WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

SETH FRANKLIN, *Applicant*

vs.

CITY OF REDLANDS, Permissibly Self-Insured, Administered By ADMINSURE, *Defendant*

Adjudication Number: ADJ17298965
San Bernardino District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact and Order of January 28, 2025, wherein it was found that while employed as a police officer during a cumulative period ending November 28, 2018, applicant did not sustain industrial injury in the form of melanoma, a form of skin cancer. The WCJ thus issued an order that applicant take nothing by way of his workers' compensation claim. In finding that applicant had not sustained industrial injury, it was found that "Applicant is not entitled to the cancer presumption pursuant to [Labor Code section] 3212.1" and that "Even if it were determined that the melanoma manifested during his employment… the cancer presumption is rebutted per the opinions of [agreed medical evaluator] Jonathan Green, M.D., because of the latency period for the melanoma." Finally, the WCJ found that "Applicant failed to prove that the melanoma was accelerated or worsened by his employment with the City of Redlands."

Applicant contends that the WCJ erred in not finding industrial injury arguing that applicant was entitled to the Labor Code section 3212.1 presumption of compensability and that defendant failed to properly rebut the presumption. We have received an Answer from defendant, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, the WCJ erred in finding that applicant was not entitled to the Labor Code section 3212.1 cancer presumption. We will thus grant reconsideration and amend the WCJ's decision to reflect that applicant has shown that he comes under the presumption. We will

defer the issue of rebuttal of the presumption pending further development of the record, analysis and decision at the trial level.

Preliminarily, we note that former Labor Code 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, Labor Code 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 Labor Code 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 February 27, 2025 and 60 days from the date of transmission is April 28, 2025. This decision is issued by or on April 28, 2025, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 February 27, 2025, and the case was transmitted to the Appeals Board on February 27, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 27, 2025.

Turning to the merits, as "a police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a … city" (Pen. Code, § 830.1, subd. (a)), applicant was subject to Labor Code section 3212.1, which states in pertinent part:

> (a) This section applies to all of the following:
>
> ***
>
> (4) 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.
>
> ***
>
> (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.

In *Faust v. City of San Diego* (2003) 68 Cal.Comp.Cases 1822 (Appeals Bd. en banc), we discussed the 3212.1 presumption in depth, and explained that it was applicant's initial burden to establish that they came into the class of employees covered by the statute, that the cancer

manifested itself during the employee's period of service or during the applicable extension period, that they were exposed to an identified known carcinogen as defined by the International Agency for Research on Cancer (IARC) or the Director of the Department of Industrial Relations. (*Faust*, 68 Cal.Comp.Cases at pp. 1830-1831.) The burden then shifts to defendant to rebut the presumption. In order to successfully rebut the presumption, the defendant must establish the primary site of the cancer and show that "the carcinogen to which the applicant has demonstrated exposure is not reasonably linked to the disabling cancer." (*Id.* at p. 1831.)

In this matter, applicant testified that in December of 2019, he saw a dermatologist in order for a "misshapen freckle" on applicant's forearm could be evaluated. The dermatologist shined a special light on the freckle and told applicant that there was nothing abnormal. (Minutes of Hearing and Summary of Evidence of October 16, 2024 trial at p. 5.) Applicant testified that the misshapen freckle had appeared three to five years prior to visiting the dermatologist in December of 2019. (Minutes of Hearing and Summary of Evidence of October 16, 2024 trial at p. 7.)

Between December 2019 and September 2022 there was a change in appearance of the freckle. Applicant testified that "The freckle became raised, sensitive, its shape changed, and the borders became more irregular. It started to crack open in a couple of spots and bled slightly." (Minutes of Hearing and Summary of Evidence of October 16, 2024 trial at p. 5.) Applicant again sought evaluation from a dermatologist. This time, the dermatologist said it looked irregular and after a biopsy applicant was diagnosed with melanoma. (Minutes of Hearing and Summary of Evidence of October 16, 2024 trial at p. 5.)

Here, as noted above, applicant belongs to a job classification entitled to the presumption. Applicant claims industrial sun exposure while working for defendant in a covered classification. We note that applicant did not present evidence that sun exposure is a known carcinogen "as defined by the International Agency for Research on Cancer, or as defined by the director." As we noted in *Faust*, "The applicant must establish that the exposure was to a 'known carcinogen' with evidence, generally documentary, that the carcinogen is defined as such by the International Agency for Research on Cancer, or otherwise so 'defined by the director.'" (*Faust*, 68 Cal.Comp.Cases at p. 1830.) However, we take judicial notice pursuant to Evidence Code section 452(h) that "solar radiation (see Ultraviolet radiation (wavelengths 100–400 nm, encompassing UVA, UVB, and UVC)" is listed as a "Group 1" carcinogen by the IARC on its own website. (<https://monographs.iarc.who.int/list-of-classifications > [as of April 28, 2025].) "Group 1" is

defined as "carcinogenic to humans," as distinguished from Group 2A (probably carcinogenic to humans), Group 2B (possibly carcinogenic to humans), and Group 3 (not classifiable as to its carcinogenicity to humans). (<https:// https://monographs.iarc.who.int/agents-classified-by-the-iarc > [as of March 17, 2023].) Thus, sun exposure is a "known carcinogen" for the purposes of section 3212.1.

Therefore, the sole remaining issue in determining whether applicant is entitled to the presumption is whether the cancer developed or manifested itself during applicant's service. The WCJ found that the presumption is unavailable because applicant's cancer first manifested itself with the appearance of the misshapen freckle somewhere between 2014 and 2016, and applicant did not begin his employment with defendant until 2018. However, contrary to the WCJ's findings, Labor Code section 3212.1 does not state that it applies only when cancer first develops or first manifests itself. Thus, in the period between December 2019 to September 2022, during which times applicant was in active service, applicant's condition continued to "develop" until there was a clear manifestation of the cancer. When applicant first saw a dermatologist, applicant's condition was not sufficiently manifested to be detected by a medical specialist. As noted in applicant's testimony and Dr. Green's reporting, applicant's skin condition underwent dramatic change between 2019 and 2022.

Therefore, we find that applicant proved his entitlement to the presumption and return this matter to the trial level for further development of the record, analysis and decision on whether the presumption has been rebutted. In order to rebut the section 3212.1, "the employer must prove the absence of a reasonable link between the cancer and industrial exposure to the carcinogen. A mere showing of an absence of medical evidence that the carcinogen has been shown to cause the particular cancer contracted by the employee is not sufficient to rebut the presumption." (*City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 305-306 [70 Cal.Comp.Cases 109].) However, "the statute does not require the employer to prove 'the absence of *any possible* link.' (Italics added.) The statute requires proof no reasonable link exists. A link that is merely remote, hypothetical, statistically improbable, or the like, is not a reasonable link. The employer need not prove the absence of a link to a scientific certainty; instead, it must simply show no such connection is reasonable, i.e., can be logically inferred." (*Id.* at p. 316.) A defendant may rebut the presumption by demonstrating that "it is highly unlikely the cancer was industrially caused because the period between the exposure and the manifestation of the cancer is not within

the cancer's latency period." (*Id.* at p. 317.) In *Sameyah v. Los Angeles County Employees Retirement Assn.* (2010) 190 Cal.App.4th 199, 215 [75 Cal.Comp.Cases 1384]), it was held that in the proper case a lack of reasonable link with industrial carcinogenic exposure could be shown by identifying a probable non-industrial cause of the cancer.

We note that the WCJ found that "*Applicant* failed to prove that the melanoma was accelerated or worsened by his employment with the City of Redlands." (Italics added.) However, given that the presumption applies, it is *defendant's* burden to show by means of substantial medical evidence that "no reasonable link" exists between applicant's exposure while working for the City of Redlands and the acceleration or worsening of the cancer.

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. The WCAB 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].) In accordance with that mandate, we will grant reconsideration, find that applicant has established the applicability of the Labor Code section 3212.1 presumption and defer all further issues, including rebuttal of the presumption pending further development of the record, analysis and decision. We express no opinion on the ultimate resolution of this matter.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings of Fact and Order of January 28, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order of January 28, 2025 is **AMENDED** as follows:

Findings of Fact

1. Seth Franklin, age 32 on the date of the alleged injury, while employed as a police officer by the City of Redlands, PSI, in Redlands, California during the period 11/26/2018 through 9/29/2022, claims injury arising out of and occurring in the course of his employment in the form of skin cancer, namely, melanoma.

2. While applicant is asserting a cumulative trauma claim from 4/1/2014 – 9/29/2022, he was employed by the City of Redlands from only 11/26/2018 through the present. No other employers have been joined in the cumulative trauma claim.

3. Applicant is entitled to the cancer presumption pursuant to Labor Code section 3212.1 insofar as his melanoma did develop or manifest during his employment with the City of Redlands while he was in a job classification coming under the presumption and after he was exposed to the known carcinogen solar ultraviolet radiation in the course of his employment.

4. All other issues, including rebuttal of the Labor Code section 3212.1 presumption are deferred, with jurisdiction reserved.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 28, 2025

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

SETH FRANKLIN
LEWIS, MARENSTEIN, WICKE, SHERWIN & LEE
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN

DW/oo

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