

Work Comp Alert *an e-newsletter*

THE HEART OF THE MATTER

By Thomas L. Bolinger

Labor Code Section 3212 provides certain police officers, firefighters and other active law enforcement and firefighting personnel the benefit of a presumption of work injury involving various physical conditions, including heart trouble. According to the section, the term injury includes heart trouble that develops or manifests itself during a period while the applicant is in the service of the office, staff, department or unit.

The ... heart trouble ... so developing or manifesting itself in those cases shall be presumed or arise out of or 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. The presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of requisite service but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Hence, if it is established that the law enforcement officer or firefighter in question has heart trouble, either during their employment or in some circumstances, up to five years from their last day of work, the presumption applies. This presumption, once established, can be very difficult to rebut.

However, in order for the presumption to apply, the applicant must establish the existence of heart trouble. If the symptoms experienced by the worker do not constitute heart trouble, then the presumption should not be applied.

This was recently addressed in *Garland vs. WCAB*, 73 CCC 913 (2008). In *Garland*, the applicant alleged that he sustained an industrial injury to his heart/cardiovascular system during a cumulative trauma period ending on 07/24/03 while employed by defendant, the City of Santee. The applicant submitted into evidence medical reports from an internist who concluded that the applicant had a heart problem. The defendant submitted into evidence medical reports from a cardiologist who found the applicant to have an essentially normal heart. After taking testimony and reviewing the evidence, the WCJ denied the applicant's claim of injury.

Applicant filed a Petition for Reconsideration, arguing that the WCJ erred in failing to find that the Labor Code Section 3212 presumption applied in this case. The WCJ recommended that reconsideration be denied. According to the WCJ, under Labor Code Section 3212, it is presumed that when firefighters, and other named classes of employees, suffer heart conditions, those heart conditions are caused by their employment. This is to make it easier to find facts in cases of that kind. This also helps those types of applicants by resolving doubts in their favor so as to effectuate the substantive policy goal of applying benefit legislation broadly. When the presumption applies, it means the employee does not have to prove industrial causation; instead, the defendant must disprove it. The WCJ never reached that issue in this case, because the applicant never proved industrial injury to his heart.

The WCJ acknowledged that the medical reports played a greater role than the testimony in determining the outcome of the case. The only testimony taken was from the applicant who claimed that he had heart palpitations dating back to 1979. This conflicted with the medical evidence. Although the applicant testified that he retired due to his heart condition, he was able to complete a 30-year career with the department without any restrictions. Further, the applicant served in the United States Coast Guard both before and after his retirement. Although there was no evidence that this work was physically taxing, the applicant testified that his post-retirement duties with the Coast Guard included work of up to 40 hours or more per week attending meetings and performing office-type work. He was able to physically complete all of those duties.

At the Appeals Board level, the WCAB denied reconsideration and adopted and incorporated the WCJ's report without further comment on the issues raised.

Applicant then filed a Petition for Writ of Review, arguing that the applicant's history of heart palpitations with objective findings of mitral valve prolapse and premature ventricular contractions constituted heart trouble under Labor Code Section 3212 resulting in the benefit of the presumption.

In the Answer to the Petition for Writ of Review, the defendant argued that the applicant's symptoms did not constitute heart trouble within in the meaning of Labor Code Section 3212.

The applicant's Petition for Writ of Review was denied on May 15, 2008. The Court of Appeal noted that the only dispute between the parties was whether the applicant's heart palpitations and irregular heart beats constitute heart trouble within the meaning of Labor Code Section 3212. According to the Court of Appeal, heart trouble in this context generally refers to a disorder of the heart, cardiovascular system, or other area of the body that places the heart in a troubled condition. It was acknowledged that heart palpitations or irregular heart beats can constitute heart trouble. However, in this case, there was substantial evidence, both medical and testimonial, that supported the WCJ's findings that the applicant's heart palpitations and irregular heart beats did not place his heart in a troubled condition.

In summary, there is case law confirming that heart palpitations or irregular heart beats can constitute heart trouble. However, the Garland case establishes that, under certain circumstances, these symptoms can be viewed as benign and not an indication of heart trouble for the purpose of triggering the presumption under Labor Code Section 3212.