

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**DENISE LOPEZ, *Applicant***

**vs.**

**COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT, permissibly self-insured by  
SEDGWICK PASADENA, *Defendants***

**Adjudication Number: ADJ15489825  
Van Nuys District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
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 as quoted below, and for the reasons stated below, we will grant reconsideration, amend the WCJ's decision to find that the presumption of injury pursuant to Labor Code<sup>1</sup> section 3212 applies. We will otherwise affirm the March 17, 2024 Findings and Award.

To be considered substantial evidence, a medical opinion "must be predicated on reasonable medical probability." (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416–17, 419 [33 Cal.Comp.Cases 660].) A physician's report must also be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions. (*Yeager Construction 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, 612 (Appeals Board en banc), 70 Cal.Comp.Cases

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

1506 (writ den.)) For the reasons stated by the WCJ in the Report, we find that opinion of panel qualified medical evaluator (PQME) Robert Weber, M.D., to be substantial medical evidence which supports the finding of injury arising out of and occurring in the course of employment (AOE/COE) to the heart even absent the section 3212 presumption.

Moreover, we have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id.*)

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the March 17, 2024 Findings and Award is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the March 17, 2024 Findings and Award is **AFFIRMED**, **EXCEPT** that it is **AMENDED** as follows:

**FINDINGS OF FACT**

\* \* \*

2. It is found that the presumption of injury pursuant to Labor Code section 3212 applies to this applicant.

\* \* \*

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**June 7, 2024**

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

**DENISE LOPEZ  
STRAUSSNER, SHERMAN, LONNE, TREGER & HELQUIST  
ENGLAND, PONTICELLO & ST. CLAIR**

**PAG/pm**

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

**REPORT AND RECOMMENDATION ON  
PETITION FOR RECONSIDERATION**

**I  
INTRODUCTION**

Date of Injury:	CT 05/21/2007 to 11/07/2021
Age on DOI:	33
Occupation:	Custody Assistant
Parts of body claimed:	Heart
Identity of Petitioner:	Defendant, County of Los Angeles Sheriff' Dept. (PSI)
Timeliness:	The petition was timely filed on April 8, 2024
Verification:	The petition was verified
Date of Award:	March 17, 2024
Petition's Contention:	Petitioner contends the WCJ erred by: (a) acting without or in excess of her powers; (b) the evidence does not justify the findings of fact; (c) the findings of fact do not support the order, decision or Award.

**II  
FACTS**

Denise Lopez was employed as a full-time salaried custody assistant for the County of Los Angeles Sheriff's Department since 2007. Lopez worked at the Inmate Reception Center. She had a duty to guard the inmates and maintain jail security. Her duties included booking and releasing prisoners, supervising inmates during maintenance and cleaning activities, ordering bedding and uniforms, detaining inmates, searching them, and responding to emergencies. Lopez wore a duty belt equipped with a flashlight, pepper spray, handcuffs and a radio. Lopez normally interfaced with two to fifteen inmates until November of 2021. All of the inmates were male. Lopez was five feet five inches tall. She suffered a heart attack on November 7, 2021 and remained off work until October 3, 2022.

**III**

## DISCUSSION

### A. Heart Presumption

*Labor Code Section 3212* provides a presumption of industrial injury for hernia, heart trouble, and pneumonia for members of a sheriff's office or the California Highway Patrol, district attorney's staff of inspectors and investigators or of police or fire departments, firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting, and members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement. Said class of employees are covered whether they are volunteers, partly paid or fully paid. The statute excludes employees whose principal duties are clerical or do not clearly fall within the scope of active law enforcement services such as stenographers, telephone operators, and other office workers. The statute holds that the term "injury" includes pneumonia and heart trouble that develops or manifests itself during a period while the member is in the service of said agencies. The hernia, heart trouble or pneumonia so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of employment. The presumption is disputable and controverted by other evidence, but if it is not uncontroverted, the appeals board is bound to find accordance with it. The compensation awarded for hernia, heart trouble or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the workers' compensation laws of the state of California.

Defendant rejects the applicability of Labor Code Section 3212, citing *Enea v. WCAB (1997) 62 Cal. Comp. Cases 510*, which held that a Senior Cook at the County of Monterey County Jail was not entitled to the heart presumption pursuant to Labor Code Section 3212. In that case, Shirley Enea's work shift was from 1:00 a.m. until 9:30 a.m. She supervised a crew of approximately 13 inmates to prepare breakfast and lunch for approximately 1,000 jail inmates and employees. In October of 1994, Enea switched shifts with another cook and worked for seven consecutive days. During that period, she experienced instances of what she believed to be indigestion. While at home on the evening of October 29, 1994, Enea suffered a myocardial infarction. In denying reconsideration, the Board found that Enea was not entitled to the heart presumption in Labor Code Section 3212, because the statute extends benefits to specifically delineated public employees, but excludes those whose principal duties are clerical or otherwise "do not clearly fall within the scope of active law enforcement services such as a stenographer, telephone operators, or other office workers." The Board also concluded that the meaning of "active law enforcement service" excluded Enea from the benefits of Labor Code Section 3212. Additionally, the Board upheld the WCJ's determination that the applicant did not present substantial medical evidence that her heart attack was industrially related.

It should be noted that Commissioner Wiegand dissented from the majority's opinion, finding that Enea's job duties exposed her to an increased risk of physical harm by being a front

line supervisor of 13 county jail inmates who had access in the kitchen to instruments that could be used as a weapon. Furthermore, she worked under stressful conditions requiring the preparation of meals for 1,000 people under a strict deadline. Commissioner Wiegand cited *Ferguson v. WCAB (1996) 61 Cal Comp Cases 63* (writ denied), which held that a sheriff whose duties were to transport inmates was involved in active law enforcement given that his duties placed him in immediate peril. Commissioner Wiegand also opined that the medical evidence did support a finding of industrially related acceleration of Enea's arteriosclerosis and the onset of her myocardial infarction.

In the case at hand, Denise Lopez, a full-time salaried custody assistant who worked for the Los Angeles County Sheriff's Department inside the Inmate Reception Center, was charged with supervising up to 15 male inmates daily and authorized to search or detain them. She was also responsible for booking and releasing inmates. The fact that she wore a duty belt with law enforcement equipment including handcuffs, pepper spray, a radio and a flashlight demonstrated that she was exposed to imminent harm and required to maintain jail security. In fact, her personnel records (Exhibit B) contain a written commendation dated March 16, 2011 for assisting a senior deputy to control and restrain an inmate who exuberated erratic behavior and repeatedly struck his head against a glass window and a floor. Lopez testified at trial that on one occasion, she was alone and had to take corrective action against an unruly inmate by telling him to face the wall so she could handcuff him. Though Lopez is not a sworn peace officer, her job duties constitute active law enforcement, and her exposure to danger from working closely with inmates places her within the scope of the statutory framework intended to protect such safety personnel. Therefore, Lopez should be entitled to the heart presumption under Labor Code Section 3212.

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### B. Substantial Medical Evidence

Notwithstanding the finding of a presumption of industrial heart injury under Labor Code 3212.2, the reports of QME Dr. Robert Weber, whose medical specialty was cardiovascular disease, do constitute substantial medical evidence in determining that the applicant sustained an occupationally related heart injury.

At the initial evaluation, Dr. Weber noted that Ms. Lopez has worked as a custodial assistant for the County of Los Angeles since May 21, 2007. Dr. Weber specifically asked Ms. Lopez to describe the circumstances of her work and whether she had stress at home. The applicant told Dr. Weber that during COVID-19, she experienced anxiety over the possibility of contracting COVID-19, and inmates were quarantined, so the number of inmates available to establish a work crew diminished significantly, so as a result, Ms. Lopez and her co-workers had to perform multiple tasks that normally would have been performed by the inmates. The increased workload

caused her stress level to rise, and sometimes, she had no time to eat her meals. She felt tired and felt stress due to being unable to balance her work with her family life. Based on review of an EKG dated November 7, 2021, Dr. Weber gave a diagnosis of myocardial infarction secondary to spontaneous dissection of right coronary artery. Dr. Weber stated that given the applicant's custodial duties inherent in her job description, that Labor Code Section 3212.2 applied, and causation was considered industrial (Exhibit AA, page 5).

Dr. Weber was asked to provide a supplemental report addressing industrial or non-industrial causation absent the application of the heart trouble presumption. In his report dated August 26, 2022, Dr. Weber found that the applicant had Spontaneous Coronary Artery Dissection (SCAD), which was a rare, complex disease which occurs particularly in young women without traditional cardiovascular risk factors such as hypertension, hyperlipidemia, cigarette smoking, or strong positive family history. His opinion was supported by a peer-reviewed article published in a medical article published in Current Problems in Cardiology, March 2021; 46 (3) titled *Spontaneous Coronary Artery Dissection in relation to Physical and Emotional Stress: A Retrospective Study in Four Arabic Gulf Countries*. According to the study, the most common triggers for spontaneous coronary artery dissection were extreme emotional and physical stress. The data from 83 patients with a confirmed diagnosis of SCAD revealed that emotional and physical stress were defined as new or unusually intense stress, within one week of the initial hospitalization of the patients with SCAD. (Exhibit BB, page 2).

Defendant contends that Dr. Weber's reliance on this medical literature renders his opinion insubstantial evidence because the sample set of subjects had a median age of 44, and applicant was 33 years of age at the time of injury, and there is no indication that she had Arab ethnicity. However, there is no medical evidence offered by Defendant to rebut Dr. Weber's opinion.

Dr. Weber supported his opinion of industrial causation of Lopez's heart trouble by reiterating her description of increased work stress, including the consequence of the COVID pandemic and how it affected her workload. Dr. Weber stated that on the basis of the research cited, he determined that the applicant's myocardial infarction and spontaneous dissection of the right coronary artery was 70% industrial, and 30% non-industrial (Exhibit BB, page 5-6). In a supplemental report dated December 9, 2022, Dr. Weber pointed out that the applicant did not have a history of hypertension, hyperlipidemia or diabetes mellitus. He also determined that the applicant was temporarily totally disabled from November 7, 2021 until October 3, 2022. Ms. Lopez had informed Dr. Weber that she had returned to work as a custody assistant on October 4, 2022 (Exhibit CC, page 2). After reviewing additional medical records pertaining to the onset of Ms. Lopez's myocardial infarction as well as her subsequent medical treatment for her heart symptomatology, Dr. Weber did not alter his opinion on industrial causation (Exhibit DD, page 10).

Dr. Weber's finding of industrial cardiac injury absent the heart presumption still constitutes substantial medical evidence because he found reasonable medical probability of industrial causation. His opinion did not need to rise to the level of scientific certainty. This standard was established in *McAllister v. WCAB* (1968)33 Cal Comp Cases 660.

Furthermore, in the case of *Stephens v. WCAB* (1971) 36 Cal Comp Cases 610, The Court of Appeal annulled the WCAB's finding that a prison officer's heart condition was not work related based on a doctor who did not address Labor Code Section 3212.2 and opined that stress and stressful occupation did not cause or accelerate the applicant's heart condition. The court of appeal remarked that Labor Code Section 3212.2 was deemed a legislative mandate to recognize that stressful occupations of these classes not only can cause heart trouble, but there is a presumption that they do. Therefore, the doctor was found to have assumed an incorrect legal theory, and his opinion was held not to constitute substantial medical evidence. The Court of Appeal annulled the WCAB's finding of no industrial injury.

Since Dr. Weber did obtain a reliable history from the applicant, conduct a physical examination of the applicant, review pertinent medical records, and address the heart presumption, his finding of industrial causation for Ms. Lopez's heart condition were aligned with the legal standards of substantial medical evidence in *McAllister* and *Stephens*. Dr. Weber's opinion was unrebutted by any other medical opinion, and no other evidence was presented to suggest that his opinion was predicated on speculation, erroneous information, inaccurate history, or incorrect legal theory. At trial, Ms. Lopez testified credibly about her work stressors from constantly being around inmates and the escalation of her stress during the height of the COVID -19 pandemic (SOE, pg. 2). She also testified that approximately one month prior to the heart incident, she felt pressure on her chest while driving to work and joked with her co-workers that she thought she was having a heart attack. Ms. Lopez had requested the Thursday and Friday off preceding the heart incident which occurred on a Sunday because she felt that she needed time off from work (SOE, pg 4). This corroborated Dr. Weber's adoption of the theory of stress-induced Spontaneous Coronary Artery Dissection and his finding of industrial causation for the applicant's heart condition. There was no compelling factual nor medical evidence to controvert Dr. Weber's opinion on industrial causation for the applicant's heart trouble. Even if the heart presumption of Labor Code Sections 3212 or 3212.2 did not apply to Lopez, Dr. Weber's opinion constituted substantial medical evidence, and the record supports a finding of industrial heart injury.

### C. Labor Code 4850 Benefits

Labor Code Section 4850 provides a list of specific public employees who are eligible for paid leave of absence for up to one year during a period of disability arising from occupational injury or illness. The statute includes various law enforcement personnel and firefighters. Conversely, the statute also excludes certain employees whose principal duties are clerical or



mechanical or whose functions do not clearly fall within the scope of active law enforcement service.

Clearly, Ms. Lopez's duties as a custodial assistant would not place her in the excluded employee category. She completed a course through an academy to qualify for her to work as a custodial assistant. Ms. Lopez has the authority to detain inmates, to search them, and to respond to emergencies. Thus, her job functions come within the scope of active law enforcement service which entitle her to leave of absence with pay in lieu of temporary disability benefits. In the case of *Kimball v. County of Santa Clara* (1972) 24 Cal App 3d 780; 37 Cal Comp Cases 937, a correctional officer in the sheriff's department whose duties included supervising the conduct of inmates in living quarters, during meals and bathing, at recreation and on work assignments, was found entitled to Labor Code Section 4850 benefits. The Court of Appeal citing *Norioian v. Department of Administration*, 11 Cal. App. 3d 651, 654, looked to the legislative intent of Labor Code Section 4850.: "The reason for such exceptional treatment for policemen and firemen is obvious: not only are their occupations particularly hazardous, but they undertake these hazards on behalf of the public. The Legislature undoubtedly sought to ensure that policemen and firemen would not be deterred from zealous performance of their mission of protecting the public by fear of loss of livelihood. It cannot be seriously contended that the supervision of prison inmates is any less hazardous than the supervision of the general public by policemen." The court reasoned that the law enforcement service envisioned by section 4850 is that service which is actually performed by an employee and not necessarily only that which is set out in his job description. Thus, it was held that the correctional officer's functions "clearly come within the scope of active law enforcement service, and he is entitled to the benefits provided by section 4850."

Since Lopez's job duties as a custodial assistant, which require supervising inmates within the Inmate Reception Compound, are akin to those of the correctional officer in *Kimball* and are consistent with a public safety officer who engages in active law enforcement, and she is exposed to the same type of hazards as other peace officers, it is consistent with the legislative intent that applicant be entitled to Labor Code 4850 benefits.

Based on the credible testimony of Lopez that she had not been offered modified duties prior to October of 2022 (SOE, pg. 4) and the medical evidence (Exhibit CC, pg.5), applicant is entitled to Labor Code Section 4850 benefits for the period November 8, 2021 to October 3, 2022.

**IV**  
**RECOMMENDATION**

Petitioner's assertion that the Findings of Fact cited only Labor Code Section 3212.2 as the basis for the Award is well-taken. Labor Code Section 3212 was discussed in the Opinion on Decision, but it was not cited in the Findings of Fact nor the Findings and Award. Therefore, it is recommended that the Petition for Reconsideration be granted in part such that the Findings of Fact and the Findings and Award be modified to include a finding that the applicant is entitled to the heart presumption under Labor Code Section 3212..... As to the remaining issues raised by Petitioner, it is respectfully requested that the Petition for Reconsideration be denied.

DATE: April 22, 2024

**Jamie A. Louie**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE