

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

**BRAD PEIRCE (Deceased),  
SHERRY HAYES-PEIRCE, *Applicant***

**vs.**

**STATE OF CALIFORNIA,  
DEPARTMENT OF CORRECTIONS AND REHABILITATION – SVSP,  
legally uninsured, administered by  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ14726665**

**Salinas District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration of the "Findings of Fact, Orders, and Opinion on Decision" (F&O) issued on November 1, 2022, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues.<sup>1</sup> This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that applicant's death was not industrial and ordered that applicant take nothing on her claim of death benefits. The WCJ deferred all other issues including statute of limitations and dependency as the issues were moot.

Applicant contends that the WCJ erred because the evidence established that applicant's industrial conditions of coronary artery disease and hypertensive heart disease contributed to applicant's death.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

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<sup>1</sup> Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been substituted in her place.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration we will rescind the November 1, 2022 F&O, and substitute a finding of fact that applicant's death was industrial. All other issues, including dependency, were deferred by the trial judge and are not presently before us. Accordingly, those issues are deferred to the trial level.

## FACTS

Per the WCJ's Report:

At the time of trial, the parties stipulated that Applicant, Brad Peirce, now deceased, while employed during a cumulative trauma period through 2/22/12 as a Correctional Sergeant, Occupational Group 490, at Soledad, California, by the State of California, Department of Corrections and Rehabilitation - Salinas Valley State Prison, had accepted industrial conditions of hypertension and coronary artery disease (atherosclerosis). Applicant claimed these conditions caused or contributed to his death on March 10, 2021. Defendant denied this claim and the matter proceeded to trial on the primary issue of whether applicant's death was caused or contributed to from the industrial heart conditions.

Additional issues of whether applicant's surviving spouse was a partial or total dependent, whether she was entitled to a statutory death benefit, Labor Code Section 5412 date of injury and the affirmative defense of Statute of Limitations were all raised, but ultimately found moot in light of a finding of a non-industrial death.

The parties filed post-trial memoranda of points and authorities on October 7, 2022, and the matter was ultimately submitted for decision on October 7, 2022. The decision finding the death to be non-industrial issued on November 1, 2022, and applicant's petition for reconsideration disputing the finding that applicant's death was non-industrial, was filed the same day.

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While the cause of death was non-industrial, PQME Ng indicated in his deposition testimony of May 27, 2021 (Exh. J-6) and report dated May 29, 2021, that the industrial conditions of hypertensive cardiac disease and coronary atherosclerosis were contributing factors to Mr. Peirce's death *in that these conditions rendered him more difficult to resuscitate once he went into cardiopulmonary arrest.* (J-5, pp. 41-42, emphasis added).

Applicant's treating cardiologist, Erol Kosar, M.D., also testified in his deposition of September 13, 2021, that he agreed with Dr. Ng that the industrial heart conditions would make it harder to resuscitate Mr. Peirce. His opinion was reinforced at p. 93, when he confirmed the industrial coronary artery disease and

coronary atherosclerosis made chances of resuscitation even less. (Exh. J-28, pp. 91, 93).

This turns the case to the issue of whether the reduced chance of successful resuscitation efforts arose out of and in the course of applicant's employment and "proximately" caused applicant's death. Dr. Ng's report of September 20, 2021, that the success rate for resuscitating people who have gone into cardiopulmonary arrest are "very poor." "The success rate is in the realm of less than 10% to occasionally over 10%." (Exh. J-4, p. 41). This opinion is reiterated in Dr. Ng's subsequent reports. The treating cardiologist, Dr. Kosar, similarly testified that the success rate of someone surviving cardiac arrest is about 10%. (J-28, p. 93).

(WCJ's Report, pp. 2-3.)

The WCJ found that applicant's death was not industrial and deferred the issue of the statute of limitations as moot.

## DISCUSSION

When applicant claims a physical injury, applicant has the initial burden of proving industrial causation by showing the employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302; Lab. Code<sup>2</sup>, § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (§§ 3202.5; 3600(a).)

The requirement of Labor Code section 3600 is twofold. On the one hand, the injury must occur in the course of the employment. This concept ordinarily refers to the time, place, and circumstances under which the injury occurs. On the other hand, the statute requires that an injury arise out of the employment. It has long been settled that for an injury to arise out of the employment it must occur by reason of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion. (*Clark*, 61 Cal.4th at 297 (internal citations and quotations omitted).)

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The statutory proximate cause language [of section 3600] has been held to be less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of employee benefits. In general, for the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a contributing cause of the injury.

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<sup>2</sup> All future references are to the Labor Code unless noted.

(*Clark, supra* at 298 (internal citations and quotations omitted).)

To constitute substantial evidence “. . . a medical opinion must 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.” (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

The parties presumably choose an agreed medical evaluator (AME) because of the AME’s expertise and neutrality. (*Power v. Workers’ Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) The Appeals Board will follow the opinions of the AME unless good cause exists to find their opinion unpersuasive. (*Ibid.*)

Here, applicant’s death was industrial. AME Dr. Ng’s testimony established industrial contribution to death to a reasonable degree of medical probability. Applicant’s underlying cardiovascular issues made him more susceptible to cardiac arrhythmia, and also made it more difficult to resuscitate him, both of which contributed to his death. (Joint Exhibit 26, Deposition of Jonathan Ng, M.D., May 27, 2021, p. 41, lines 15-20.) Accordingly, applicant established that his death was industrial.

Defendant argues that applicant died solely due to non-industrial conditions and that applicant cannot prove for certain that the industrial component contributed to death. This argument is not convincing. First, it ignores the opinions of Dr. Ng, who clearly opined that the industrial cardiac conditions contributed to death by making applicant more susceptible to cardiac arrhythmia and less susceptible to resuscitation. Defendant cites no evidence of considerable substantiality to reject the opinions of AME Dr. Ng.

Next, defendant fails to acknowledge the correct burden of proof in workers’ compensation, which is preponderance of the evidence. (§ 3202.5.) “Preponderance of the evidence” means that evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.” (*Ibid.*) Applicant is not required to prove her case with absolute certainty. Here, applicant has proven by *a preponderance of the evidence* that an industrial injury occurred.

Accordingly, as our Decision After Reconsideration we will rescind the November 1, 2022 F&O, and substitute a finding of fact that applicant's death was industrial. All other issues, including dependency, were deferred by the trial judge and are not presently before us. Accordingly, those issues are deferred to the trial level.

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Board that the F&O issued on November 1, 2022, is **RESCINDED** with the following **SUBSTITUTED** therefore:

**FINDINGS OF FACT**

1. Applicant, Brad Pierce, died on March 10, 2021, due in part to hypertension and coronary artery disease, which arose out of an occurred in the course of employment.
2. All other issues are deferred.

**IT IS FURTHER ORDERED** that this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

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



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

**February 28, 2025**

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

**SHERRY HAYES-PEIRCE  
DILLES LAW GROUP  
STATE COMPENSATION INSURANCE FUND, LEGAL**

**EDL/mc**

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