The Heart Presumption Ruling Favorable for Officers

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Public safety officers have the heart presumption. If the officer develops or manifests heart trouble during the officer's employment, the heart trouble is presumed work related. The attack on the heart presumption is whether the officer has actual "heart trouble" or has a congenital heart defect.

The Heart presumption is set forth in Labor Code section 3212. Section 3212 creates a rebuttable presumption of industrial causation in favor of certain public safety officers, including police, fire fighters and corrections officers. This provision states that an injury to the heart that develops of manifests itself during employment is presumed to be industrial, unless controverted by other evidence. However, such rebuttal cannot be "attributed to any disease existing prior to such development or manifestation."

Section 3212 further states:

"The heart trouble so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation."

In *Muznik v. WCAB (1975),* the court broadly construed the meaning of the term "heart trouble". The court concluded that the legislative intent was to encompass "any affliction to, or additional exertion of, the heart caused directly to that organ or the system to which it belongs, or to it through interaction with other afflicted areas of the body.

To rebut the presumption of industrial causation, the employer must show through substantial medical evidence that some contemporaneous non-work related event was the "sole cause" of the heart trouble. Unless so controverted, the appeals board is bound to find in accordance with the presumption.

Recently, the WCAB **reversed** a trial court's denial of benefits in the case of *Kennedy v. City of Oakland (2012).* In the *Kennedy* case, the injured officer was a fire fighter who sustained an injury to his heart, circulatory system and cerebrovascular system caused by a stroke. The stroke was caused by a congenital heart anomaly. Importantly, the officer had no prior history of heart disease. The evaluating physician determined the heart condition and resulting stroke was caused by a congenital heart defect and

thus the heart presumption was rebutted. The trial court agreed and found against the injured officer stating the heart presumption was rebutted due to the congenital heart defect.

On appeal, the WCAB reversed and stated while the evidence establishes that the sole cause of the injury was the pre-existing congenital condition, the anti-attribution clause of Labor Code section 3212 prevents the Appeals Board from considering whether that condition rebuts the industrial presumption. The WCAB stated, when the anti-attribution clause applies, the injury shall in no case be explained as caused or brought about by pre-existing disease. In the absence of evidence that some other “contemporaneous non-work related event” was the cause of his injury, the injured officer is entitled to the presumption of industrial causation.

The heart presumption is under attack by counties and cities. The employers are looking at every angle to deny an officer or dependent the heart presumption. Given the anti-attribution provisions, the employers cannot rebut the heart injury with evidence of pre-existing conditions.

The employer must show a sole cause that is not work related and contemporaneous with the heart trouble. For example, the officer’s strenuous recreational exertion caused the heart injury.

Cities and counties have consistently challenged the purpose of the heart presumption to force an injured public safety officer to endure lengthy litigation process on the issue of heart trouble. Given the recent decision in *Kennedy,* officers with a heart injury have the legal protection of the heart presumption, which imposes a steep standard for the employer to rebut the presumption.

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