

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

REBECCA HENDERSON, *Applicant*

vs.

**COUNTY OF BUTTE PROBATION DEPARTMENT administered by
LWP CLAIMS, *Defendants***

**Adjudication Number: ADJ14997874
Redding District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the Answer, and the supplemental pleading, 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.

I.

There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).) This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe &*

Foundry Co. v. Industrial Acc. Com. (Hinojoza) (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

Documents are deemed filed on the date received by the Appeals Board if they are received prior to 5:00 p.m. of a court day. (Cal. Code Regs., tit. 8, §10615(b).) If documents are received after 5:00 p.m., they are deemed filed as of the next court day. (*Id.*) This is consistent with the provisions of Government Code 11020(a), which provides that the business hours of state agencies are “from 8:00 a.m. to 5:00 p.m.” Therefore, to be timely, defendant’s Petition would have to have been received before 5:00 p.m. on June 10, 2024. Here, Case Events in the Electronic Adjudication System (EAMS) shows an EAMS batch date for the Petition for Reconsideration as July 12, 2024 at “10:34” (i.e. 10:34 a.m.). The record in FileNet in EAMS shows a “received date” or filing date of July 12, 2024 at “9:58 AM” for the Petition for Reconsideration.

On July 12, 2024, defendant filed correspondence regarding the Petition for Reconsideration stating that the Petition did not show up in EAMS and attaching a copy of the Petition for Reconsideration and a document showing the EAMS Batch ID which states, “Submission of this eform through EAMS constitutes service upon any internal DWC unit Batch ID: 40838643 Date: 06/04/2024 09:55:16 AM.” The Proof of Service confirms that the Petition was e-filed on June 4, 2024, and that applicant’s attorney was served with the Petition by U.S. Mail. This proof of service is further supported by applicant’s Answer, which was filed on June 19, 2024.

According to the January 1, 2013 Revision of the EAMS Reference Guide and Instructional Manual for Electronic Filing E-Form Filers (Manual),¹ once a document is e-filed in EAMS, the submitting party receives a Batch ID page with an ID number and the date and time it was submitted. (Manual, p. 14.) The party is instructed to save the page as confirmation of the date and time the document was submitted. (Manual, pp. 14-15, 18.) According to the Manual, an electronically submitted document is filed when it is successfully processed into EAMS. (Manual, p. 15.)

We accept defendant’s July 12, 2024 correspondence as a supplemental petition under WCAB Rule 10964 (Cal. Code Regs., tit. 8, §10964) and have considered it. Based on the Batch ID page submitted by defendant, demonstrating timely filing on June 4, 2024, the Petition for Reconsideration is timely filed.

¹ http://www.dir.ca.gov/dwc/eams/EAMS_ElectronicFilingEFormFilersGuide.pdf

II.

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part 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 Labor Code 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 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 July 24, 2024, and 60 days from the date of transmission is Sunday, September 22, 2024. The next business day that is 60 days from the date of transmission is Monday, September 23, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, September 23, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 20, 2024

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

**REBECCA HENDERSON
MASTAGNI HOLSTEDT
CUNEO BLACK WARD & MISSLER**

DLM/oo

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

**REPORT & RECOMMENDATION ON PETITION FOR
RECONSIDERATION**

**I.
INTRODUCTION**

- | | | |
|-----------------------------|---|--|
| 1. Applicant's Occupation | : | Probation Office Supervisor |
| Applicant's Age | : | 43 |
| Date of Injury | : | Continuous Trauma 8/29/2017 - 9/01/2017 |
| | : | Continuous Trauma 11/8/2018 - 11/25/2018 |
| 2. Identity of Petitioner | : | County of Butte Probation Department |
| Timeliness | : | See detailed discussion below |
| Verification | : | The Petition was verified |
| 3. Date of Findings & Order | : | 5/10/2024 |

**II.
TIMELINESS**

The Opinion On Decision and Findings of Fact issued 5/10/2024. Petitioner submitted a letter directed to the Workers' Compensation Appeals Board, dated 7/12/2024 which indicated that the Offices of Cuneo, Black, Ward & Missler filed a Petition for Reconsideration on June 4, 2024. Labor Code §5903 allows "... 20 days after service of any final order, decision, or award made and filed by the Appeals Board or a Workers' Compensation Judge granting or denying compensation, or arising out of or incidental thereto, any person aggrieved thereby may petition for reconsideration..." Taking into consideration time for service by US Postal Service, or any similar delivery service, the time period is typically extended to 25 days. Assuming a time limit of 25 days from the date of service of the Opinion on Decision and Findings of Fact, Petitioner's Petition For Reconsideration would be considered timely; however, that is a decision for the Honorable Commissioners to decide. The following Report & Recommendation is submitted assuming timely receipt of the Petition.

**III.
BACKGROUND**

Applicant Rebecca Henderson, was employed by the County of Butte since approximately 1998. At the time of her claims of industrial injury, she was employed as a Probation Officer for the Butte County Probation Department and had been a Probation Officer since April 2002.

As stated in the Opinion on Decision, the California Camp Fire started in Butte County on 11/08/2018 and quickly spread throughout the City of Paradise, CA and almost completely engulfed the entire city. It is also necessary to note that the City of Paradise was located on a bluff with virtually one way out of the city, being only a two lane road³ up/down the mountain. The Camp Fire was the deadliest and most destructive wildfire in California history, at that time, and also one of the most expensive natural disasters in the world in 2018. Most major thoroughfares were blocked due to the fire.

Being located on a bluff, there was only one major highway in and out of the city. Given the urgency of the fire and to assist residents in leaving the city, Law Enforcement set up perimeters and directed traffic out of the city on the one connecting highway. The two lane road was closed to traffic going up the hill towards the City of Paradise and both lanes utilized directing traffic down the highway to safer grounds.

The State of California has had a Mutual Aid System since its establishment in 1961. Pursuant to the California Governor's Office of Emergency Services for Law Enforcement, the System "has been used to restore order during emergencies, including civil unrest, and to provide assistance to local agencies during other unusual events or catastrophic disasters". The system divides the State into four levels of organization and seven Law Enforcement Mutual Aid Regions with the County Sheriff acting as "Operational Area Mutual Aid Coordinator". Assistant Chiefs are assigned to each of the seven regions. "The Regional Law Enforcement Branch Assistant Chief works directly with the jurisdiction to assist in plan development and resource coordination."⁴

With this background detailing the plans in place in the event of civil unrest and catastrophic disasters, and returning to the issues at hand, both Applicant Henderson and her previous supervisor testified as to how Rebecca Henderson, a Probation Officer Supervisor, became involved in mutual aid assisting in necessary duties during the fires.

Mr. John Dwayne Martin, currently the Assistant Chief Probation Officer, and still in the chain of

³ To be clear, one lane in each direction.

⁴ State of California Governor's Office Emergency Services Mutual Aid System.

command above Applicant Henderson, and actually her previous direct supervisor, testified that the Butte County Probation Department received a request for mutual aid shortly after the onset of the Camp Fire. His department, including Applicant Henderson, gathered in their break room. The request for mutual aid requested aid in helping to evacuate the Adventist Hospital in Paradise, in addition to assisting with looting patrol and road blocks. Those involved with assistance were given instructions and a map and reported to the Sheriff's administration. Applicant Henderson worked the Camp Fire the first seven days of the fire. She also worked the subsequent Ponderosa Fire for just one day, then the Wall Fire for one or two days.

In July 2021 Applicant Henderson was diagnosed with colon cancer. Her surgery removed 8 ½ inches of her colon. On 8/05/2021, Rebecca Henderson filed an Application for Adjudication of Claim alleging Cumulative Exposure to Carcinogens Caused Colon Cancer (presumptive). Shortly thereafter, Cuneo, Black, Ward & Missler served Notice of Representation on behalf of Butte County.

The parties proceeded to Medical Legal Evaluation by Timur S. Durrani, M.D., M.P.H., in the specialty of Occupational Medical and Toxicology. His first report, dated 2/14/2022, diagnosed Applicant with an invasive adenocarcinoma of the sigmoid colon. He also in that report, opined "There is insufficient evidence to conclude with reasonable medical probability, that Rebecca Henderson's colon cancer was caused by her work place exposures." He further opined insufficient evidence to determine apportionment, permanent and stationary status or give a rating of whole person impairment. Likewise, in his second report, dated 5/11/2022, he opined, "While it is possible her exposure caused her colon cancer, there is insufficient evidence to conclude, with reasonable medical probability, that Rebecca Henderson's colon cancer was caused by her work place exposures."

Applicant was again evaluated by QME Timur Durrani, M.D.. He issued a third report on 5/25/2023 and had his deposition testimony taken 11/02/2023. While QME Durrani, M.D. could not, at first, specifically state that Applicant Henderson's cancer was industrially caused, his closing opinion was that he did not have a basis to say that her exposures during July '17th August '17th and November '18th, could not have caused her colon cancer. The parties also questioned QME

Durrani regarding the issue of latency. QME Durrani opined at first using two different starting points, one the date the cancer was actually discovered and two, the date that the cancer would have started to develop to get to the level where it became discoverable. Using development at 20 millimeters, going back to zero millimeters, would take 240 day⁵; however, he opined several methods, each somewhat hypothetical. However, as somewhat of an end result, he noted that colon cancer has a latency period "from years to decades", partially depending on whether the cancer is aggressive, very aggressive or slowly aggressive. In the end, he did opine Applicant Henderson's cancer would be within the latency period, but with that latency period being a few years to 30 years.

On another point, California Penal Code §830.1 defines persons/occupations who qualify as peace officers, which includes (c) "or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency." California Penal Code §830.5 also defines persons who qualify as peace officers, whose authority extends to any place in the state which engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment or as required under Section 8597, 8598, and 8617 of the Government Code. Section (a) lists several job titles including that of probation officer, which also qualifies as a peace officer.

Applicant Henderson qualified under §830.1 because she was directed by her employer during a local state of emergency. Applicant Henderson qualifies under §830.5 as a probation officer, which was her normal job title.

Finally Labor Code §3212.1 describes multiple occupations including "peace officers, as defined in Section 830.1, subdivision (a) of Section 830.2, and subdivisions (a) and (b) of Section 830.37, of the Penal Code, who are primarily engaged in active law enforcement activities". Labor Code §3212.1 also in (b) states, "The term "injury", as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or

⁵ The 240 days based based *[sic]* on a growth rate of .083 assuming a linear group *[sic]*

she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director."

Subsequently, on 7/07/2022, the parties completed a Pre-Trial Conference Statement to proceed to trial as to (1) whether Applicant's colon cancer arose out of and in the course of her employment, (2) application of the cancer presumption in Labor Code §3212.1 in addition to (3) Applicant's status as a Penal Code §830.5 peace officer, occupational group 490 vs. 390 and Applicant's status as a Penal Code §830.5.

The parties then proceeded to trial on 10/17/2022 on the issues of:

1. Injury arising out of and in the course of employment in the form of colon cancer,
2. Applicant's correct occupational code,
3. Application of the Labor 3212.1 cancer presumption,
4. Applicant's status as a peace officer occupational group 490 versus 390,
5. Applicant's status as a Penal Code 830.5,
6. Applicant's status as a Penal Code 830.1,
7. Applicant Attorney fee.

Findings and Award issued on 12/29/2022 which found Applicant qualified as a Peace Officer under Penal Code. sections 830.1, 830.2 and 830.37.

It was also found that under the presumptions of Labor Code §3212.1, she qualified as a Peace Officer entitled to the presumption that her cancer arose out of and in the course of her employment. The issue of Attorney Fees was found to be not yet ripe as just the issues of injury arising out of employer, the cancer presumption, Applicant's status under the Penal Code sections and the specific occupational group were determined. No issue of permanent disability had yet been raised.

Defendant filed a Petition for Reconsideration to which Applicant filed a response. An Order Vacating and Rescinding the Opinion on Decision and to develop the medical record issued on 1/24/2023 as it was determined to be necessary for QME Durrani's opinions on the issue of latency for colon cancer.

On 3/05/2024, a new Pre-Trial Conference Statement was submitted. The parties proceeded to submit the case for submission on 3/06/2024, which was completed on 3/06/2024 with the submission of only QME Durrani's 5/25/2023 report and subsequent deposition on 11/02/2023.

Opinion on Decision issued 3/29/2024 which found insufficient evidence from QME Durrani to determine industrial causation.

Another Petition for Reconsideration which resolved, following which Findings of Fact and Opinion on Decision subsequently issued on 5/10/2024.

This most recent decision opined:

1. QME Durrani opined on a latency period within which Applicant's cancer arose.
2. Applicant's occupational group is 490, not 390.
3. Defendant's argument that because Applicant was not working full-time as a police officer, she should not be treated as a police officer was not sufficient. It was found that Applicant qualified as a peace officer both under Penal Code §830.1 (a) and (c) and Penal Code §830.5.
4. Given that Applicant qualified as a peace officer under both Penal Code §830.1 and §830.5, Applicant qualified for the cancer presumption under Labor Code §3212.1

IV. **PETITION FOR RECONSIDERATION OF 7/12/2024**

Petitioner cites *County of Imperial, permissibly self-insured, v. Workers' Compensation Appeals Board*⁶, and argues that while the injured worker in *Martinez* was performing regular police officer duties, Applicant was simply providing mutual aid. In response, yes, the undersigned totally agrees that Applicant Henderson was providing mutual aid, but the mutual aid she was providing consisted of police officer duties. She assisted with both evacuations and looting patrols, both normal duties of peace officers. A normal task of police officers or a solitary police officer is not only to investigate calls of attempted home burglaries, but also to drive through neighborhoods to prevent home burglaries, in other words, looting patrols. Another normal task of police officers is to provide whatever police duties are necessary in states of emergency as directed by the

⁶ Note- The WCJ left the citation out of the report. We added it, *County of Imperial, permissibly self-insured, v. Workers' Compensation Appeals Board (Martinez)*, (2020) 85 Cal. Comp. Cases 797 (W/D)

appropriate command centers.

The trial Judge in *Martinez*⁷ stated, as quoted by Petitioner, that the "dispute is whether applicant performed work outside of his regular classification of probation officer and was performing the duties of a peace officer as defined in Penal Code section 830.1". Applicant Henderson was also performing work outside of her regular classification of probation officer and performing the duties of a peace officer.

As Petitioner stated, "the Applicant in *Martinez* was performing the duties of a peace officer as defined in Penal Code section 830.1. So was Applicant Henderson. Applicant testified she was in full tactical gear, including her duty belt, laser, pepper spray **and weaponry**. And as previously stated, she was "performing other law enforcement duties as directed by her employing agency **during a local state of emergency**."⁸

During the trial testimony of John Dwayne Martin⁹, he testified that the mutual aid also included assisting with road blocks, again the normal and typical police officer duties.

In sum, at the time of her injury, Applicant was performing the acts and duties of a peace officer and qualifies as such under both Penal Code §830.1 (a)(3)(c) and §830.5(a)(5).

Petitioner also argues that "if all probation officers who are assigned to mutual aid are entitled to the presumption, then the statutory limitation on who is and is not covered no longer exists, and the intent of the legislature is nullified. Again, the undersigned agrees - to a point. The undersigned would rephrase the statement to read in part "if all probation officers performing acts of mutual aid during an emergency or during periods of civil unrest and performing acts of mutual aid within the State of California Mutual Aid System under the auspices of the Governor's Office Emergency Service.... It is not and would not be the wide open eligibility for one and all that Petitioner seems to predict. Let us not forget that at the time of Applicant Henderson's injury, the area was in the

⁷ *Ibid.*

⁸ California Penal Code §830.1(c).

⁹ Applicant's previous employer.

midst of a horrific firestorm. Applicant Henderson was called upon to assist in getting the residents out of the fire and safe. She was also assigned to protect peoples homes and belongings while the residents were fleeing the fires. Thus any other person would also have to qualify to the same or similar highly unusual set of circumstances.

As another part of the equation, Applicant was evaluated by QME Timur Durrani, M.D.. He issued three reports (2/14/2022, 5/11/2022, 5/25/2023) and had his deposition testimony taken 11/02/2023. While QME Durrani, M.D. could not, at first, specifically state that Applicant Henderson's cancer was industrially caused, his closing opinion was that he did not have a basis to say that her exposures during July '17th, August '17th and November '18[sic] could not have caused her colon cancer. The parties also questioned QME Durrani regarding the issue of latency. QME Durrani opined at first using two different starting points, one the date the cancer was actually discovered and two, the date that the cancer would have started to develop to get to the level where it became discoverable. Using development at 20 millimeters, going back to zero millimeters, would take 240 days¹⁰; however, he opined several methods, each somewhat hypothetical. However, as somewhat of an end result, he noted that colon cancer has a latency period "from years to decades", partially depending on whether the cancer is aggressive, very aggressive or slowly aggressive. In the encl, he did opine Applicant Henderson's cancer would be within the latency period, but with that latency period being a few years to 30 years.

And while the undersigned does fully agree with the quotations from Saal v WCAB⁹the evidence and facts herein appear to support that at the time of her injury, Applicant was:

1. Performing acts of mutual aid during the three fires she worked in 2017 and 2018
2. Those acts of mutual aid involved the duties of a peace officer under §830.1 and 830.

Petitioner may agree that the various components of this case make the perfect hailstorm. Be that as it may, given that Applicant Henderson was performing the duties of a peace officer at the time of her injurious exposure, Applicant Henderson thus qualifies for the presumption of Labor Code §3212.1 (b), specifically that the cancer Applicant Henderson was diagnosed with, "developed or

¹⁰The 240 days based based [sic] on a growth rate of .083 assuming a linear group

⁹ *Saal v. WCAB* (1975) 50 Cal.App.3d.3d, 40 Cal.Comp.Cases 456 .

manifested during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research. on Cancer, or as defined by the director.¹⁰ "

V.

CONCLUSION AND RECOMMENDATION

In Conclusion, while Applicant's regular occupation was that of a Probation Officer, during the emergency situations of the 2017 and 2018 fires, Applicant Henderson provided mutual aid as directed by her superior during a local state of emergency. That mutual aid was in the form and manner of a peace officer as detailed. Applicant Henderson thus qualifies as a peace officer and thus also qualifies for the cancer presumption of Labor Code §3212.1.

It is therefore respectfully recommended that Defendant's Petition for Reconsideration be denied in its entirety.

DATE: 7/23/2024

Mary Sulprizio
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

¹⁰ Labor Code §3212.1(b).