

COMPENSATION NEWS

MONTHLY REPORT

No presumption for a correctional officer and no finding of AOE-COE

This non published case is one of the few clear victories for defendants before the WCAB

The applicant was a correctional officer for a correctional facility from 1991 to 2001. The applicant filed a workers' compensation claim alleging injury to his cardiovascular and respiratory systems, psyche, hypertension and an aggravation of his diabetes.

The applicant obtained a medical evaluation finding the injury compensable. The defendant obtained a medical

that indicated the applicant did not suffer an industrial injury.

After a hearing the Workers' Compensation Judge (WCJ) determined that there was no statutory presumption for injury and the medical evidence did not establish industrial injury. The Workers' Compensation Appeals Board (WCAB) upheld the WCJ on Petition For Reconsideration.

As to the presumption issue the appellate court followed the WCAB reasoning. The applicant was not a state employee falling within the presumption, but worked for a city entity. If the legislature wished to include his position within the statute the legislature would have done so.

The court viewed the WCJ's reasoning as controlling. The applicant must prove a causal connection between his job and his disease. The court indicated that the applicant medical was

not conclusive. The doctor merely states conclusions without stating how the medical condition had a connection to the job. The WCAB has the right to rely on one opinion. In this case it was the defense doctor's opinion.

The appellate court went on to state there was no duty by the WCAB to further develop the record. To develop the record they intimate that the new medical evidence would have to be unavailable or discoverable at the time of the close of discovery. This was not the case here.

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