Dr. Franc testified that based on laboratory testing in April 2020, applicant almost certainly had the JC virus. (Exhibit FF, p. 11, lns 1-11.) He also testified that "I don't have medical records that the JC virus antibody test was performed prior to two years, but we know with reasonable medical certainty that in 2020 she had had exposure to it." (*Id.* at p. 28, lns 1-21.) Based on PQME Franc's testimony, it is clear the JC virus *manifested* during employment by way of laboratory testing that showed high JC virus antibodies.

In addition, PQME Dr. Tirmizi explained the JC virus "may reactivate under conditions of immunosuppression, which is what has happened in [applicant's] case." (Exhibit AA, p. 2.) Notably, applicant took immunosuppression medication while working for defendant, and the medication caused the JC virus to *develop* into PML.

Here, applicant's blood-borne infectious disease developed and manifested during employment. Although here both development of the condition and manifestation of the condition occurred, we emphasize that *either* development *or* manifestation of the condition is sufficient to trigger the presumption. Further, as we have determined that applicant's blood-borne infectious

disease developed or manifested during employment, we need not consider how such period of employment may be legally extended by operation of section 3212.8(b)(2).

Applicant has established that her blood-borne infectious disease developed and manifested during employment and that she is entitled to the presumption of section 3212.8.

4.

Having established that applicant is entitled to the presumption of injury pursuant to section 3212.8, the burden shifts to defendant to controvert the presumption "by other evidence" while acknowledging the blood-borne infectious disease "shall in no case be attributed to any disease or skin infection existing prior to that development or manifestation." (Lab. Code, § 3212.8(b)(1) and (c).)

The burden shifts because once the facts giving rise to the presumption of industrial injury have been proven, the burden of proof to negate the presumption falls upon the employer. (*Gillette v. Workers' Comp. Appeals Bd.* (1971) 20 Cal.App.3d 312, 320 [36 Cal.Comp.Cases 570] [considering the application of the heart presumption in section 3212].)

Defendant's argument to rebut the presumption rests on two general theories: Speculation that applicant contracted the JC virus outside of employment; and speculation that immunosuppressant drugs, not the JC virus, caused applicant's PML. Neither theory is persuasive.

First, to defeat the presumption, defendant must establish through substantial medical evidence that the JC virus was acquired non-industrially. This defendant has not done.

For example, although PQME Dr. Franc states in deposition "it's more likely than not that she was exposed to this virus before her first day of work," he later contradicts himself by stating "exposure to this could be later in life and then there may be no outward sign of the infection." (Exhibit FF, at p. 24, ln 16-18; p. 28, lns 8-10.) Similarly, although PQME Dr. Tirmizi states that the JC virus "is acquired in childhood" this statement directly follows the doctor acknowledging he is "unable to identify when the applicant contracted JCV." (Exhibit AA, p. 2.)

These are just two examples that illustrate how the medical opinions relied on to establish when applicant acquired the JV virus are not substantial evidence. Such opinions are "based on surmise, speculation, conjecture or guess." (*Hegglin*, *supra*, at p. 169.) It is precisely because proving the cause of a blood borne pathogen is difficult that the Legislature made a policy decision to relieve an applicant from having to meet the burden of industrial causation. Here, defendant has not overcome the presumption.

Next, it is clear that applicant was prescribed medication that allowed the JC virus to advance into PML. For example, PQME Dr. Franc explained immunosuppressive agents "can suppress the part of the immune system which keeps JC virus in check, and you can develop PML as a result of this." (Exhibit FF, lns 12-17.) And PQME Dr. Tirmizi stated the JC virus "may reactivate under conditions of immunosuppression, which is what has happened in [applicant's] case." (Exhibit AA, p. 2.)

Although defendant has provided evidence that the immune suppressant medication applicant took for a non-industrial condition allowed the JC virus to advance into PML, there is no evidence the immune suppressant medication *caused* the JC virus. Put another way, the immune suppressant medication did not cause the JC virus to exist in applicant's brain, but it did allow the existing JC virus to develop and later manifest during applicant's employment.

We understand the conceptual difficulty defendant has with application of the presumption to the facts of this case because on the surface it would appear the immune suppressant medication "caused" the injury by allowing the JC virus to progress into PML.

It is clear *a priori*, however, that without the JC virus being present during the use of immune suppressant medication, the JC virus would not have progressed into PML. It is a well-settled legal principle that the causation requirement of workers' compensation is satisfied where the employment is a contributing cause without which the injury would not have occurred. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5, 5705.) Here, the JC virus was clearly a contributing cause of applicant's injury.

Therefore, the JC virus is a legal cause of applicant's injury, and defendant has failed to controvert the presumption of industrial injury.

IV.

Following our independent review of the record occasioned by applicant's Petition, we are persuaded applicant has established the necessary evidence to trigger the blood-borne infectious disease presumption of section 3212.8 and that defendant has failed to controvert the presumption.

Accordingly, we grant applicant's Petition for Reconsideration, rescind the June 30, 2026 F&O, and substitute a new F&O that finds that applicant met her burden to show that the section 3212.8 blood-borne infectious disease presumption applies; that defendant failed to rebut the

presumption; that applicant sustained injury AOE/COE to the brain; and that all other issues are deferred.

For the foregoing reasons,

IT IS ORDERED that applicant's July 22, 2026 Petition for Reconsideration is **GRANTED**.

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the June 30, 2026 Findings of Fact and Order issued by the WCJ is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant met her burden to show that the blood-borne infectious disease presumption of Labor Code section 3212.8 applies.

2. Defendant failed to rebut the presumption in Labor Code section 3212.8.

3. Sage Cooper, while employed during the period of February 7, 2007, through September 21, 2022, as a Correctional Officer, Occupational Group Number 490, at San Luis Obispo, California, by CDCR - California Men's Colony, sustained injury arising out of and in the course of employment to the brain. The issue of injury to other body parts is deferred.

4. At the time of injury, the employer was legally uninsured.

5. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 5, 2026

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

SAGE COOPER
FERRONE LAW GROUP
STATE COMPENSATION INSURANCE FUND

PS/*cs*

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