WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

KIRK L. HOFFMAN, *Applicant*

vs.

STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS AND REHABILITATION, legally uninsured, administered by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Numbers: ADJ12833099, ADJ12258332; ADJ12833100
Salinas District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration to further study the factual and legal issues in this case.[1] This is our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the Findings and Award (F&A) issued on July 20, 2021, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that applicant sustained an injury to his heart, circulatory system, and digestive systems in ADJ12833099 and ADJ12833100; that the correct date of injury in ADJ12258332 is November 19, 2007 and the correct date of injury in ADJ12833099 is July 31, 2020, but that the date of injury in ADJ1283100 is immaterial as there is one continuous injury for the body parts after 2007, ending on July 31, 2020; that the claim in AJD12833100 is subsumed in the claim in ADJ12833099; that the claims are not barred by the statute of limitations; and that defendant did not unreasonably delay benefits.

Defendant contends that applicant did not sustain injury in ADJ12833099; that the date of injury in ADJ12833100 is August 31, 2012, and not July 31, 2020; that the claim of injury in ADJ12833099 is subsumed in ADJ12822100; that ADJ12833100 is barred by the statute of limitations; and that Exhibit D-20 should have been admitted into evidence[2].

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[1] Commissioner Lowe was on the panel that issued the "Opinion and Order Granting Petition for Reconsideration." As Commissioner Lowe no longer serves on the Appeals Board, a new panel member has been appointed in her place.

[2] Upon return, Exhibit D-20 should be admitted into evidence as the WCJ noted in the Report.

Applicant filed an Answer. Applicant contends that applicant sustained a cumulative injury to the heart/circulatory system and for GERD through the last date of employment, July 31, 2020; that per Labor Code section 5412[3] the date of injury is September 15, 2020 and that the statute of limitations will not bar the claim as a result; and that ADJ12833100 does not subsume ADJ12833099.

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

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report. Based on our review of the record, and as discussed below, we will rescind the F&A and the Order Amending the F&A[4] and return this matter to the trial level for further proceedings consistent with this opinion and a new decision. This is not a final decision on the merits, and any aggrieved person may timely seek reconsideration of the new decision.

FACTS

Applicant alleged four cumulative injuries while employed by the State of California Department of Corrections and Rehabilitation (CDCR) as a chief deputy warden. Applicant worked for CDCR from April 13, 1996 through July 31, 2020. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 5:20-21.)

Revels Cayton, M.D., acted as a qualified medical evaluator (QME) in internal medicine and issued three reports. (Exhibit D-3, April 1, 2008; Exhibit D-5, June 2, 2008; Exhibit D-10, September 12, 2012.) Alan Rosenthal, M.D., then acted as a QME in internal medicine and issued one report on February 6, 2014 (Exhibit D-17). Raye Bellinger, M.D., then acted as a QME in internal medicine and issued six reports. (Exhibit A-9, November 4, 2019; Exhibit A-8, December 20, 2019; Exhibit A-7, August 3, 2020; Exhibit A-6, August 5, 2020; Exhibit A-5, September 22, 2020; Exhibit A-4, February 16, 2021.)

The reports are discussed in pertinent part as follows.

Dr. Cayton evaluated applicant on March 20, 2008, and issued a report on April 1, 2008. (Exhibit D-3.) He noted that applicant reported chest pain on November 19, 2007. The report

[3] Unless otherwise stated, all further statutory references are to the Labor Code.

[4] By way of a letter filed on July 27, 2021, applicant requested that the WCJ defer the issue of injury in ADJ14563943. On July 30, 2021, the WCJ issued an Order ostensibly amending the F&A deferring multiple issues. As we are rescinding the F&A, we will rescind the Order Amending the F&A. We remind the WCJ that the proper procedure when amending a decision is set forth in WCAB Rule 10961 (Cal. Code Regs., tit. 8, § 10961).

documents a battery of pulmonary and cardiac testing, but the ultimate diagnosis appears to be gastroesophageal reflux (GERD) caused by work related stress.

On August 31, 2012, Dr. Cayton re-examined applicant and issued a report dated September 17, 2012. (Exhibit D-10.) By way of history, applicant reported that in January 2012, while at work, he had a blood pressure reading of 160/112 and was subsequently evaluated for hypertension. (*Id*. at p. 4.) Dr. Cayon diagnosed gastroesophageal reflux, industrial and hypertension, industrial. (*Id.* at p. 11.) Dr. Cayton indicated that there was no temporary or permanent disability. (*Id.* at p. 13.)

On January 21, 2014, Dr. Rosenthal examined applicant and issued a report on February 6, 2014, noting a date of injury of November 5, 2012. (Exhibit D-17.) By way of history, applicant told Dr. Rosenthal that he had been seeing his primary care physician for control of blood pressure and/or hypertension. Dr. Rosenthal diagnosed essential hypertension, exogenous obesity, GERD, sleep disorder with possible obstructive sleep apnea, and multiple nevi of chest. (*Id.* at p. 13). He concluded that applicant had no periods of temporary disability related to his hypertension, and that applicant had no symptoms related to hypertension at the time of his examination as his blood pressure was being controlled by medication. (*Id.* at p. 18.) He requested an updated echocardiogram to determine disability.

Dr. Bellinger evaluated applicant on November 4, 2019, and issued a report. (Exhibit A-9.) Dr. Bellinger diagnosed applicant with: 1. hypertension currently controlled on single drug therapy; 2. GERD, currently under control with esomeprazole, and under surveillance for Barrett esophagus; 3. Hyperlipidemia; and 4. sleep apnea. (*Id.* at p. 33.) He opined that applicant was at maximum medical improvement for both GERD and hypertension, but requested a follow up echocardiogram to examine the applicant's current condition.

In his report of August 5, 2020, after review of additional medical records, and in response to questions by applicant's attorney, Dr. Bellinger opined in pertinent part that the end date of the period of cumulative injury should be up to applicant's last day worked of July 31, 2020, and that there is "heart trouble" due to the finding of left ventricular hypertrophy (LVH) in the April 30, 2020 echocardiogram. (*Id.* at p. 7.) He further opined that the LVH manifested during the applicant's service. (*Ibid.*)

On July 6, 2021, the parties proceeded to trial in ADJ12833099, ADJ12258332, and ADJ12833100. The parties stipulated that applicant was at all relevant times a Peace Officer and

entitled to benefits under sections 3212.2 and 4663(e). They further stipulated that applicant sustained injury in the form of GERD in ADJ12258332. (MOH/SOE, 2:15-16.) The issue of permanent disability was deferred. All issues relating to applicant's claim of injury in the form of a stroke were deferred.

The issues were identified in relevant part as follows: injury arising out of and in the course of employment in ADJ12833100 and ADJ12833099; and parts of body injured: heart/circulatory system and digestive system, with injury in the form of a stroke deferred. Further, according to the MOH:

> Applicant requests deferral, with jurisdiction reserved, as to whether the alleged cumulative injury to the heart should be part of/merged with the alleged cumulative trauma through 7/31/20 in ADJ14563943 and how the PD in this case would be combined/added with the PD in ADJ 14563943. In that regard, Applicant hereby notifies Defendant and the WCAB of the addition of the heart/circulatory system and digestive system to the previously-alleged neck, back, bilateral shoulders, and ears.

A further issue was identified as:

> Correct end dates for injury or injuries: Applicant asserts that the cumulative trauma claims in ADJ12258332 (alleged CT-11/19/07 to the heart/circulatory system) and in ADJ12833100 (alleged CT-8/31/12 to the heart/circulatory system and digestive system) are subsumed by the CT from 4/1996 through 7/31/20 to the heart/circulatory system and digestive system in ADJ12833099.

Finally, the MOH state that: "Defendant asserts the statute of limitations."

(MOH/SOE at p. 2-3.)

DISCUSSION

I

The parties have stipulated that applicant is a peace officer for the purpose of applying section 3212.2, which states:

> In the case of officers and employees in the Department of Corrections having custodial duties, each officer and employee in the Department of Youth Authority having group supervisory duties, and each security officer employed at the Atascadero State Hospital, 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.

(Lab. Code, § 3212.2.)

"Heart trouble" in the context of section 3212.2, has been defined as "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. (*Muznik v. Workers' Comp. Appeals Bd.* (1975) 51 Cal.App.3d 622, 635 [40 Cal.Comp.Cases 578].)

Hypertension, or high blood pressure, itself, is not necessarily "heart trouble" for the purposes of section 3212.2. Under some circumstances, it is not equated to heart trouble simply because it is a precursor to a later ailment. (See *Hamilton v. Workers' Comp. Appeals Bd.* (1979) 93 Cal. App. 3d 587 [44 Cal.Comp.Cases 520]; *Hart v. Workers' Comp. Appeals Bd*. (1978) 82 Cal.App.3d 619, 625 [43 Cal.Comp.Cases 757]; *Permanente Medical Group v. Workers' Comp. Appeals Bd*. (*Coyne*) (1977) 69 Cal.App.3d 770, 778-779 [42 Cal.Comp.Cases 388]; *Muznik*, *supra*, at p. 635, fn. 5.) However, these cases also support the premise that hypertension and "heart trouble" can be ordinarily distinct pathological conditions. (*Hamilton*, *supra*, at 592.) In *Muznik*, the court found that applicant, a fireman, had non-industrial essential hypertension which was asymptomatic that led to eventual diagnoses years later of heart murmur, widened aorta, and arteriosclerosis of the iliac arteries confirmed by an abnormal electrocardiogram. (*Id.*) LVH, even if asymptomatic, has been found to be heart trouble for the purposes of the presumption. (*Cal. v. Workers' Comp. Appeals Bd.* (*Knox*) (2005) 70 Cal.Comp.Cases 909; *City of Hayward v. Workers' Comp. Appeals Bd.* (*Ribera*) (2006) 2006 Cal. Wrk. Comp. LEXIS 350 (writ denied).)

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).) "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, 97]; see *Place v. Workmen's Comp. App. Bd*. (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525].)

We note that the underlying facts in *Muznik* are similar to the circumstances here. The medical reporting indicates that applicant has had at least two separate diagnoses of hypertension and LVH, and up until 2019, the only confirmed diagnosis, apart from GERD, was hypertension. The medical record is not complete for a determination as to whether there was actually "heart trouble" as of August 2012. However, "heart trouble" is certainly confirmed with the separate diagnosis of LVH by Dr. Bellinger based on the echocardiogram of April 30, 2020, and, as opined by Dr. Bellinger, it manifested during applicant's service. As a result, the presumption under section 3212.2 is applicable to the separate finding of LVH as of April 30, 2020.

II

We next discuss the contention that the cases are subsumed. We disagree that this is the proper analysis. Rather, the analysis is whether there are multiple and separate cumulative injuries or one cumulative injury.

In any given situation, there can be more than one injury, either specific or cumulative or a combination of both, arising from the same event or from separate events. (*Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (*Steele*) (1990) 219 Cal.App.3d 1265, 1271 [55 Cal.Comp.Cases 107].) Cumulative injury occurs from repetitive mental or physical activities at work over a period of time, which causes any disability or need for medical treatment. (Lab. Code, § 3208.1; *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (*Austin*) (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323]; *J.T. Thorp, Inc., v. Workers' Comp. Appeals Bd.* (*Butler*) (1984) 153 Cal.App.3d 327, 332-333 [49 Cal.Comp.Cases 224].) Findings regarding cumulative injury and the date of injury must be based on substantial evidence such as medical opinion and testimony and in consideration of the entire record. (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 317-319 [33 Cal.Comp.Cases 500]; *Austin*, *supra*, 16 Cal.App.4th at pp. 233- 241; (*City of Fresno v. Workers' Comp. Appeals Bd*. (*Johnson*) (1985) 163 Cal.App.3d 467, 470-473 [50

Cal.Comp.Cases 53].) "The number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB." (*Austin*, *supra*, 16 Cal.App.4th at p. 234.)

"[I]f an employee becomes disabled, is off work and then returns to work only to again become disabled, there is a question of fact as to whether the new disability is due to the old injury or whether it is due to a new and separate injury." (*Id*. at p. 234.) However, "[t]he general rule is that where an employee suffers contemporaneous injury to different body parts over an extended period of employment, the employee has suffered one cumulative injury." (G*ravlin v. City of Vista* (Sept. 22, 2017, ADJ513626) 2017 Cal.Wrk.Comp. P.D. LEXIS 413, *16.)[5] "If, however, the employee's occupational activities after returning to work from a period of industrially-caused disability are *not* injurious—i.e., if any new period of temporary disability, new or increased level of permanent disability, or new or increased need for medical treatment result solely from an *exacerbation* of the *original* injury—then there is only a *single* cumulative injury." (*Id.* at p. *24.)

In this matter, the WCJ found that ADJ12833099, a cumulative injury plead through July 31, 2020, "subsumed" ADJ12833100, a cumulative injury plead through August 31, 2012. Both claims allege injury to the heart/circulatory and digestive systems. The WCJ appears to conclude that ADJ12258332, a cumulative injury plead through November 19, 2007 to the digestive system, cannot be subsumed by the later filed claims because there was a finding of permanent disability by Dr. Cayton in 2008. While the latter point may be true, the correct determination is whether that particular period is part and parcel of one long period of injurious exposure ending in July 31, 2020 or whether there were separate periods of cumulative injury.

Section 3208.1 defines a cumulative trauma injury as one, "occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability *or the need for medical treatment*." (emphasis added)

Looking first at the digestive complaints, there is a conclusion as to permanent disability as it relates to GERD of 7% whole person impairment as of April 2008. However, on November 4, 2019, Dr. Bellinger gave a higher rating of 9% whole person for GERD. Thus, the record is

[5]Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to *Gravlin* because it considered a similar issue.

unclear as to whether there is a new and separate cumulative injury due to a changed circumstance or simply the progression of the original injury linked by medical treatment or the continuation of the same exposure.

Applicant's injury to his heart/circulatory condition presents a more complicated factual analysis. Setting aside the presumption in section 3212.2, discussed above, the record indicates that the applicant had varying levels of cardiac/circulatory complaints over his career. Among the three QMEs there is dispute as to whether there was actually diastolic disfunction as of 2012. There is, however, agreement that from at least 2012, if not before, that applicant had symptoms, albeit controlled, of hypertension. In the most recent reporting, Dr. Bellinger opined that there was injurious exposure through the end of employment due to the stressful job. Yet, the medical record is slim with respect to applicant's varying need for medical treatment, including medication for hypertension over his career and the new diagnosis of LVH in 2020, and there is no testimony as to whether applicant's work duties changed over the years. While it may be true that applicant had injurious exposure through the entirety of his career, the record must address whether there are separate cumulative injuries based on evidence of applicant's work duties, presence of disability, or need for medical treatment.

Section 3208.2 states, "When disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit."

Here, though all issues relating to ADJ14563943 were deferred, a decision as to the number of cumulative injuries affecting the heart and digestive system is simply not possible without consideration of all periods alleged. While ADJ14563943 is not before us, it appears that it was plead as injury to the neck, back, bilateral shoulders, and ears, but was amended to include heart/circulatory and digestive system. (MOH/SOE, at p. 3.) In short, determination of the number of cumulative injuries cannot be accomplished without considering all injuries plead for the overlapping body parts.

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp.*

Appeals Bd. (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that "[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record . . . the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie*, *supra*, at p. 141.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*Id*.) If the existing physicians cannot cure the need for development of the record, the selection of an AME should be considered by the parties. If the parties cannot agree to an AME, the WCJ may appoint a physician pursuant to section 5701.

Upon return, further medical reporting is essential to determine the issues of the number of injuries and injury to various body parts, and must include consideration of ADJ14563943.

III.

Finally, we turn to the issue of the statute of limitations. The WCJ reasoned that because some claims were subsumed by later filing, the statute of limitations did not apply and that a determination of the legal date of injury was unnecessary. We disagree. Whether any of applicant's claimed injuries are barred by the statute of limitations must be discussed in the context of section 5412.

Under section 5405, proceedings must commence within one year of (1) the date of injury; (2) the expiration of the period covered by the employer's last payment of disability indemnity; or (3) the date of the last furnishing by the employer of medical, surgical or hospital treatment. (Lab. Code, § 5405; see *Butler*, *supra*, 153 Cal.App.3d 327.) Section 3208.1 (b) states in relevant part, "the date of a cumulative injury shall be the date determined under section 5412." Section 5412 defines the date of injury as the date "upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known that such disability was caused by his present or prior employment."

For the purposes of section 5412, disability is either temporary or permanent. (*State Compensation Insurance Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998, 1002-1004, 1005-1006 [69 Cal.Comp.Cases 579]; *Chavira v. Workers' Comp. Appeals Bd*. (1991) 253 Cal.App.3d 463, 474 [56 Cal.Comp.Cases 631].) Disability has been defined as "an

impairment of bodily functions which results in the impairment of earnings capacity." (*Butler*, *supra*, 53 Cal.App.3d at p. 336.)

An employer has the burden of proving that an employee knew or should have known that their disability was industrially caused. (*Johnson, supra*, at p. 471, citing *Chambers*, *supra*, 69 Cal. 2d at p. 559.) In general, an employee is not charged with knowledge that their disability is job-related without medical evidence to that effect. (*Johnson*, *supra*, at p. 473; *Newton v. Workers' Comp. Appeals Bd.* (1993) 17 Cal.App.4th 147, 156, fn. 16 [58 Cal.Comp.Cases 395].) Whether an employee knew or should have known their disability was industrially caused is a question of fact. (*Johnson*, *supra*, 163 Cal.App.3d at p. 471; *Nielsen v. Workers' Comp.* Appeals Bd. (1985) 164 Cal.App.3d 918, 927 [50 Cal.Comp.Cases 104]; *Chambers v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 556, 559 [33 Cal.Comp.Cases 722].) Still, under certain circumstances, the filing of a claim form can be evidence of knowledge that the claimed injury was industrially related. (*Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal.App.3d 1102 [53 Cal.Comp.Cases 502].)

Here, the WCJ conflated the period of cumulative exposure with the date of injury under section 5412. A proper analysis as to the application of statute of limitations requires a determination of the point at which there is knowledge of an industrial injury and evidence of compensable disability for each period of cumulative injury.

Based on the record before us, and as discussed above, further development of the medical record is required. In addition to further evidence as to the number and nature of the cumulative injury or injuries and the corresponding body parts, a determination of legal date of injury must be made for each cumulative injury, including in ADJ14563943, before section 5405 can be applied. Further, the WCJ should consider the application of recently enacted section 5414.3.

Accordingly, we rescind the F&A and the Order Amending and return the matter to the trial level for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of July 20, 2021 and the Order Amending of July 30, 2021 are **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 12, 2026

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

KIRK HOFFMAN
DILLES LAW GROUP
SPRENKLE, GEORGARIOU & DILLES
STATE COMPENSATION INSURANCE FUND

TF/md

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