WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

LENIN QUIROZ, *Applicant*

vs.

CITY OF LOS ANGELES, permissibly self-insured, *Defendant*

Adjudication Number: ADJ15563281

Van Nuys 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 arbitrator (WCA) with respect thereto. Based on our review of the record, and for the reasons stated in the WCA's report, which we adopt and incorporate, we will deny reconsideration.

I.

Former Labor Code[1] 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, 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.

[1] All further statutory references are to the Labor Code unless otherwise specified.

Under 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 Management 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 January 14, 2025 and 60 days from the date of transmission is Saturday, March 15, 2025. The next business day that is 60 days from the date of transmission, is Monday, March 17, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, March 17, 2025, so that we have timely acted on the petition as required by section 5909(a).

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

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on January 27, 2025, and the case was transmitted to the Appeals Board on January 14, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on January 14, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does

[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.

not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on January 14, 2025.

II.

The WCA's Finding that applicant's injury arose out of employment and occurred during the course of employment (AOE/COE) was supported by substantial medical evidence. A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. 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, 620-621 (Appeals Bd. en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Worker's Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].) On the other hand, there must be some solid basis in the medical report for the doctor's ultimate opinion; the Appeals Board may not blindly accept a medical opinion which lacks a solid underlying basis, and must carefully judge its weight and credibility. (*National Convenience Stores v. Workers' Comp. Appeals Bd. (Kesser)* (1981) 121 Cal.App.3d 420, 426 [46 Cal.Comp.Cases 783].) In other words, the Appeals Board must look to the underlying facts of a medical opinion to determine whether or not that opinion constitutes substantial evidence, and accordingly, the expert's opinion is no better than the facts on which it is based. (*Turner v. Workers' Comp. Appeals Bd.* (1974) 42 Cal.App.3d 1036, 1044 [39 Cal.Comp.Cases 780].)

The WCA properly relied upon the opinion of the agreed medical evaluator (AME), who the parties presumably chose because of the AME's expertise and neutrality. The WCA was presented with no good reason to find the AME's opinion unpersuasive, and we also find none.

(See *Power v. Workers' Comp. Appeals Bd*. (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

III.

An employee's occupation is one of the component parts for rating permanent disability. The reason for this is that it serves to assist in determining the relative effects of disability on various parts of the body while taking into account the physical requirements of various occupations. (*Holt v. Workers' Comp. Appeals Bd.* (1986) 187 Cal.App.3d 1257, 1261 [51 Cal.Comp.Cases 576].) For injuries occurring on or after January 1, 2013, rating is completed through use of the 2005 Permanent Disability Rating Schedule (PDRS) which contains 45 occupational group numbers. (Lab. Code, § 4660.1; 2005 PDRS, pp. 1-8.) Which occupational group number is to be applied in each case is a question of fact to be determined by the trier of fact. (*Dalen v. Workmen's Comp. Appeals Bd.* (1972) 26 Cal.App.3d 497, 503 [37 Cal.Comp.Cases 393].) It is also well established that an "employee is entitled to be rated for the occupation which carries the highest factor in the computation of disability." (*Id*. at pp. 505-506.) However, there must be evidence that the employee in fact performed the duties required of the more arduous occupation. (*Holt*, *supra*, at p. 1262.) An employee may also be entitled to a higher occupational group number if the activity (or activities) which generates the higher occupational group is an integral part of the occupation. (*National Kinney v. Workers' Comp. Appeals Bd. (Casillas)* (1980) 113 Cal.App.3d 203, 215-216 [45 Cal.Comp.Cases 1266].) Therefore, we will affirm the WCA's Finding that applicant's occupational group number is 490.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 17, 2025

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

LENIN QUIROZ
LEWIS, MARENSTEIN, WICKE, SHERWIN & LEE, LLP
OFFICE OF CITY ATTORNEY, CITY OF LOS ANGELES
TERRY L. SMITH, ARBITRATOR (ADR)

JMR/mc

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

ADR Case No: 4055929

LENIN QUIROZ:	**V.**	**CITY OF LOS ANGELES**
Insurance Company:		**Permissibly Self-Insured, Administered by ACME Administrators Now, Administered by Elite Claims Management**
Arbitrator:		**TERRY L. SMITH**

ATTACHMENTS

Arbitrator's First Amended Minutes of Hearing and Summary of Evidence January 7, 2025 (Page 18 of this Report and Recommendation)

Arbitrator's First Amended Findings and Award and Opinion on Decision January 7, 2025 (Page 26 of this Report and Recommendation)

Applicant's Exhibit 1:

Medical report of Fred Kuyt, M.D., dated October 27, 2023

Applicant's Exhibit 2:

Medical report of Fred Kuyt, M.D., dated July 7, 2023

Applicant's Exhibit 3:

Medical report of Fred Kuyt, M.D., dated April 4, 2023

Applicant's Exhibit 4:
Deposition Transcript of Fred Kuyt, M.D., dated March 28, 2024

Applicant's Exhibit 5:
Correspondence by Fred Kuyt, M.D., Arbitrator's dated December 4, 2024

Defendant's Exhibit A:
DWC-1 Claim Form, dated September 7, 2017

Defendant's Exhibit B:
Form 5020, Employers Report of Occupational Illness, dated September 11, 2017

Defendant's Exhibit C:
Delay of Claim, by ACME Administrators, dated September 18, 2017

Defendant's Exhibit D:
Letter to Applicant from ACME Administrators, dated September 29, 2017

Defendant's Exhibit E:
E-Mail to/from Applicant, ACME Administrators, City of Los Angeles, dated September 27, 2017

Defendant's Exhibit F:
E-Mail from Applicant to ACME Administrators, dated October 2, 2017

Defendant's Exhibit G:
Correspondence from Applicant's Attorney, dated November 30, 2021 (Notice of Claim and Opening Documents),

Defendant's Exhibit H:
Denial of Claim – ACME Administrator's, dated March 3, 2022

I.

INTRODUCTION

1.	Date of Injury Parts of Body Injured:	June 2, 2003 - September 3, 2017 Reproductive System (Testicular Cancer)
	Manner in which injury occurred;	Cumulative Trauma Exposure
2.	Identity of Petitioner Timeliness: Verification:	**Defendant** filed the Petition. The petition is timely. The petition is verified.
		Applicant filed an Answer.
3.	Date of Findings and Award:	December 9, 2024
	Date of First Amended F&A:	January 7, 2025

Petitioner contends that the Arbitrator erred in:

1. By the Order, Decision or Award the Alternative Dispute Resolution Arbitrator acted without or in excess of his power;
2. That the evidence does not justify the Finding of Fact and Order;
3. The Findings of Fact do not support the Order;

More Specifically, the Petitioner contends that the Arbitrator erred in:

1) Failure to Dismiss the Case Per Labor Code §5405, Statute of Limitations;
2) Medical Reporting of Agreed Medical Evaluator Fred Kuyt, M.D. is not substantial evidence;
3) The Arbitrator utilized Group #490 rather than #390.

II.

DISCUSSION

Defendant's attorney filed a Petition for Reconsideration after the Alternate Dispute Resolution Arbitrator issued Findings and Award, Opinion on Decision on December 9, 2024 and Amended Findings and Award, Opinion on Decision on January 7, 2025.

Pursuant to the December 9, 2024 Findings and Award it was determined that:

III.

FINDINGS OF FACT

1. LENIN QUIROZ, born [ ], while employed during the period JUNE 2, 2003 through SEPTEMBER 3, 2017, as a DETENTION OFFICER, at Los Angeles, California, by City of Los Angeles, sustained injury arising out of and in the course of employment to the REPRODUCTIVE SYSTEM (TESTICULAR CANCER).

2. At the time of the injury, the employer was permissibly self-insured and administered by ACME Administrators, now Administered by Elite Claims Management.

3. At the time of the injury, the employee's earnings were $1,413.74 per week, warranting indemnity rates of $942.49 for temporary disability and $290.00 per week for permanent disability.

4. Applicant is entitled to Permanent disability of 13%, after apportionment, amounting to 42.25 weeks of disability payments at the rate of $290.00 per week in the total sum of $12,252.50.

5. Occupational Group Number is 490.

6. Applicant is in need of further medical treatment.

7. Applicant's attorney is entitled to an attorney fee of $1,837.87.

8. The Statute of Limitations did not expire.

9. The Agreed Medical Examiner reporting is Substantial Evidence.

10. The Permanent and Stationary date is April 4, 2023 pursuant to the reporting of Agreed Medical Evaluator, Fred Kuyt, M.D.

IV.

AWARD

AWARD IS MADE in favor of LENIN QUIROZ and against CITY OF LOS ANGELES, permissibly self-insured, administered by ELITE CLAIMS MANAGEMENT, as follows:

a. Permanent disability of 13% amounting to 42.25 weeks of disability payments at the rate of $290.00 per week in the total sum of $12,252.50.

b. Further medical treatment to cure or relieve from the effects of the injuries herein.

c. Based upon the guidelines for awarding attorney fees found in Policy and Procedure Manual Index Number 1.140, reasonable attorney's fee of 15% of permanent disability indemnity award of $12,252.50, which is equal to $1,837.87, to be commuted off the far end of the Award.

My reasoning for these conclusions can be found in my Opinion on Decision:

V.

OPINION ON DECISION

STIPULATIONS

The Stipulations of the parties as set forth in the Minutes of Hearing taken from the Pre-Trial Conference Statement are accepted as fact.

ADMISSIBILITY OF EVIDENCE:

Applicant's attorney moved to admit Exhibit's 1-5 into evidence. They are as follows:

1. Medical report of Fred Kuyt, M.D., dated October 27, 2023
2. Medical report of Fred Kuyt, M.D., dated July 7, 2023
3. Medical report of Fred Kuyt, M.D., dated April 4, 2023
4. Deposition Transcript of Fred Kuyt, M.D., dated March 28, 2024

5. Correspondence by Fred Kuyt, M.D., Arbitrator's dated December 4, 2024

Defendant objected to Applicant's Exhibits #1 through #5 based upon lack of substantial evidence.

Applicant contended the reports and deposition are substantial evidence and as an Agreed Medical Evaluator should carry great weight.

The Defendant's objection is overruled and it is Ordered Exhibits 1-5 are admitted into evidence and given the weight they deserve.

FACTUAL BACKGROUND

Applicant, LENIN QUIROZ, born [ ], while employed during the period JUNE 2, 2003 through SEPTEMBER 3, 2017, as a DETENTION OFFICER, at Los Angeles, California, by City of Los Angeles, claims to have sustained injury arising out of and in the course of employment to the REPRODUCTIVE SYSTEM (TESTICULAR CANCER).

At the time of the injury, the employer was permissibly self-insured and administered by ACME Administrators, now Administered by Elite Claims Management.

At the time of the injury, the employee's earnings were $1,413.74 per week, warranting indemnity rates of $942.49 for temporary disability and $290.00 per week for permanent disability.

Mr. Quiroz filed a DWC-1 Claim Form on September 7, 2017 believing there was a presumption of injury. (Defense Exhibit "A", Page 145 of this Report and Recommendation)

The Employer issued a Form 5020, Employer Report of Illness on September 11, 2017, indicating there was a presumption of injury. (Defense Exhibit "B", Page 146 of this Report and Recommendation)

After Mr. Quiroz was advised there was no presumption as he was not a Sworn Officer, and he did not want his personal medical records reviewed, he decided to withdraw his claim for workers' compensation benefits, within his emails dated September 27, 2017 and October 2, 2017. (Defense Exhibit "E" and "F", Pages 152 and 155 of this Report and Recommendation)

1. Statute of Limitations

Defendant contends that compensation is barred by Section 5405, which limits the time in which an employee may commence proceedings for the collection of California workers' compensation benefits. They contend that applicant knew or should have known his testicular cancer was caused by his employment when he first filed his Claim Form on September 7, 2017. Thereafter, when the applicant filed his Application for Adjudication on November 30, 2021, the Statute of Limitations pursuant to Labor Code §5405 had expired.

In cases involving an alleged cumulative injury, the date of injury is governed by Labor Code §5412. This Section requires the applicant to have "disability" and "knowledge" the injury is caused by work.

The Court of Appeal has defined "disability" per §5412 as "either compensable temporary disability or permanent disability," noting that "medical treatment alone is not disability, but it may be evidence of compensable permanent disability, as may a need for splints and modified work. These are questions for the Trier of Fact to determine and may require expert medical opinion."

Applicant testified he filed his Claim Form (September 7, 2017) believing that his injury was covered by the presumption as indicated on the Form 5020 Employer Report of Illness After he learned the presumption did not apply, he withdrew his claim.

(Attachment Page 18 of this Report and Recommendation, First Amended Minutes of Hearing and Summary of Evidence, January 7, 2025, Page 7 line 28 and Page 8 line 1.)

Regarding the "knowledge" component of §5412, whether an employee knew are should have known his disability was industrially caused is a question of fact. An employee is not charged with knowledge that his or her disability is job-related without medical evidence to that effect, unless the nature of the disability and the applicant's training, intelligence and qualifications are such that he should have recognized the relationship between the known adverse factors involved in his employment and his disability.

The burden of proving that the employee knew or should have known rests with the employer. This burden is not sustained merely by showing that the employee knew he had some symptoms. This is because "the medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities

of lay arbiters."

Applicant testified he believed the September 29, 2017 and October 2, 2017 emails were his requesting to withdraw his claim as he did not qualify for the "presumptive" injury. He was "going through chemotherapy and everything was too much for him to cope with."

(Attachment Page 18 of this Report and Recommendation, First Amended Minutes of Hearing and Summary of Evidence, January 7, 2025, Page 6, lines: 2-4)

He further testified that no physician had advised him that he had a work-related condition until Dr. Kuyt.

(Attachment Page 18 of this Report and Recommendation, First Amended Minutes of Hearing and Summary of Evidence, January 7, 2025, Page 6, line: 8)

He further testified that he does not approve any sick time for other employees. He does not provide employees with time off from work.

(Attachment Page 18 of this Report and Recommendation, First Amended Minutes of Hearing and Summary of Evidence, January 7, 2025, Page 7, line: 11)

By considering the September 27, 2017 email (Applicant's email is dated September 27, 2017 and Aimee Cordier's response is September 29, 2017, Defense Exhibit "E",

Page 152 of this Report and Recommendation), and the applicant's testimony, it is found the applicant believed, after he learned that the presumption did not apply, that he could not maintain a workers' compensation claim and thus, withdrew the claim.

It is found based upon the entire record that defendant did not prove that Mr. Quiroz is a sophisticated person with regard to cumulative trauma workers' compensation illness, and that causation of his testicular cancer was not amenable to a lay arbiter, after he was advised there was no

presumption.

Therefore, based upon the entire record it is found the statutory limitations for filing a workers' compensation claim was tolled until Agreed Medical Evaluator Dr. Kuyt advised the injury was caused by Mr. Quiroz's exposure at work.

2. Dr. Kuyt's Reporting and Deposition Testimony is Substantial Evidence Re: Injury

Applicant claims to have sustained injury arising out of and in the course of his employment to the Reproductive System, (Testicular Cancer). Based on the medical reporting of Fred Kuyt, M.D. dated April 4, 2023, July 3, 2023, October 27, 2023 and his deposition testimony on March 28, 2024, and the credible testimony of Mr. Quiroz, it is found applicant sustained injury to his Reproductive System, (Testicular Cancer).

Applicant testified that on April 4, 2023, he worked at the "Glass House." This is the jail that is located in downtown Los Angeles, the "Metropolitan Detention Center."

While working at the "Glass House" location he is exposed to "leaky pipes." The building is very old, with no air conditioning and during the summer it is like an oven. The leaky pipes would drip down through the ceilings. The overflow of sewer water will come up from the floor drains. He saw black spots on the walls.

The building has two floors. He worked on both floors. The top floor housed the felony arrestees and the bottom housed the misdemeanor arrestees, the kitchen, the booking and processing area and the dispensary.

On occasion they would be required to close parts of the detention center for the safety of the Officers and the arrestees due to the sewer water backing up, which was dirty and caused them to slip on the floor. The Watch Commander advised that he considered the dirty water as a "biohazard." Other employees had what he called "respiratory problems". The employees would discuss the respiratory problems and state that they believed it was caused by the leaky pipes. They believed that the general conditions of the building made them sick. He worked at this location for six years.
After the Metro Detention Facility, the applicant went to work at the 77 Jail. This is located in South Central Los Angeles. The jail is located in the basement where there is no circulation without the air conditioner. They have the same leaky pipes and arrestees are backing up the toilets and water comes down from the top floor to the bottom floor. At times the arrestees will break the sprinklers and the water will flow from the top floor down to the bottom floor. He would see mold on the ceiling tiles. When the water would overflow the maintenance crew would come in to clean it up.
The booking area is in the jail facility for security reasons. He worked within the booking area. The floor above the basement is what he refers to as the second level. This is where they keep arrestees, male and female. When an inmate clogs the toilets or breaks the sprinklers water would flow down to the basement where he worked.

He believes he was exposed to mold and fungus at both jail facilities.
(Attachment Page 18 of this Report and Recommendation, First Amended Minutes of Hearing and Summary of Evidence, January 7, 2025, Page 4, line: 17 -Page 5, line: 10)

Applicant attended Agreed Medical Evaluator Fred Kuyt, M.D., in the field of Urology, and within an April 4, 2023 report Dr. Kuyt wrote:

> *"The latency period between environmental exposure and the inception of the prostate cancer was 17 years. This is appropriately beyond the ten to twelve-year minimal interval for genetic change to the development of cancer." (Applicant's Exhibit 3 Page 50 of this Report and Recommendation, Medical Report Fred Kuyt, M.D. dated April 4, 2023, Page 4, Paragraph 2)*

Within Dr. Kuyt's October 27, 2023 report, he wrote:

"Our office is in receipt of your 10/10/23 request for supplemental reporting identifying Mr. Lenin Quiroz's position with the Los Angeles Police Department as a Detention Officer, whose position does not qualify for the presumption under Labor Code §3212.1." (Page 2)

"As noted in the initial urologic evaluation of 4/4/23, Mr. Quiroz was a 44 year-old Caucasian male who sustained a cumulative trauma (CT) while performing his customary and daily work activities as a Detention Officer for the City of Los Angeles Police Department. In describing his specific work environment, Mr. Quiroz noted various jail facilities in which he worked, especially the older and dilapidated jail known as the Glass House in downtown Los Angeles. This particular facility and others like it were soaked in sewer water due to leaking pipes. There was no air-conditioning, making it feel like working in a damp oven during the summer. Concerns of mold and fungus were continuous. Inmates and Officers were regularly ill with respiratory diseases caused by these infectious toxins. It is not a coincidental observation that an increased risk to developing non-seminomatous testicular cancer exist from exposure to fungal and mold infested environments and those environments that contained DDT from pesticides and organochlorines. These chemicals are commonly used to sterilize such contaminated environments. After initial urologic evaluation it was with reasonable medical probability, under Labor Code §3212.1, that Mr. Quiroz's testicular cancer diagnosed on 9/3/17 arose out of his work environment which in this specific case, consist of ongoing toxic and carcinogenic exposure to pesticides, mold and fungus. Now that it has been determined that Mr. Quiroz's position as a Detention Officer is not presumed under Labor Code §3212.1, it is still determined that Mr. Quiroz's work environment with reasonable medical probability has contributed to the development of his testicular cancer." (Page 2)

"As to causation and apportionment, keeping in mind the non-industrial factors that have contributed to the development of Mr. Quiroz's non- seminomatous testicular cancer, also knowing that the cause of testicular cancer can be unknown, it is with reasonable medical probability that the development of Mr. Quiroz's testicular cancer is 60% apportioned to the industrial environment and 40% to the development of Mr. Quiroz's cancer to non-industrial causation. Absent the industrial environment, it is with reasonable medical probability that Mr. Quiroz would not have developed testicular cancer." (Applicant's Exhibit 1 Page 38 of this Report and Recommendation, Medical Report Fred Kuyt, M.D. dated October 27, 2023,Page 2, Paragraph 1 through Page 3, Paragraph 2).

Additionally, Dr. Kuyt testified at deposition on March 28, 2024 as follows:

"Well, I think after 35 years of working with testicular cancer, and if you interview anybody from John Hopkins or Mayo Clinic, Scripts, Cleveland clinic—if you interview anyone of them as a peripheral expert, I can guarantee you a 100% of them would agree with the conclusions that the environment and the situation is more than likely medically probable and a contributing factor in developing non-seminomatous. I mean there's got to be something that credits the expertise of us. (Applicant's Exhibit 4 Page 72 of this Report and Recommendation, Deposition Transcript Fred Kuyt, M.D. (Page 16, lines 12-21)

". . . . as an expert in this field, having worked with Dr. Donald Skinner and having done hundreds of tests for non-seminomatous tumors, this expert feels that it is within reasonable medical probability within his work environment

- - absent all nonindustrial localities - - to develop non-seminomatous testicular cancer that his work environment is the primary causative factor." (Applicant's Exhibit 4 Page 72 of this Report and Recommendation, Deposition Transcript Fred Kuyt, M.D., Page 22, lines 21-25.)

Although the employee bears the burden of proving that his injury was sustained in the course of his employment, the established legislative policy is that the Workmen's Compensation Act must be liberally construed in the employee's favor pursuant to Labor Code §3202.

Based on the Applicant's uncontradicted, credible testimony of the conditions the applicant worked in for 14 years and Agreed Medical Examiner's, Dr. Kuyt's, reporting and expertise according to his depo testimony, it is found applicant sustained industrial injury to his Reproductive System, (Testicular Cancer).

3. Occupational Group Number 490 vs 390

Applicant was hired by the City of Los Angeles on June 2, 2003, as a Los Angeles Police Department civilian Police Officer. His duties are to maintain custody of arrestees. He has held the same job title through today's date. On multiple occasions he has been required to use lawful force. He will assist Police Officers restraining arrestees. However, when the Sworn Officers are not present, the civilian Police Officers are required to handle the situation by themselves.

(Attachment Page 18 of this Report and Recommendation, First Amended Minutes of Hearing and Summary of Evidence, January 7, 2025, Page 4, lines: 6-10)

Based upon Mr. Quiroz's credible testimony that he used physical force to handle the arrestees within the jail facility, it is found that his Group Number is 490. It is not the specific designation of "sworn officer" or "civilian officer" that determines the Group Number, but the actual job duties of the person that controls. The Arbitrator notes that both 490 and 390, for a testicular injury results in the same "F" modifier and does not make any difference in this case, for rating purposes.

4. Whether Medical Reporting of Fred Kuyt, M.D. is Substantial Evidence.

Defendant argues that the reporting of Dr. Kuyt is not substantial evidence as he did not provide the parties with the peer reviewed studies he had read throughout his career on the issue of causation of testicular cancer.

Presumably, the Agreed Medical Evaluator was chosen by both parties because of his expertise and neutrality. Therefore, his opinion should carry great weight. It would have been better for the parties if the doctor provided some of the peer reviewed studies that he testified he has reviewed throughout his career. However, his failure to provide the articles does not make his reporting inadmissible.

If there were any studies that contradicted the doctor's opinions they could have been offered by defendant and the Agreed Medical Evaluator could have been cross-examined to alter his opinion and considered by the Arbitrator. There may not be any contradicting studies.

Additionally, the Workers' Compensation Arbitrator is aware there was some confusion at the beginning, by Dr. Kuyt and the parties, regarding whether the presumption pursuant to Labor Code §3212.1 applied. After Dr. Kuyt was advised the presumption did not apply, within his reporting he continued to opine that there was enough evidence of exposure for him to determine the testicular cancer was partially caused by applicant's exposure at work.

The Arbitrator opines that by reviewing the medical reporting and the deposition testimony of Dr. Kuyt that he is an expert in the field of testicular cancer. It is found that the medical reporting is substantial evidence regarding causation on this case.

VI.

ARBITRATOR'S COMMENTS ON RECONSIDERATION

Statute of Limitations - Date of Knowledge:

With regard to the "knowledge" component of Labor Code §5412, whether an employee knew or should have known his disability was industrially caused is a question of fact. *(City of Fresno v. Workers' Comp. Appeals Bd. (Johnson)* (1985) 163 Cal. App. 3rd 467, 471 [50 Cal. Comp. Cases 53].) An employee is not charged with knowledge that his or her disability is job-related without medical advice to that effect, unless the nature of the disability and the applicant's training, intelligence and qualifications are such that he should have recognized the relationship between the no adverse factors involved in his employment and his disability. *(Johnson, supra, at 473; Newton v. Workers' Comp Appeals Bd. (1993)* 17 Cal. App. 4th 147 [58 Cal. Comp. Cases 395].)

The burden of proving the employee knew or should have known rests with the employer. This burden is not sustained merely by showing that the employee knew he had some symptoms. (*Johnson*, supra, 163 Cal. App. 3rd 467, 471.) This is because "the medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters." *(Peter Kiewit Sons v. Industrial Acci. Com. (McLaughlin)* (1965) 234 Cal. App. 2nd 831, 839 [30 Cal. Comp. Cases 188].)

Defendant argues that the applicant knew or should have known he had industrially related testicular cancer because he filed a DWC–1 Claim Form on September 7, 2017. However, based on the applicant's testimony and the documentary evidence, it is clear the Claim Form was filed based on applicant's belief he was covered under the Presumption under Labor Code §3212.1 and not because he believed he had an industrially related claim without the presumption.

Applicant testified he filed his Claim Form on (September 7, 2017) believing that his injury was covered by the presumption as indicated on the Form 5020 Employer Report of Illness. After he learned the presumption did not apply, he withdrew his claim.

(Attachment Page 18 of this Report and Recommendation, First Amended Minutes of Hearing and Summary of Evidence, January 7, 2025, Page 7 Line 28 and Page 8 Line 1.)

Additionally, when the Arbitrator reviewed the contents of the Applicant's September 27, 2017 email, beginning with, "It's a sad and disappointing day, because I found out that presumptive injury is for sworn and fighters only. Someone else started this presumptive injury worker comp paperwork." that the applicant did not fully understand industrial causation of his testicular cancer. (Defense Exhibit "E", Page 152 of this Report and Recommendation)

The Arbitrator finds that the applicant did not fully understand causation of testicular cancer and without the presumption applicant did not feel he had a claim. It is also found the applicant did not have the requisite knowledge until he received the expert reporting of Dr. Kuyt regarding industrial causation. It is Defendant's burden to prove the applicant, "knew or should have known" he had an industrially caused testicular cancer and they failed their burden.

Medical Reporting of Fred Kuyt, M.D. is Substantial Evidence

The Defendant argues the medical reporting of Agreed Medical Evaluator Kuyt is not substantial evidence to prove industrial causation, as he did not provide the parties with the peer reviewed studies he had read throughout his career on the issue of causation of testicular cancer.

Presumably, the Agreed Medical Evaluator was chosen by both parties because of his expertise and neutrality. Therefore, his opinion should carry great weight. Dr. Kuyt's failure to provide the articles does not make his reporting inadmissible.

Applicant provided Dr. Kuyt with a description of his work environment for over a decade. Applicant provided uncontradicted, credible testimony at Arbitration of the same work environment.

The Workers' Compensation Arbitrator is aware there was some confusion at the beginning, by Dr. Kuyt and the parties, regarding whether the presumption pursuant to Labor Code §3212.1 applied. After Dr. Kuyt was advised the presumption did not apply, within his reporting he continued to opine that there was enough evidence of exposure for him to determine the testicular cancer was partially caused by applicant's exposure at work.

The Arbitrator finds that after hearing the uncontradicted, credible testimony of the applicant and review of the medical reporting and the deposition testimony of Dr. Kuyt that Dr. Kuyt is an expert in the field of testicular cancer and there is substantial evidence regarding causation on this case.

Occupational Group Number 390 vs. 490

Within applicant's September 27, 2017 email, he stated, "We deal with arrestees that SWORN officers bring to us. Last three months ago, I got into two USE OF FORCE, dealing with aggressive arrestees on PCP. But, we are not SWORN. We now work side by side with SWORN officers inside the JAIL."

The Arbitrator agrees with Defendant's Petition for Reconsideration, Page 13, lines 26-28, that Group #490 is defined in the PDRS as "Sworn Officers" and is also defined as "Workers called upon to perform demanding activities in unpredictable and dangerous circumstances" (2005 PDRS p. 3-36) "Use of force with aggressive arrestees on PCP," may be in a custodial environment, but it is also, definitely a "demanding activity in an unpredictable and dangerous circumstance." Thus, Occupational Group #490 is more appropriate in this case.

VII.

RECOMMENDATION

For the foregoing reasons, I recommend that the Petition for Reconsideration dated January 8, 2025, filed by Defendant, City of Los Angeles be Denied in its entirety.

Dated: January 27, 2025

Terry L. Smith, Arbitrator