

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

PHILLIP HOWLETT (DEC'D), et al., *Applicants*

vs.

**CALIFORNIA HIGHWAY PATROL, legally uninsured,
adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ14723140
Santa Rosa District Office**

**OPINION AND ORDERS
GRANTING PETITION
FOR RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Defendant seeks reconsideration of the “Findings and Award” (F&A) issued on May 12, 2025, by the workers’ compensation administrative law judge (WCJ). The F&A, in pertinent part, applied the presumption of compensability in Labor Code¹ section 3212.1 and found that applicant sustained industrial injury in the form of cancer resulting in applicant’s death while employed by defendant.

Defendant argues that it rebutted the presumption of compensability and that applicant’s last injurious exposure to carcinogens occurred while he was subsequently employed with the University of California Police Department.

We have received an Answer from applicant. The WCJ filed a Report and Recommendation (Report) recommending that we deny reconsideration.

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, we will grant the Petition for Reconsideration solely to correct technical errors in the Findings and Award. As our Decision After Reconsideration, we will rescind the May 12, 2025 F&A and reissue the F&A to correct for technical error. We make no substantive change to the decision.

¹ All future references are to the Labor Code unless noted.

FACTS

Per the WCJ's Report:

The applicant worked for Defendant CHP as an Officer from September 9, 1991 through December 30, 2015 when he retired; however, Applicant's last day of physical work with CHP was November 20, 2014. (MOH/SOE, p. 2, lines 23-29.) The applicant thereafter was employed as an Officer for UCSFPD from September 19, 2016 through December 31, 2022. (Id. at p. 2, lines 25-26.) The applicant last physically worked for UCSFPD in December 2020. (Joint Exh. 3, p. 3.)

Applicant filed an Application for Adjudication of Claim on June 3, 2021 for a cumulative trauma through November 30, 2020 against CHP claiming injury to his body in the form of cancer in his right thigh. Defendant denied the claim.

The applicant underwent surgery, chemotherapy and radiation, but succumbed to cancer on February 22, 2023. An Application for Death Benefits was filed on August 3, 2023.

On July 28, 2023, Defendant CHP/SCIF filed a Petition for Joinder of UCSFPD. (EAMS Doc. ID No. 47494177.) A Notice of Intent to Join UCSFPD issued by the undersigned, Judge Hengel, on July 31, 2023. (EAMS Doc. ID No. 76995796.) UCSFPD issued a timely objection to the Notice of Intent on August 4, 2023. (EAMS Doc. ID No. 47587815.) On September 9, 2023, Presiding Judge Boriolo issued an Order deferring the issue of joinder to Judge Hengel via Minutes of Hearing. (EAMS Doc. ID No. 77130814.) Thereafter, no action was taken by Defendant CHP/SCIF (Petitioner), and an Order for Joinder did not issue.

The applicant was evaluated by Panel Qualified Medical Evaluator (PQME) Dr. Richard Levy. Dr. Levy found the cancer to be related to Applicant's work at CHP. (Joint Exh. 3; Joint Exh. 4.) Dr. Levy determined that the latency period for the cancer diagnosis in 2020 was likely 3 to 5 years but could extend 10 to 30 years before diagnosis. (Joint Exh. 7; Joint Exh. 8, p. 3.) While Dr. Levy confirmed that UCSFPD could not be excluded, as Applicant's employment with UCSFPD falls into the latency period, he ultimately concluded that it "was more probable that the exposure from CHP duties from 1991-2014 would have [been] deemed the time period, including latency, for development of sarcoma. It is more medically probable than not that the CHP period of employment was responsible in terms of employment duration and latency period than UCSFPD. However, UCSFPD cannot be completely excluded given the latency discussion from my prior reports." (Joint Exh. 8.)

Based on Dr. Levy's reporting and the presumption under Labor Code section 3212.1, Presiding Judge Boriolo found in favor of the applicant against CHP. It is from this Findings and Award (in particular, Findings of Fact #2) that Petitioner seeks reconsideration.

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

Dr. Levy's finding of industrial injury was based solely upon the presumption of compensability. (Joint Exhibit 3, p. 7; Joint Exhibit 5, p. 5; Joint Exhibit 6, p. 4; Joint Exhibit 9, p. 6.) Nowhere within his reporting does he address causation of cancer using a traditional analysis. (See generally, *id.*)

Simply stated, it is more within reasonable medical probability that his exposure to any and all toxins as a field CHP officer had a causative role during patient's employment as a first responder. From a medical perspective, I believe that the California Presumption applies in this case. I see no clinical or medical grounds to refute the Presumption.

(Joint Exhibit 7, Report of Richard Levy, M.D., January 11, 2023, p. 4.)

DISCUSSION

I.

Former 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.

(§ 5909.)

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 June 9, 2025, and 60 days from the date of transmission is Friday, August 8, 2025. This decision is issued by or on August 8, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on June 9, 2025, and the case was transmitted to the Appeals Board on June 9, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 9, 2025.

II.

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; § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (Lab. Code², §§ 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.

* * *

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.

(*Clark, supra*, at pp. 297-298 (internal citations and quotations omitted).)

² All future references are to the Labor Code unless noted.

Notwithstanding the analysis in *Clark*, for certain occupations the Legislature created presumptions that physical injuries are compensable. One such presumption is the cancer presumption found in section 3212.1, which states, in pertinent part:

(b) The term “injury,” as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director. . .

(d) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. 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 120 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(§ 3212.1.)

Defendant does not challenge that the presumption applies to its employment of applicant. Instead, defendant argues that the presumption of injury further applies against applicant’s subsequent employer, the University of California and thus, California Highway Patrol is not the liable party.

Section 3212.1 applies to: “Peace officers, as defined in Section 830.1, **subdivision (a) of Section 830.2**, and subdivisions (a) and (b) of Section 830.37, of the Penal Code, who are primarily engaged in active law enforcement activities.” (§ 3212.1(a)(4), (emphasis added).) The cancer presumption also applies to the University of California **fire department**. (§ 3212.1(a)(1)(B).) Applicant’s employment with the California Highway Patrol is covered under the presumption as such officers fall within Penal Code section 830.2(a); however, applicant’s employment with the University of California Police Department is not covered within the presumption as such peace officers are defined in Penal Code section 830.2(b). This subsection is not included in the cancer presumption.

Defendant argues that it overcame the presumption of injury in section 3212.1 by showing that the injury occurred with applicant’s subsequent employer. It did not. All of Dr. Levy’s

opinions in this matter are based solely upon the legal presumption of compensability found in section 3212.1. Dr. Levy never addressed any method of proving industrial causation outside of the legal presumption. Applicant's subsequent employment with the University of California does not fall within the legal presumption. Defendant has provided no evidence that the subsequent employment caused applicant's cancer.

Defendant's entire petition for reconsideration appears premised upon a legal error, which incorrectly presumes that a University of California peace officer is covered under the cancer presumption. As defendant failed to produce any evidence that the University of California would be liable for this injury under a traditional causation analysis per *Clark, supra*, under these facts, we do not find that the University of California was a necessary party to adjudicate this dispute.

In reviewing the Findings and Award, there exists a technical error. The trial judge adopted the parties' incorrect stipulation to the period of applicant's employment. On the Minutes of Hearing and Summary of Evidence, the parties stipulated that applicant was jointly employed with the California Highway Patrol and the University of California during the period of November 30, 2015, through November 15, 2020. (Minutes of Hearing and Summary of Evidence, March 12, 2025, p. 2, lines 8-14.) However, this is clearly an error as the parties also stipulated that "Applicant last physically worked for CHP on November 20, 2014 and officially retired from CHP on December 30, 2015. Applicant worked for UCSF PD from September 19, 2016 until December 31, 2022." (*Id.* at p. 2, lines 28-29.)

Accordingly, we grant the Petition for Reconsideration solely to correct technical error as to the date of employment and injurious exposure. As our Decision After Reconsideration, we rescind the May 12, 2025 F&A and reissue the F&A to correct for technical error. We make no substantive change to the decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the May 12, 2025 Findings and Award issued by the Workers' Compensation Administrative Law Judge is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the May 12, 2025 Findings and Award issued by the Workers' Compensation Administrative Law Judge is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Phillip Howlett (dec'd), who was 55 years old on the date of injury, while employed by California Highway Patrol during a period of injurious exposure ending on November 20, 2014, sustained injury arising out of and in the course of employment to cancer and death.
2. The presumption in Labor Code §3212.1 applies and has not been rebutted.
3. Applicant's wife, Alicia Ann McDonald, and son, Kyle Howlett, are presumptive total dependents.
4. The applicant is entitled to temporary disability benefits at the weekly rate of \$1,356.31, subject to the statutory cap, the periods of which are deferred to the parties to adjust with jurisdiction reserved in the event of a dispute.
5. The reasonable value of the services of applicant's attorney is 15% of the benefits awarded herein.
6. All other issues are deferred with jurisdiction reserved.

AWARD

AWARD IS MADE in favor of PHILLIP HOWLETT (dec'd) against CALIFORNIA HIGHWAY PATROL of:

- a. Death benefits payable to Alicia Ann McDonald and Kyle Howlett as presumptive total dependents, less a reasonable attorney's fee of 15%;
- b. Reasonable burial expenses subject to the statutory maximum of \$10,000 payable to the estate of Phillip Howlett; and
- c. Temporary disability indemnity payable to the estate of Phillip Howlett at the weekly rate of \$1,356.31, less a reasonable attorney's fee of 15%, the period of which is to be informally resolved by the parties with jurisdiction reserved in the event of a dispute.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 8, 2025

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

**ALICIA ANN MCDONALD
KYLE HOWLETT
FARNSWORTH LAW GROUP
STATE COMPENSATION INSURANCE FUND**

EDL/abs

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