WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

STEVEN VLASIS (Deceased), ***Applicant***

vs.

COUNTY OF FRESNO, PSI;
Administered by ACCLAMATION INSURANCE MANAGEMENT SERVICES,
Defendants

Adjudication Numbers: ADJ11941968; ADJ11941983
Fresno 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/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 9, 2024

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

LIZANNE VLASIS (Applicant's Widow)
DAN EPPERLY & ASSOCIATES
BRADFORD & BARTHEL

LN/pm

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

INTRODUCTION

1. Applicant's Occupation: Deputy Sheriff
2. Age at Injury: 52 (ADJ11941968)
   54 (ADJ11941983)
3. Date of Injury: 4/21/17 (ADJ11941968)
   9/4/99 - 9/21/18 (ADJ11941983)
4. Parts of Body Alleged Injured:
   low back (ADJ11941968)
   Low back, neck, bilateral knees, hypertension, headaches, brain cancer (ADJ11941983)
5. Manner in Which Injury Alleged Occurred: cumulative trauma, cancer presumption
6. Identity of Petitioner: Defendant
7. Timeliness: Timely filed on 3/11/24
8. Verification: The Petition was Verified.
9. Date of Award: 2/13/24
10. Petitioner contends:
    a. Defendant rebutted the presumption of compensability under Labor Code section 3212.1
    b. There is no basis for penalty under either section 5814 or 5814.3.
    c. There is no basis for increase in temporary disability rate, permanent total disability rate or death benefit rate pursuant to Labor Code section 4458.5.
    d. Applicant was not entitled to temporary disability benefits after retirement.
    e. Applicant's spouse should not be entitled to presumption of total dependent pursuant to section 3501(b).

II
FACTS

Steven Vlasis, decedent, while employed by the County of Fresno as a Deputy Sheriff suffered an accepted injury to his back on 4/21/17 (ADJ11941968) and a cumulative trauma injury which was accepted for his low back, neck, bilateral knees, hypertension and headaches, but denied for brain cancer (ADJ11941983).

With regards to his alleged cancer injury, the decedent was evaluated by Dr. Jonathan Green as an Agreed Medical Examiner. In his report dated 9/22/20, Dr. Green diagnosed decedent with Glioblastoma multiforme (brain cancer).

(Exh. H, Dr. Green AME report 9/22/20, pg. 5.) The doctor noted that little is known about the etiology of this type of brain neoplasm, which is highly incurable. He cited a study which noted, "No underlying carcinogenic causes can be identified." The only confirmed risk known at this point in time is that of high-dose ionizing radiation. (Id. at pg. 6.)

The doctor stated that decedent's wife told him that her husband was exposed to lead when he would practice at the firing range. The doctor's review of recent medical literature indicated suggestive evidence for an association between lead exposure and brain tumor. Based upon his research, the doctor concluded with regard to the issue of causation, if the presumption does not apply, it is unknown why the decedent developed the brain cancer. However, if the presumption does apply, the primary site of the cancer is the brain, the carcinogen is lead which is a carcinogen defined as a "probable human carcinogen by the International Agency for Research on Cancer (IARC). (Id. at pg. 7-8.) Furthermore, based upon the recent data as to the association between lead exposure and brain cancer, the doctor was not able to conclude that the carcinogen in question, i.e., lead, did not cause the brain cancer afflicting Mr. Vlasis. (Id. at pg. 8.)

The deposition of decedent's treating radiation oncologist, Dr. William Silveira, was taken on 5/2/22. Dr. Silveira testified that he provided a consultation regarding adjuvant radiation therapy for the decedent and that he had never testified as an expert witness. (Exh. N, Dr. Silveira deposition transcript, 5/2/22, pg. 14:3-7, 19-22.) In preparation for the deposition, Dr. Silveira reviewed a chapter on the etiology of glioblastoma and a study referenced in that chapter. Based upon his review, the doctor opined that the etiology of glioblastoma is primarily unknown in most cases. (Id. at pg. 15:21 - 22) The doctor also stated that the study he had reviewed found that there was not an association or link between lead and glioblastoma. (Id. at pg. 16:17 - 25) The doctor further testified that he was unaware of any studies showing no association between benzene or the by-products of combustion and glioblastoma. (Id. at pg. 17:15-18:4.)

Dr. Silveira's deposition and the study he reviewed was provided to Dr. Green for his review and comment. In his report dated 6/16/22, Dr. Green opined that the study relied upon by Dr. Silveira was not conclusive and was no more powerful than the study he had referenced in his report of September 22, 2020. (Exh. K, Dr. Green AME report 6/16/22, pg. 5.) Dr. Green also noted that he could not state with any degree of medical probability that the lead or products of combustion did not cause the cancer in question. (Id. at pg. 6.)

Dr. Green's deposition was taken on March 12, 2021. At that time, he testified that gasoline contains benzene, that benzene is a carcinogen on the IARC list and that the decedent would have been exposed to benzene when he fueled his patrol vehicle. (Exh. P, Dr. Green deposition, 3/12/21, pg. 19:6-17.) Similarly, the doctor opined that benzene was in vehicle exhaust and the decedent would have been exposed to vehicle exhaust when he was behind a car writing tickets or from traffic. (Id. at pg. 19:20 - 20:4.) The doctor also testified that he was not aware of any studies stating that benzene and/or diesel exhaust do not lead to the development of the cancer in question. (Id. at pg. 22:4 - 8)

In his report dated 2/13/23, Dr. Green reviewed several articles and the deposition of Troy Paul concerning exposure to various potential carcinogens. The doctor opined that the decedent, as a patrol officer, would have been exposed to lead, benzene, formaldehyde and diesel exhaust, which are identified as carcinogens per IARC. (Exh. L, Dr. Green report, 2/13/23, pg. 4.)

The matter proceeded to trial on multiple issues including applicant's claimed injury of brain cancer, temporary disability, temporary disability rate pursuant to Labor Code section 4458.5, permanent disability, application of LC section 3212.1, death benefits, burial benefits, penalty under LC section 5414.3 or 5814 and whether the presumption for total dependency under LC section 3501 applies to the spouse.

At trial, Lizanne Viasis, decedent's spouse testified that she last worked for an employer in 2017. Prior to his death, she lived with the decedent and was dependent upon his income. (MOH/SOE, 11/30/23, pg. 6:16- 20.) She testified that prior to his death, her only source of income was from Social Security. (Id. at pg. 7:22 - 24.) Their 2020 joint income tax return showed $15,085 as her Social Security income. (Id. at pg. 8:1 - 2)

Prior to his death, decedent held title to four rental properties in his name alone and the income from the rental properties was approximately $3300 per month. (Id. at 7:11 - 15.)

The undersigned found the applicant was a statutorily covered employee who developed brain cancer during his period of service and he was exposed to multiple carcinogens while in the service of the County of Fresno; that the presumption of Labor Code section 3212.1 applied to applicant's injury and that defendant failed to rebut the presumption. The undersigned utilized Labor Code section 4458.5 to calculate earnings of $1,877.07 and a temporary disability rate

of $1,251.38. The undersigned found decedent's spouse earned less than $30,000 in the twelve months immediately preceding his death and was conclusively presumed to be a total dependent under Labor Code section 3501(b) and entitled to death benefits and burial costs. The undersigned found that defendant unreasonably rejected liability for applicant's claimed injury due to brain cancer subject to the presumption under Labor Code section 3212.1 and applicant was entitled to penalties of five times the unpaid temporary total disability and unpaid permanent total disability which exceeds the maximum penalty allowed under Labor Code section 5814.3. The undersigned also found applicant's spouse was entitled to penalties of five times the unpaid death benefits and burial expenses which exceeds the maximum penalty allowed under Labor Code section 5814.3. It is from these findings and the associated awards that defendant seeks reconsideration. Applicant has submitted a timely Answer to Defendant's Petition for Reconsideration.

III
DISCUSSION

Labor Code section 3212.1 sets forth a presumption of compensability for peace officers diagnosed with cancer. (Lab. Code§ 3212.1(a)(4)). The presumption applies if a statutorily covered employee demonstrates that cancer developed, or manifested during a period of service to the department, and that he or she was exposed to a carcinogen while in the service of the department as "defined by the International Agency for Research on Cancer (IARC) or as defined by the director [of the California Department of Industrial Relations]." (Lab. Code§ 3212.1(b)). Once this is shown, the employer has the burden of rebutting the presumption by proving that: (1) the primary site of the cancer has been established; and (2) the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. The employer cannot meet this burden by simply showing that no evidence has established a reasonable link between the known carcinogen and the cancer - it must affirmatively establish that a reasonable link does not exist. (Faust v. City of San Diego (2003) 68 Cal.Comp.Cases 1822, 1831 (appeals board en bane); See *City of Anaheim v. Workers' Comp. Appeals Bd.* (Pettitt) (2002) 67 Cal.Comp.Cases 1609 (writ denied)). The evidence must explicitly demonstrate that medical or scientific research has shown that there is no reasonable inference that exposure to the specific known carcinogen or carcinogens is related to or causes the development of the cancer. The expert evidence should include a review of

studies or other evidence that justifies an opinion or conclusion that there is no reasonable link.

Defendant contends that Applicant failed to meet his burden to prove actual exposure to some of the claimed carcinogens. Defendant contends that Applicant did not offer any Material Safety Data Sheets to establish exposure to Formaldehyde and/or Benzene. However, Applicant did offer credible, unrebutled testimony of Troy Paul who testified that he worked with the applicant at the Fresno County Sheriff's Office for approximately 20 years, while they were both in the Vice Unit, while they were both assigned to the court services unit and when they were both assigned to patrol. (Exh. 16, Deposition transcript of Troy Paul, 10/26/22, pg. 6:15 - 7:7) Mr. Paul testified that as part of his duties, the applicant, more likely than not, had been exposed to second hand smoke, pesticides from crop dusting, diesel exhaust, vehicle exhaust, gasoline fumes, air born particulate matter from firearms at the gun range, fumes and particulate matter from cleaning firearms and smoke from fires. (Id. at 7:23 - 8:21, 9:1 - 11:3, 13:20 - 14:19, 16:17 - 19:5, 20:6 - 22:5, 23:18 - 24:10.) In establishing exposure to a known carcinogen, evidence can be provided by the testimony of witnesses familiar with the injured worker's employment. (*Faust v. City of San Diego* (2003) 68 Cal.Comp.Cases 1822, 1826 (en bane.); *City of Compton v. Workers' Comp. Appeals Bd.* 76 Cal.Comp.Cases 991, 993 (writ den.))

Defendant contends that Dr. Green appears to simply accept at face value applicant was exposed to formaldehyde without any evidence to support the existence of formaldehyde in his patrol car. However, Dr. Green did review an article "Inhalation of two Prop 65-listed chemicals within vehicles may be associated with increased cancer risk", which he noted raised concern about the "potential risk associated with inhalation of benzene and formaldehyde for people who spend a significant amount of time in their vehicles, an issue that is [especially] pertinent to traffic-congested areas where people have longer commutes." It was based upon a review of this article studying risks associated with inhalation of benzene and formaldehyde while in vehicles and Mr. Paul's deposition about the amount of time the applicant spent in his patrol vehicle, that Dr. Green opined the applicant was exposed to benzene and formaldehyde while working. (Exh. L, supra., pg. 2 & 4.)

Defendant contends that there is evidence in the record indicating that formaldehyde is not causative of glioblastoma. Defendant then cites to studies that were never introduced or admitted into evidence at anytime prior to the Petition for Reconsideration. CCR 10945(b) requires citation of specific

references to the record. A party may not assert "factual statements" in a petition for reconsideration that are not part of the evidentiary record. (*Hill v. County of San Bernardino*, 2012 Cal. Wrk. Comp. P.D. LEXIS 74; *Redden v. MJT Enterprise, Inc., dba Blue Ribbon Personnel*, 2015 Cal. Wrk. Comp. P.D. LEXIS 263; Ruiz v. Wahoo's Fish Tacos, 2015 Cal. Wrk. Comp. P.D. LEXIS 266.) If the evidence cited is not contained in the record, it will not be considered and the party may be sanctioned for citing it. (*Deza v. The Home Depot*, 2008 Cal. Wrk. Comp. P.D. LEXIS 228; *Navarro v. Lockheed*, 2011 Cal. Wrk. Comp. P.D. LEXIS 388; *Arends v. URS Federal Support Services, Inc*., 2014 Cal. Wrk. Comp. P.O. LEXIS 143; *Moore v. Jemico,* LLC, 2017 Cal. Wrk. Comp. P.O. LEXIS 294.)

Defendant has requested that the WCAB take judicial notice of several studies, which were not submitted as evidence at the time of trial, nor identified at the time of the MSC. None of the studies were submitted to any medical expert in this case for review and comment, nor where they identified or provided to adverse party prior to the Petition for Reconsideration. Judicial notice may not be taken of any matter unless authorized or required by law. Evidence Code 450 et seq establishes the conditions for judicial notice. Pursuant to Evidence Code 453, the appeals board must take judicial notice of any matter specified in Evidence Code 452 if a party requests it and:

a. gives each adverse party sufficient notice of the requests, through the pleadings or otherwise, to enable it to prepare to meet the request; and
b. furnishes the court with sufficient information to enable it to take judicial notice of the matter.

Evidence Code 452 provides that judicial notice may be taken of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

In this case, the adverse party was given no notice of the request and had no opportunity to review the studies nor provide them to a medical expert for review and comment. In addition, as shown in the record, studies of this nature are subject to dispute and are not the type of matter of scientific certainty that are subject to judicial notice. (Exh. K, Dr. Green AME report 6/16/22, pg. 5.)

Defendant contends that they have met their burden of proving no association between benzene and applicant's brain cancer based upon a single reference made within the article "Lifetime occupational exposure to metals and welding fumes, and risk of glioma" which was attached to Dr. Silveria's deposition transcript. (William Silveria M.D. deposition transcript dated 5/2/22,

submitted 12/21/23, EAMS ID 49639126.) The single reference quoted by defendant does not reference any results or conclusions drawn by the study but is a mere mention of a prior study which had found an association between occupational exposure to metal, particularly iron, as well as to oil mist, and risk of meningioma. In contrast, this study found no associations observed for glioma risk. The mention that "there were no associations observed for glioma risk here or in other analyses assessing occupational exposure to solvents, combustion products, dusts and other chemical agents overall or according to sex, tumor histology, tumor grade, respondent status, and considering various exposure modeling approaches or lag time" is too general, nonspecific and not related to the subject study to support the finding suggested by defendant. In addition, this article was provided to Dr. Green for his review and comment. Defendant failed to question the doctor more specifically on the details of this or any other study when Dr. Green opined that ii was insufficient for him to state with any degree of medical probability that the lead or products of combustion did not cause the cancer in question. (Exh. K, supra. at pg. 6.)

It appears that defendant seeks to substitute their opinion as to the appropriate conclusions to be drawn from a review of various scientific review articles for those of the medical expert without ever questioning the doctor more specifically as to how and why the various studies cited do or do not affect his opinions. By so doing, defendant only references a portion of the study that Dr. Green reviewed and relied upon. In the article, "Occupational Lead Exposure and Brain Tumors: Systematic Review and Meta-Analysis" the defendant quotes language from the introduction, which discusses history of prior studies but fails to note the actual conclusion of the article which states, "this meta-analysis provides suggestive evidence for an association between lead compound exposure and brain tumor." (Exh. H, Report of Dr. Green, 9/22/20, attached article, "Occupational Lead Exposure and Brain Tumors: Systematic Review and Meta-Analysis," pg. 11.) This conclusion supports Dr. Green's opinion that he could not conclude that the carcinogen in question, i.e., lead did not cause the brain cancer afflicting Mr. Vlasis. (Exh. H, Id. pg. 8.)

Defendant next contends that because the IARC contains information regarding various cancer sites and which known carcinogens have sufficient evidence of harm to humans and which have limited evidence of harm to humans, it can be inferred that there exist studies showing a link does not exist between the cancer site in question and any carcinogen not listed for that site. Defendant provides no basis to support this interpretation. To the contrary, the fact that LC section 3212.1(b) references the IARC to be used to define a known carcinogen but does not reference the IARC in subdivision (d) to be used in

rebutting the presumption would imply that this reference alone is insufficient to rebut the cancer presumption.

Defendant contends that applicant's claim for penalties under LC section 5814.3 is barred by the statute of limitations imposed under LC section 5814 for no other reason than both statutes deal with penalties. Defendant claims that LC section 5814.3 is a derivative of section 5814 but provides no basis to support such a claim. If the Legislature intended 5814.3 to be a derivative of 5814, it could have been drafted as an amendment and a subdivision of 5814 rather than as a separate statute. The Legislature is presumed to act intentionally and purposely when it includes language in one section but omits it in another. (*People v. Woodhead* (1987) 43 Cal. 3d. 1002.)

Defendant contends that under *Gallamore v. WCAB* (1979) 44 Cal.Comp.Cases 321, only one penalty should have been imposed since all of the benefits, which the undersigned found were unreasonably delayed, stem from the single claim of injury and the denial of the single component of the claim and that there cannot be a basis for multiple penalties that stem from a single act of misconduct. However, in this case there were two legally separate and distinct acts, one which affected the inter vivos benefits due to the decedent and one which affected death benefits due to the dependent spouse following his death. That these are legally separate significant acts is supported by the requirement of a filing of a separate application for adjudication of claim for death benefits which do not automatically follow a claim for benefits made by the applicant prior to death.

Defendant contends that the imposition of a penalty under LC section 5814.3 was unwarranted because defendant had a legitimate good faith doubt as to its liability even in the face of the presumption of section 3212.1. However, as discussed above, defendant either relied upon evidence not properly admitted into evidence and never reviewed by the AME or upon an unwarranted assumption that the IARC alone could be used as a basis to rebut the presumption. The evidence properly admitted at trial was insufficient to rebut the presumption as to all carcinogenic agents to which the applicant had been exposed.

The legal date of injury for a cumulative trauma is defined by Labor Code section 5412 as the date upon which the applicant first suffered disability and either knew, or should have known, that such disability was caused by his present or prior employment. In this case, the first evidence of disability is found in Exhibit B, Dr. Rothi's report dated 6/26/19, wherein he notes that there had

been no prior loss time from work. The doctor found applicant's condition to be at maximum medical improvement and assigned permanent impairment. (Exh. B, Dr. Brian Rothi's AME report, 6/26/19, pg. 4, 12 - 13.) The 6/26/19 report also establishes applicant's knowledge that the disability was caused by the cumulative trauma.

Labor Code section 4458.5 provides for certain public employees who suffer an injury following termination of active service, and within the time prescribed in Section 3212, 3212.2, 3212.3, 3212.4, 3212.4, 3212.5, 3212.6, 3212.7 or 3213, irrespective of his remuneration from any postactive service employment, his average weekly earnings for the purposes of determining temporary disability indemnity, permanent total disability indemnity, and [permanent] partial disability indemnity, shall be taken at the maximum fixed for each such disability respectively, in Section 4453.

There is some split in prior decisions as to whether or not LC 4458.5 should apply to injuries covered by the cancer [presumption] under LC 3212.1, as it is not one of the sections specifically listed. In some cases, the board has held that an employee must have a presumptively compensable injury that is listed in LC 4458.5. (*Bachant v. City of Fresno*, 2007 Cal. Wrk. Comp. P.O. LEXIS 96; *Goslin v. City of Avalon*, 2009 Cal. Wrk. Comp. P.O. LEXIS 121.) The undersigned finds more persuasive those cases finding either that the plain language of LC 4458.5 only requires that the injury follows termination of active service and within the time prescribed by the various sections listed and not that the injury must be covered under the listed sections; or that there could be no legislative intent to exclude those injuries involving presumptions that were enacted after LC 4458.5. (See *City of Covina v. WCAB (Alvarez)* (2002) 67 CCC 1044 (writ denied); *Sillers v. City of Pleasant Hill*, 2018 Cal. Wrk. Comp. P.O. LEXIS 77; *City of Pinole v. WCAB (Field)* (2018) 84 CCC 22 (writ denied); *Jones v. City of Los Angeles*, 2020 Cal. Wrk. Comp. P.O. LEXIS 294; *California Highway Patrol v. WCAB (Hazelbaker)* (2021) 86 CCC 230 (writ denied); *California Department of Forestry and Fire Protection v. WCAB (Russell)* (2023) 88 CCC 572 (writ denied); *Clark v. City of Vallejo*, 2023 Cal. Wrk. Comp. P.O. LEXIS 144.)

In this case, applying LC 4458.5 to applicant's date of injury of 6/26/19 per LC 5412, applicant's earnings are set at $1,877.07 to produce a TD and TPD rate of $1,251.38 per week.

The defendant contends that applicant is not entitled to temporary disability benefits from April 24, 2020 to May 10, 2020, as he had previously

retired. Defendant relies upon *Gonzales v. WCAB* (1998) 63 Cal.Comp.Cases 1477, in which the court held that whether an employer is liable for [temporary] disability following retirement depends on his or her willingness to work. If the employee is retired for all purposes and not just from the particular employment, he would not be entitled to any temporary disability. (*Gonzales v. WCAB* (1998) 63 Cal.Comp.Cases 1477, 1479.)

To determine whether an employee is entitled to temporary disability following retirement, the Board must assess: (1) whether the employee is retired from all purposes or only from the particular employment; and (2) whether the decision to retire was related to the industrial injury. The burden is on the defendant to show that when the applicant left the employer, the employee truly did voluntarily remove himself or herself from the labor force. (*Berry v. Hospice of the Foothills*, 2018 Cal.Wrk.Comp. P.O. LEXIS 26). The employee then has the burden of proving that his or her intent to pursue work was interrupted by the industrial injury. (*Gonzales v. Workers' Comp. Appeals Bd*. (1998) 63 Cal.Comp.Cases 1477, 1479; Lab. Code§ 3202.5).

Defendant contends that decedent's income from rental properties was merely passive income and did not constitute earnings for the purposes of awarding TD. Defendant cites no authority for this contention.

In *Pinecrest Restaurant v. WCAB (Menicou)* (1999) 64 CCC 1114 (writ denied), in determining whether or not a spouse was entitled to the presumption of total dependence pursuant to LC section 3501(b), the board determined that the word earned in LC section 3501(b) involved something more than passive [receipt] of income. The board held that income from pension and social security was not derived from active employment efforts occurring during the 12 months prior to applicant's wife's death. The board also noted that income derived from rental income was less than the threshold of $30,000 and found that the finding of total dependency pursuant to LC section 3501(b) was justified. (*Pinecrest Restaurant v. WCAB (Menicou*) (1999) 64 CCC 1114, 1115. (writ denied)) While Pinecrest did not involve application of LC 4458.5, it does provide [guidance] in determining that income derived from rental properties as opposed to income from pensions or social security is considered active income.

Defendant contends it is inconsistent to determine that the decedent engaged in active employment activities following his retirement as related to his income from rental properties while also determining that his spouse is entitled to the conclusive presumption of total dependency under LC section 3501(b). Defendant relies upon a joint tax return for 2020 which showed a net

gain of $166,978.00 for the sale of two properties to show that applicant's spouse had earnings in excess of $30,000. (Exh. R, tax Records and Earnings for Lizanne Vlasis, pg. 17.) However, defendant ignores Ms. Vlasis' credible and unrebutted testimony that prior to his death, title on all of the rental properties was held solely by the decedent. (MOH/SOE, 11/30/23, pg. 7:14 - 15.) Her testimony is supported by the documentation attached to the tax returns which shows that Steve Vlasis was the purchaser of the property and Steve Vlasis is identified as the seller of the property with Lizanne Vlases listed as his representative with a power of attorney. (Exh. R, Id. At pg. 173, 94.) Income generated by the sale of the decedent's property cannot be imputed as separate income to the spouse merely because she assisted in preparing it for sale once the injured employee became incapacitated due to his industrial injury.

IV
RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

Date: March 26, 2024

Respectfully submitted

/s/ Debra Sandoval
WORKERS' COMPENSATION JUDGE