WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSE NUNEZ, *Applicant*

vs.

CDCR-CALIPATRIA STATE PRISON, legally uninsured, administered by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ12936570
San Diego District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted applicant's Petition for Reconsideration of the "Findings and Order" (F&O) issued on April 18, 2022, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that defendant rebutted the presumption of compensability found under Labor Code section 3212.2 and ordered that applicant take nothing on his claim of injury to the heart and in the form of hypertension.

Applicant contends that defendant failed to submit substantial medical evidence to support rebuttal of the heart presumption. Applicant also seeks removal and alleges that language in the WCJ's opinion could be construed as precluding a finding that applicant qualifies for the presumption.[1]

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

[1] To the extent that applicant's petition for removal was filed separately, all issues in this case should have been filed within a singular petition for reconsideration. Multiple petitions for reconsideration and removal are not necessary when both seek appeal from the same decision. Accordingly, we have treated the petitions as a single petition for 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 and for the reasons discussed below, as our Decision After Reconsideration we will rescind the April 18, 2022 F&O and substitute a new finding of fact that defers the issue of whether the presumption applies and returns this matter to the trial level for further proceedings.

FACTS

Applicant was employed as a registered nurse when he claims to have sustained a cumulative injury through January 29, 2020 to his heart and in the form of hypertension. (Minutes of Hearing and Summary of Evidence, February 2, 2022, p. 2, lines 4-8.)

This matter proceeded to trial on the issue of injury arising out of and occurring in the course of employment and "Whether or not the presumption is rebutted by the PQME's findings." (*Id*. at p. 2, lines 21-24.) Although the framing of the issue implies that the parties agreed that applicant is subject to the presumption of compensability under Labor Code[2] section 3212.2, the parties did not stipulate to such a fact.

Applicant was seen by qualified medical evaluator (QME) Richard Friedman, M.D., who authored one report in evidence and was deposed.

Dr. Friedman took a history of work duties as follows:

> This 53-year-old male was working as a registered nurse at Calipatria State Prison. He states that he had been doing this for approximately six years and had been a nurse for approximately 10 years. He currently works in the Emergency Room then triage and treatment and states he works approximately 60 hours per week at the present time.

(Joint Exhibit 1, Report of Richard Friedman, M.D., July 21, 2020, p. 1.)

Dr. Friedman diagnosed applicant as having both hypertension and mild left ventricular hypertrophy. (*Id*. at p. 4.)

Dr. Friedman opined on causation as follows:

> With regard to apportionment, this would be apportioned to nonindustrial factors 100% in that the type of nursing that he does and the location of the nursing that he does should not put him at increased stress compared to other comparable nursing jobs in other areas. This has not been thought to be a significant contributing factor to hypertension, any more than any other type of occupation.

(*Id*. at p. 5.)

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

Although Dr. Friedman uses the term 'apportionment', he assigned no permanent disability because applicant was not permanent and stationary, and thus, it appears he used the term inartfully to describe causation of injury.

DISCUSSION

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).) "When the foundation of an expert's testimony is determined to be inadequate as a matter of law, we are not bound by an apparent conflict in the evidence created by his bare conclusions." (*People v. Bassett* (1968) 69 Cal.2d 122, 139.)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

Pursuant to section 3212.2: "For an officer and employee in the Department of Corrections and Rehabilitation having custodial duties and for a peace officer, as defined in Section 830.38 of the Penal Code, employed by the State Department of State Hospitals, the term "injury" includes heart trouble that develops or manifests itself during a period while such officer or employee is in the service of such department or hospital."

The 'heart trouble' presumption in section 3212.2 is identical to that contain in section 3212. "In order for [an injured worker] to be entitled to the presumption . . . 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 [36 Cal.Comp.Cases 431]: '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].

(*Id.* at p. 635.)

Here, applicant suffers from both essential hypertension and left ventricular hypertrophy. It would appear that the left ventricular hypertrophy would constitute heart trouble within the statutory presumption; however, the parties have not established whether applicant is subject to the presumption. Instead, they have only submitted the issue of whether defendant has rebutted the presumption. Rebuttal of a presumption is only analyzed if a presumption exists. Accordingly, we will return this matter to the trial level to decide the issue of whether the presumption applies in this case.

As to the specific issue presented, defendant has not rebutted the presumption of compensability as the current reporting of the QME does not constitute substantial evidence. The QME did not take an adequate history of stress on the job. Furthermore, in reaching his conclusion on causation, the QME injected his own personal opinion that the level of stress sustained by a nurse treating inmates in a state prison is no different than any other nurse. That is not a proper medical opinion. Defendant produced no evidence to establish this fact. Accordingly, defendant did not meet its burden of rebutting a presumption on the present record.

To the extent that applicant objects to language contained in the WCJ's opinion, applicant's objection is moot as we are rescinding the F&O. However, we would remind applicant that language contained in an opinion is not controlling and that only the Findings of Fact and Award

and/or Orders that issue control the case. An objection to language embedded solely within an opinion is not actionable because no party can be aggrieved by such language.

Accordingly, as our Decision After Reconsideration we rescind the April 18, 2022 F&O and substitute a new finding of fact that defers the issue of whether the presumption applies and returns this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on April 18, 2022, by the WCJ is **RESCINDED** with the following **SUBSTITUTED** therefore:

FINDINGS OF FACT

1. Applicant, Jose Nunez, while employed during the period of August 2, 2010 through January 29, 2020 as a Registered Nurse, at Calipatria, California, by Calipatria State Prison, claims to have sustained injury arising out of and in the course of employment to his heart and in the form of hypertension.

2. At the time of injury, the employee's earnings were $2,345.54 per week, warranting indemnity rates per statute.

3. The employer has furnished some medical treatment. The primary treating physician is Sohalb Tariq. The Internal PQME is Dr. Richard Friedman.

4. The issue of whether the presumption of compensability contained in Labor Code section 3212.2 applies to applicant is deferred.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 17, 2026

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

JOSE NUNEZ
ADAMS, FERRONE AND FERRONE
STATE COMPENSATION INSURANCE FUND

EDL/mt

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