WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ROGELIO NUNEZ, *Applicant*

vs.

CITY OF VENTURA; permissibly self-insured, administered by ATHENS ADMINISTRATORS, *Defendants*

Adjudication Number: ADJ18593806
Oxnard District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on May 21, 2025, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment to psyche in the form of post-traumatic stress disorder (PTSD).

Defendant contends that applicant's claim was retaliatory. Defendant also contends that the record lacks the required diagnosis of PTSD based on the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association (DSM). Defendant further contends that the report of Qualified Medical Evaluator (QME) Linslee Egan, M.D., is not substantial medical evidence because Dr. Egan failed to perform a "Rolda" analysis and failed to address prior good faith personnel actions. (See *Rolda v. Pitney Bowes, Inc*. (2001) 66 Cal.Comp.Cases 241 (Appeals Bd. en banc).)

We received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto.

Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the Findings and Award issued by the WCJ on May 21, 2025, and

substitute new Findings of Fact, finding that applicant met the presumption in Labor Code section[1] 3212.15 and defendant failed to rebut it.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury in the form of PTSD while employed by defendant as a police officer, during the period from September 1, 2007, to October 30, 2023.

It is undisputed that applicant was employed as a police officer.

Applicant was evaluated by QME Dr. Egan, on April 30, 2024, who issued a report on May 30, 2024 (QME Report). Dr. Egan took a detailed history (QME Report, pp. 3-10), reviewed 154 pages of records (QME Report, pp. 2, 14-16, 34-74), and reviewed the results of diagnostic testing (QME Report, pp. 28-33; pages appended to QME Report, found at pp. 81-92 of the PDF). Dr. Egan diagnosed applicant with posttraumatic stress disorder, providing a detailed analysis of the basis for the diagnosis. (QME Report, pp. 10, 18-21.)

Applicant's primary treating physician (PTP) Lisa Isaac, Ph.D., also diagnosed applicant with PTSD. (Dr. Isaac's PTP report, dated January 2, 2024, p. 6.)

On March 6, 2025, the matter proceeded to trial. As relevant here, the issues were injury arising out of and in the course of employment to psyche and PTSD and the legal presumption of injury for PTSD pursuant to section 3212.15.

The parties stipulated that applicant while employed during the periods from September 1, 2007, through October 30, 2023, as a police officer, claims to have sustained injury arising out of and in the course of employment to his psyche and PTSD.

On May 21, 2025, the WCJ issued the Findings and Award, finding in relevant part that applicant while employed during the period from September 1, 2007 through October 30, 2023, sustained injury arising out of and occurring in the course of employment to psyche in the form of PTSD.

///

///

///

///

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

DISCUSSION

I.

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.

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 26, 2025, and 60 days from the date of transmission is Monday, August 25, 2025. This decision is issued by or on August 25, 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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on June 26, 2025, and the case was transmitted to the Appeals Board on June 26, 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 26, 2025.

II.

To be compensable, an injury must arise out of and occur in the course of employment. (Lab. Code, § 3600.) The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd*. (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) 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].)

However, in the case of certain public employees the Labor Code contains a series of presumptions of industrial causation. These presumptions are a reflection of public policy whose purpose is to provide additional compensation to employees who provide vital and hazardous services by easing their burden of proof of industrial causation.

Sections 3212 through 3213 contain a series of statutory presumptions regarding the industrial nature of various injuries applicable to certain public safety officers. "These presumptions provide that when specified public employees develop or manifest particular injuries or illnesses, during their employment or within specified periods thereafter, the injury or illness is presumed to arise out of and in the course of their employment." (*City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 310-311 [70 Cal.Comp.Cases 109].) Their purpose is to provide additional compensation benefits to employees who provide vital and hazardous services by easing their burden of proof of industrial causation. (*Ibid*.)

As explained by the Court of Appeal in *Marinwood Community Services, Inc. v. Workers' Comp. Appeals Bd. (Romo)* (2017) 10 Cal.App.5th 231, 241 [82 Cal.Comp.Cases 317] (quoting *Garcia, supra* at 310-311.):

> [I]n the case of certain public employees who provide 'vital and hazardous services' to the public [citation], the Labor Code contains a series of presumptions of industrial causation. These presumptions provide that when specified public employees develop or manifest particular injuries or illnesses, during their employment or within specified periods thereafter, the injury or illness is presumed to arise out of and in the course of their employment. (See

> §§ 3212 [hernia, heart trouble, pneumonia], 3212.2, 3212.3, 3212.4, 3212.5, 3212.6 [tuberculosis], 3212.7, 3212.8 [blood-borne infectious diseases], 3212.85 [exposure to biochemical substances that may be used as weapons of mass destruction], 3212.9 [meningitis], 3212.10, 3212.11 [skin cancer], 3212.12 [Lyme disease], 3213, 3213.2 [lower back impairments].) These presumptions are a reflection of public policy. [Citation.] Their purpose is to provide additional compensation benefits to employees who provide vital and hazardous services by easing their burden of proof of industrial causation.

Section 3212.15 creates a rebuttable presumption of industrial causation in favor of various public safety employees, including police officers such as applicant herein. Section 3212.15(b), as relevant here, states:

> […] [T]he term "injury," as used in this division, includes "post-traumatic stress disorder," as diagnosed according to the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and that develops or manifests itself during a period in which any [employee covered by the statute] is in the service of the [employer covered by the statute].

Section 3212.15(c)(2) then states in relevant part:

> [f]or an injury that is diagnosed as specified in subdivision (b): […] (2) The injury 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 other evidence, but unless so controverted, the appeals board is bound to find in accordance with the presumption. […]

Here, it is undisputed that applicant was a police officer in the relevant timeframe. Thus under section 3212.15(b) and (c), a "disputable" presumption of industrial injury arises where (1) there is a professional diagnosis of PTSD; and (2) the PTSD "develops or manifests itself" during a period covered by the statute, unless controverted by other evidence.

To be substantial evidence upon which a WCJ can rely, a medical opinion must be well-reasoned, based on an adequate history and examination, and it must disclose a solid underlying basis for the opinion. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc); see also *E.L. Yeager Construction v. Workers' Comp. Appeals Bd*. (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687].)

Here, QME Dr. Egan took a detailed history (QME Report, pp. 3-10); reviewed records (QME Report, pp. 2, 14-16, 34-74); reviewed the results of diagnostic testing (QME Report, pp. 28-33; pages appended to QME Report, found at pp. 81-92 of the PDF); and provided a detailed

analysis and solid underlying basis for the opinion that applicant sustained PTSD as a result of his employment as a police officer. (QME Report, pp. 10, 18-21.) Based on the record, the diagnosis of PTSD is well supported by the medical evidence. (Dr. Egan's QME Report; Dr. Isaac's PTP report, dated January 2, 2024.)

Here, the plain language of section 3212.15 compels a finding that applicant has sustained a presumptively compensable injury. There is no dispute that applicant is among the classes of employees for whom the presumption of section 3212.15 is available, or that the PTSD arose or manifested during applicant's employment. (Lab. Code § 3212.15, subd. (b), (c).) The medical record establishes a diagnosis of PTSD. (Dr. Egan's QME Report; Dr. Isaac's PTP report, dated January 2, 2024.) Applicant has thus met the burden of proof necessary for the presumption of industrial causation to attach, and the burden of proof now shifts to the defendant to affirmatively controvert the presumption, or we are "bound to find in accordance with [the presumption]." (Lab. Code § 3212.15(c)(2).)

The law is well-established that the burden of proof rests upon the party holding the affirmative of the issue and that they shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence. (Lab. Code, §§ 3202.5, 5705.) The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact. (Evid. Code, § 606; *Garcia, supra*, at 314.)

Accordingly, once the "facts giving rise to the presumption of industrial injury have been proven at the outset, the burden of proof negating the presumption falls upon the employer." (*Gillette v. Workmen's Comp. Appeals Bd*. (1971) 20 Cal.App.3d 312 [36 Cal.Comp.Cases 570].) It therefore falls to defendant to present medical evidence establishing that applicant's PTSD did not arise out of and in the course of employment, and to do so by a preponderance of the evidence.

Speculation and argument that applicant's diagnosis of PTSD was only partially industrial does not meet the affirmative burden of proof required to controvert the presumption. (*Zipton v. Workers' Comp. Appeals Bd.* (1990) 218 Cal.App.3d 980, 988, fn. 4 [55 Cal.Comp.Cases 78] ["[w]here facts are proven giving rise to a presumption under one of these statutes, the burden of proof shifts to the party, against whom it operates, to prove the nonexistence of the presumed fact, to wit, an industrial relationship"].) Moreover, defendant's contentions misconstrue the legal standards set forth in section 3212.15. Here, defendant presents no evidence in the petition to support that it rebutted the presumption. In the absence of evidence that affirmatively controverts

the presumption, defendant has not met its burden of proof, and we are bound to find in accordance with the presumption of industrial injury. (Lab. Code, § 3212.15(c)(2).)

As applicant met the presumption under section 3212.15, we need not perform a *Rolda* analysis under section 3208.3, including defendant's contentions regarding a good faith personnel action.

With regard to defendant's argument that applicant's claim was a retaliatory action, our review of the record does not support this contention. Moreover, as defendant presents no statutory or decisional authority to support the contention, it is disingenuous at best, bordering on frivolous.

Accordingly, we grant defendant's Petition, rescind the Findings and Award issued by the WCJ on May 21, 2025, and substitute new Findings of Fact that find that applicant met his burden of proof under section 3212.15, that defendant did not rebut the presumption, and that applicant sustained injury to psyche in the form of PTSD.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued by the WCJ on May 21, 2025 is **RESCINDED** and the following **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Rogelio Nunez born on [] while employed during the period from September 1, 2007 through October 30, 2023, as a police officer at Ventura, California, by City of Ventura, insured by Athens Administrators, met his burden to show that the presumption in Labor Code section 3212.15 applies to his injury.

2. Defendant did not rebut the Labor Code section 3212.15 presumption.

3. Applicant sustained injury arising out of and occurring in the course of employment to psyche in the form of PTSD.

4. The injury resulted in temporary disability for the period October 30, 2023, through May 1, 2024, at the maximum rate, subject to Labor Code section 4850, less 15% attorney fees and interest.

AWARD

AWARD IS MADE in favor of ROGELIO NUNEZ against CITY OF VENTURA of:

a. Temporary disability indemnity at the maximum rate per week beginning October 30, 2023 through May 1, 2024, subject to Labor Code section 4850, and interest, less 15% attorney fees, payable to the law offices of Gordon Edelstein Krepack Grant Felton & Goldstein, LLP, to be calculated between the parties, with the board reserving jurisdiction for any disputes.

b. Further medical treatment.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 25, 2025

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

ROGELIO NUNEZ
GORDON, EDELSTEIN, KREPACK, GRANT, FELTON & GOLDSTEIN
EMPLOYER DEFENSE

JB/*pm*

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