WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

HARBANS SINGH-KALER, ***Applicant***

vs.

STATE OF CALIFORNIA, Legally Uninsured, ***Defendant***

Adjudication Number: ADJ10863775
Bakersfield District Office

OPINION AND DECISION AFTER RECONSIDERATION

In order to further study the factual and legal issues in this case, we[1] granted applicant's Petition for Reconsideration of a workers' compensation administrative law judge's Findings and Award of Fact of January 17, 2020, wherein it was found that while employed as a chief engineer during a cumulative period ending April 18, 2017, applicant sustained industrial injury to the circulatory system and heart causing permanent disability of 54% after apportionment. Applicant's injury caused impairment in the forms of coronary heart disease and hypertension. In finding compensable permanent disability of 54%, it was found that "The presumption of Labor Code §3212.2 applies to this injury," but applicant's hypertension disability was reduced 40% by apportionment to nonindustrial factors. Additionally, applicant's permanent disability was rated by utilizing occupational code 332. Applicant's counsel was awarded an attorneys' fee of $10,553.10, calculated as 12% of applicant's gross permanent disability recovery.

Applicant contends that the WCJ erred in finding permanent disability of only 54%, arguing that (1) the hypertension disability constituted heart trouble under Labor Code section 3212.2, and thus should not have been apportioned, pursuant to Labor Code section 4663(e) and that (2) the WCJ erred in utilizing occupational group 332 in rating the permanent disability rather than occupational group 380. Additionally, applicant's counsel argues that it should be awarded

[1] Commissioner Marguerite Sweeney, who was on the panel in this case when the Order Granting Reconsideration was issued, no longer serves on the Appeals Board. Commissioner Joseph V. Capurro has been substituted in her place.

an attorneys' fee of 15% of the permanent disability recovery. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will defer the issues of permanent disability and attorneys' fees. As we discuss below, applicant's hypertension constituted "heart trouble" pursuant to Labor Code section 3212.2 and thus the hypertension disability is not apportionable pursuant to Labor Code section 4663(e). However, we return the matter for reanalysis of the occupational group and attorneys' fees issues.

A. Applicant's Hypertension Disability is Not Apportionable

Labor Code section 3212.2 creates a presumption that "heart trouble" developing or manifesting itself during the service of a prison guard or any other Department of Corrections employee having custodian duties, or within a specified period after retirement, is industrial. Section 3212.2 is part of a larger statutory scheme that applies similar protection to other safety workers. For instance, Labor Code section 3212 creates an almost identical presumption in favor of firefighters and section 3212.5 creates an almost identical presumption in favor of peace officers.

Labor Code section 3212.2 states in pertinent part:

> In the case of officers and employees in the Department of Corrections having custodial duties … the term "injury" includes heart trouble which develops or manifests itself during a period while such officer or employee is in the service of such department or hospital.
>
> The compensation which is awarded for such heart trouble shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workmen's compensation laws of this state.
>
> Such heart trouble so developing or manifesting itself in such cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

"In order for [an injured worker] to be entitled to the presumption embodied in section 3212, he must first show that his disability can be characterized as 'heart trouble.' As stated in *Baker v. Workmen's Comp. Appeals Bd.* [(1971)] 18 Cal.App.3d 852, 859: 'The presumption is

one of occupational causation; it is not a presumption that a disability is attributable to heart trouble." (*Muznik v. Workers' Comp. Appeals Bd.* (1975) 51 Cal.App.3d 622, 632 [40 Cal.Comp.Cases 578].)

The *Muznik* court reviewed the appellate cases that had found the existence of "heart trouble," and concluded as follows:

> [T]he phrase "heart trouble" assumes a rather expansive meaning. This result is further evidenced by the Legislature's decision not to utilize a medical term or to list or require any specific malady for the presumption of section 3212 to become operative, but rather, to employ a lay term which is not necessarily related to physical deterioration or "disease" at all. As defined in Webster's Dictionary, the term "trouble" when used as a noun covers a wide range of meanings, including distress, affliction, anxiety, annoyance, pain, labor, or exertion. The intent of the authors of the amendment adding the phrase "heart trouble" to section 3212 was no doubt to have the meaning of that phrase encompass any affliction to, or additional exertion of, the heart caused directly by that organ or the system to which it belongs, or to it through interaction with other afflicted areas of the body, which, though not envisioned in 1939, might be produced by the stress and strain of the particular jobs covered by the section. [Citation].

(*Muznik*, 51 Cal.App.3d at p. 635.)

In *Muznik*, the court cautioned that it was not holding that "hypertension, in every instance, constitutes 'heart trouble;' nor do we conclude that disorders in other areas of the body that do not place the heart in a 'troubled' condition, qualify as 'heart trouble.'" (*Muznik*, 51 Cal.App.3d at p. 635, fn. 5.) Nevertheless, the court reversed the WCAB's reliance on a medical opinion stating that the applicant's so-called "essential hypertension" did not constitute "heart trouble." As the *Muznik* court explained, "in applying the term 'heart trouble,' it is permissible to determine whether the interaction of [hypertension] with the heart has proven 'troublesome' to that organ or has required the heart to engage in disabling exertion or labor." (*Muznik*, 51 Cal.App.3d at p. 636.) Thus, in *Muznik*, the court found that the Labor Code section 3212 presumption arose in a case that hypertension contributed to, among other things, ventricular irritability that caused the heart to skip beats. (*Muznik*, 51 Cal.App.3d at p. 637.)

In this case, the medical evidence shows that applicant's hypertension caused heart trouble. Agreed medical evaluator internist Stewart Lonky, M.D. wrote in his March 12, 2018 report that, "there is a significant left ventricular hypertrophy it is my opinion that there should, be a change in the amount of impairment. According to the AMA Guides, Table 4- 2, the minimum amount

of impairment that is associated with left ventricular hypertrophy in patients with hypertension is a 30 percent impairment." (March 12, 2018 report at p. 3.) In fact, applicant's hypertension rates at 30%, which is class 3 hypertensive cardiovascular disease under table 4-2 of the AMA Guides precisely because wall thickening in the heart (i.e. ventricular hypertrophy) qualifies the impairment for class 3. The AMA Guides Table 4-2 makes clear that the presence of left ventricular hypertrophy "suggest more extensive end-organ damage." (AMA Guides, Table 4-2, p. 66.)

Indeed, consistent with the Court of Appeal's decision in *Muznik*, in *State of California v. Workers' Comp. Appeals Bd. (Knox)* (2005) 70 Cal.Comp.Cases 909, 910-912 (writ den.), it was found that high blood pressure which caused left ventricular hypertrophy which resulted in the need for medical treatment, but did not cause ratable disability, constituted "heart trouble" sufficient to raise the presumption of industrial causation. Similarly, in *Orange County Fire Authority v. Workers' Comp. Appeals Bd. (Sleep)* (2005) 70 Cal.Comp.Cases 1499 (writ den.), hypertension was found to constitute "heart trouble" giving rise to the Labor Code section 3212 presumption when "an echocardiogram revealed concentric left ventricular hypertrophy that was characteristic of hypertensive cardiomyopathy." (*Sleep*, 70 Cal.Comp.Cases at p. 1500.) In *Sleep*, the Appeals Board reversed the WCJ's finding of no industrial injury. As the digest summary of the Sleep case found in California Compensation Cases states:

> With regard to Applicant's claim for industrially caused hypertension/heart trouble, the [Appeals Board] found that the left ventricular hypertrophy shown in the echocardiogram, as noted by both [medical evaluators], fell within the meaning of "heart trouble" under Labor Code § 3212, giving rise to the presumption of compensability. The [Appeals Board] indicated that this finding was consistent with the broad interpretation of the meaning of "heart trouble" as set forth in *Muznik, [supra]* in which the court of appeal noted that the term "heart trouble" was expansive in meaning. The [Appeals Board] found that Defendant failed to meet its burden of proof and did not rebut the presumption of industrial causation set forth in Labor Code § 3212.

(*Sleep*, 70 Cal.Comp.Cases at p. 1502.)

We find the facts of our case indistinguishable from those in *Sleep* and *Knox*. Accordingly, we find that applicant's hypertension, which caused left ventricular hypertrophy, constitutes "heart trouble" for the purposes of Labor Code section 3212.2. Because applicant's hypertension falls under Labor Code section 3212.2, his disability is exempt from apportionment, as provided by

Labor Code section 4663(e). Accordingly, we amend the WCJ's decision to find that applicant's hypertension impairment is not subject to apportionment.

B. We Return This Matter to The Trial Level for Further Analysis of the Issues of Occupational Group and Attorneys' Fees

With regard to the issue of the proper occupational group for permanent disability rating purposes, we note that the WCJ did not rule on the issue of the applicant's apparent stipulation to Occupational Group 332 at the mandatory settlement conference. According to the Pre-Trial Conference Statement, which was completed at the December 13, 2018 mandatory settlement conference, the parties admitted that applicant's proper occupational group was 332. (Pre-Trial Conference Statement at p. 2.) The minutes of the June 19, 2019 trial do not record a stipulation to any occupational group, but under "Issues to Be Decided," state, "Occupational group, with the employee claiming today Group 380 and the employer maintaining it's still Group 332. Whether the applicant is bound by his representation of the occupational group at the [mandatory settlement conference]. ([Defendant] notes that at the December 13, 2018 MSC, the parties stipulated to Occupational Group 332.)" (Minutes of Hearing and Summary of Evidence of June 13, 2019 hearing at p. 2.)

Ultimately, the WCJ did not decide the issue of whether applicant was bound by the representation in the Pre-Trial Conference Statement, instead apparently determining on the merits that Occupational Group 332 best reflected the applicant's duties. Additionally, at the November 5, 2019 hearing, defendant attempted to introduce a document entitled "Chief Engineer 1, Correctional Facility Essential Functions." This item was marked for identification and its admissibility was deferred. However, it does not appear that a ruling was ever made.

We believe that the issue of applicant's proper occupational group must be reanalyzed, including the determination of the above unresolved issues. To the extent it is found that applicant is not bound by the representation on the Pre-Trial Conference Statement, the parties and the WCJ should further develop the evidentiary record on this issue, as the current record is not clear with regard to the applicant's work duties.

Finally, applicant's counsel requests an attorneys' fee of 15 percent of the permanent disability recovery rather than the 12 percent found by the WCJ. Since we defer the issues of occupational group and permanent disability indemnity, we necessarily defer this issue. Since the permanent disability indemnity recovery will increase as a result of the finding of no

apportionment and the potential for a higher occupational adjustment, the WCJ may determine a new attorneys' fee *de novo*. However, applicant's counsel is reminded in further proceedings that any request for an increase in the attorneys' fee must comply with Appeals Board Rule 10842, which states, "All requests for an increase in attorney's fee shall be accompanied by proof of service on the applicant of written notice of the attorney's adverse interest and of the applicant's right to seek independent counsel. Failure to notify the applicant may constitute grounds for dismissal of the request for increase in fee." (Cal. Code Regs., tit. 8, § 10842.)

Accordingly, we amend the WCJ's decision to reflect that apportionment of the hypertension disability is not appropriate, but to reflect that the issues of occupational group, permanent disability, and attorneys' fees are deferred. We express no opinion on the ultimate resolution of the outstanding issues.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of Fact of January 17, 2020 is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant, Harbans Singh-Kaler, age 58 on the date of injury, while employed during the period from January 7, 1991 through April 18, 2017 as a chief engineer, at Wasco, California, by the State of California, sustained injury arising out of and in the course of employment to the circulatory system and heart.

2. The presumption of Labor Code section 3212.2 applies to this injury.

3. At the time of injury, Applicant's earnings were $1,627.64 per week, warranting indemnity rates of $1,085.10 per week for temporary disability, and $290.00 per week for permanent disability.

4. Applicant has been adequately compensated for all periods of temporary disability claimed through September 19, 2018.

5. The injury was permanent and stationary on September 22, 2017.

6. Under the provisions of Labor Code section 4663(e), applicant's coronary artery disability is not subject to apportionment.

7. Under the provisions of Labor Code section 4663(e), applicant's hypertension disability is not subject to apportionment.

8. Applicant is in need of further medical treatment to cure or relieve the effects of this injury.

9. The issue of occupational group and consequently permanent disability are deferred, with jurisdiction reserved.

10. The issue of attorneys' fees is deferred, with jurisdiction reserved.

AWARD

AWARD IS MADE in favor of Harbans Singh-Kaler against the State of California as follows:

(a) Further medical treatment per Finding Number 8.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 25, 2025

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

HARBANS SINGH-KALER
ADAMS, FERRONE & FERRONE
STATE COMPENSATION INSURANCE FUND

DW/oo

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