WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ADAM BOOTH, *Applicant*

vs.

COUNTY OF VENTURA, permissibly self-insured; administered by SEDGWICK CMS, *Defendants*

Adjudication Number: ADJ17557045

Oxnard District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 31, 2024

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

ADAM BOOTH
LEWIS, MARENSTEIN, WICKE ET AL.
KEMPNER & ASSOCIATES, INC.

JMR/mc

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Adam Booth born on [ ] while employed through 12-18-2022 as a deputy sheriff at Ventura, California, by County of Ventura, alleged injury arising out of and occurring in the course of employment in the form of pancreatic cancer and liver cancer and that the presumption under Labor Code Section 3212.1 applies and has not been rebutted. Petitioner defendant County of Ventura seeks reconsideration of the 03/13/2024 decision that the presumption does apply and has not been rebutted.

II. CONTENTIONS

Petitioner contends that 1) applicant's diagnosis on 12/18/2022 is too far removed from his employment exposures from April of 2018 (when hired as a sworn peace officer) through his placement off work due to the diagnosis; 2) the opinions of Pedran Enayati, M.D., PQME (Joint Exhibits X and Y) are not substantial medical evidence and misconstrues the legal concept of the presumption; 3) the opinions of treating physician Sean Leoni, M.D. (Applicant's Exhibits 1, 2 and 3) are not substantial medical evidence; 4) that petitioner has been denied due process without further opportunity to develop the medical record.

III. FACTS

Applicant herein testified without rebuttal that in the course of his employment as a sworn peace officer between 2017 and 2022 he was exposed to gasoline fumes, benzene, drug paraphernalia, drugs, firearms and explosive discharges, gun cleaning and oiling materials, cigarette smoke, fire and other materials unknown (Summary of Evidence 12/19/2023).

Defendant's Exhibits J, K and L are material data safety sheets for locations where applicant worked describing various substances, some of which were not considered safety hazards, and some of which were so considered.

Applicant now suffers from pancreatic cancer, first diagnosed 12/18/2022 (Applicant's Exhibit 1, report of treating physician Sean Leoni, M.D. 03/29/2023).

From a medical expert standpoint, Pedran Enayati, M.D., PQME (Joint Exhibits X, Y and Z) as panel qualified medical examiner [said] that the most likely cause of the cancer is his industrial exposure. Dr. Leoni also so concluded.

Applicant acknowledged in testimony that he was exposed to gasoline and diesel fumes and welding fumes prior to his employment as a sheriff as well (Summary of Evidence 02/16/2024).

IV. DISCUSSION

There is no dispute as to applicant's exposure to carcinogens on the job.

There is no dispute that after some four years of such employment as a peace officer he developed pancreatic and liver cancer.

Petitioner essentially argues that applicant must bear the burden of proof of industrial causation despite the presumption set forth in Labor Code Section 3212.1. Applicant need not prove that the latency period for the development of his cancer is such that his industrial exposure did not cause the cancer. The burden was on petitioner to prove that the industrial exposures are not reasonably linked to the disabling cancer. There must either be no connection to the exposure and the cancer or "any such possible connection is so unlikely as to be absurd or illogical." City of Long Beach v. WCAB (Garcia) (2005) 70 CCC 109.

Drs. Enyati and Leoni did not have to establish that applicant cancer was caused by the industrial exposures (though they both so opined). They only had to demonstrate that the connection was not non-existent or absurd or illogical.

The medical literature offered by petitioner involves the medical demonstration of causation of certain cancers. The literature, however, does not address that demonstration through the lens of a legal presumption.

Where certain facts exist (industrial exposure), other facts *legally* exist (industrial causation of cancer) under a legal presumption, absent rebuttal as required by law. Here, Labor Code Section 3212.1 and the case law developed under it dictates a high bar for rebuttal. Petitioner had to prove that there was either no connection or a connection so unlikely as [to] be absurd or illogical. Neither could be shown.

Thus, there was no need to delay proceedings with development of the medical record after a full year of robust discovery. Petitioner asserts that the PQME lacked understanding of the relevant facts such as the length of time on the job and the arduous nature of the job. Neither facts

were ever in question and were not ignored by Dr. Enayati. The doctor's lack of understanding of Petitioner's assertion that Dr. Leoni did not have "any insight into the length of his (applicant's) assignments" ignores the fact that the industrial exposures are unquestioned. No specific level of actual exposure needs to be shown to prove causation; even a minimal exposure is enough to satisfy Applicant's burden. Faust v. City of San Diego (2003), *en banc*, 68 CCC 1822

The assertion that Dr. Leoni did not review the entire medical file or applicant's deposition ignores the fact that the sole medical evidence necessary is an expert medical opinion that applicant was exposed at work, developed cancer and the connection was not non-existent or absurd.

Petitioner distinguishes between the consideration of the latency period in Castellanos v. County of Los Angeles Fire Department (2022) 88 CCC 602 and the present case. There the trial level decision was based on opinions that three months of employment exposure was insufficient to be the cause of testicular cancer. In reversing and finding industrial causation by application of the Section 3212.1 presumption, the Board's noteworthy panel decision stated that the experts there did not support a latency period that would preclude development of cancer. Here petitioner states that defendant was denied due process because, unlike Castellanos, the doctors did not adequately address the latency theory. However, the evidentiary record here is actually *not* all that unlike the one in Castellanos. The doctors gave their opinions, which failed to establish a latency defense.

V. RECOMMENDATION

Based on the foregoing the undersigned WCALJ recommends that the petition for reconsideration be denied.

DATED AT OXNARD, CALIFORNIA

DATE: 04/03/2024

WILLIAM M. CARERO
WORKERS' COMPENSATION JUDGE