



California Coalition on
22ND **Workers' Compensation**
ANNUAL CONFERENCE
LEGISLATIVE & EDUCATIONAL FORUM

PUBLIC ENTITY PRESUMPTIONS AND PENALTIES

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SAFETY OFFICE CLAIMS COME WITH EXTRA COSTS AND RISKS

- **Labor Code Section 4850 Benefits**
 - » Provides special disability compensation for police officers, firefighters, sheriffs, inspectors and district attorney investigators
 - » Provides for up to one year of salary continuation in lieu of temporary disability benefits during time off for an industrial injury



SAFETY OFFICE CLAIMS COME WITH EXTRA COSTS AND RISKS

- Presumptions

- » Certain police officers, firefighters and other safety officers are entitled to a presumption of work injury for conditions such as cancer, heart trouble, hernia, blood-borne infectious disease and others
- » These presumptions generally apply only to those engaged in active law enforcement or active firefighting and prevention.
- » However, each presumption should be read in its entirety as there are exceptions

PRESUMPTION OF WORK INJURY

- **Many presumption statutes have anti-attribution clauses**
 - » Apportionment to causation of permanent disability under Labor Code § 4663 is prohibited in presumptive injury cases by § 4663(e)
- **The presumptions can be rebutted**
 - » However, must consider the risk of penalties when initially denying a presumptive case
- **What are the presumptions**
 - » Cancer
 - » Heart Trouble
 - » Hernia
 - » Pneumonia
 - » Blood-Borne Infectious Disease or MRSA
 - » Low Back (Duty Belt)
 - » PTSD



PRESUMPTION OF WORK INJURY

- Presumptive cases can exist post-retirement
 - » § 4458.5 states for certain presumptive injuries that occur after termination of service, the worker is entitled to maximum rates for temporary disability and permanent disability
 - » Worker may be entitled to TTD at maximum rates even if he took a service retirement and has not worked since retirement



CANCER PRESUMPTION

- § 3212.1 cancer presumption applies to active firefighters (including volunteers) and peace officers who are primarily engaged in active law enforcement activities
 - » Presumption will apply if worker establishes exposure to a known carcinogen, as defined by the IARC, and manifestation or development of the cancer within the statutory timeframe
- Cancer presumption is rebuttable if defendant can (1) establish the primary site of the cancer, and (2) affirmatively establish there is no reasonable link between the carcinogen and the cancer



REBUTTING THE CANCER PRESUMPTION

- » Often, defendant must produce a specific study that states a specific carcinogen is not reasonably linked to a specific cancer
- » The fact that no existing medical studies show a positive link between the cancer and the exposure does not rebut the presumption (*Garcia*)
- » Genetic predisposition to breast cancer is not sufficient to rebut the presumption (*Castro*)
- » Defendants can rebut the cancer presumption by establishing that the latency period excludes the subject employment



HEART TROUBLE PRESUMPTION

- § 3212 extends a heart trouble presumption to members of a fire department, sheriff's office, CHP and district attorney investigators
 - » No requirement that the member of fire department engage in active firefighting
 - » It specially covers volunteer firefighters
 - » § 3212.5 only applies to members who have served five years or more in capacity as a police officer, sheriff's deputy, etc. and extends the heart trouble presumption to members of a police department of a city or municipality or State Highway Patrol



HEART TROUBLE PRESUMPTION

- Heart trouble is considered to have manifested when discovered simply by diagnostics, without symptoms or restrictions
- No strict legislative or judicial definition of “heart trouble”
 - » A heart tumor falls within the presumption (Herfurth)
 - » Aortic valve disease constitutes heart trouble (Miller)
 - » Left ventricular hypertrophy is heart trouble (Richardson)
 - » Hypertension is not heart trouble for purposes of the presumption (Hamilton)

REBUTTING HEART PRESUMPTION

- The courts have held injury AOE/COE for heart trouble can be rebutted by establishing some contemporaneous, non-work related event - such as strenuous recreational exercise - was the sole cause of the heart trouble, such as deep-sea diving
- The courts have found the following to properly rebut the heart trouble presumption:
 - » Post-partum cardiomyopathy (Palmer)
 - » Non-industrial pancreatic cancer which caused blood clots leading to a stroke and heart attack (Hootman)
 - » Strenuous jogging leading to a heart attack (Robinson)
- Presumption is extended 3 months for each full year of service, up to 60 months, based on last date of active service
 - » Time runs from last day actually worked, not subsequent, official retirement date



DUTY BELT PRESUMPTION

- § 3213.2 extends a presumption of **lower back injury** to police officers employed for at least five years on a regular, full-time salary that have been required to wear a duty belt as a condition of employment
 - » No anti-attribution clause; but does not preclude *Benson* apportionment per § 4664
 - » Extends up to 60 months post-retirement
 - » It applies to the lumbar spine only.



PTSD PRESUMPTION

- Provides a rebuttable presumption of PTSD injury for active firefighters and peace officers
- Requires a diagnosis of PTSD specifically under the current version of the DSM
- Contains no anti-attribution clause.
- Extends up to 60 months post-retirement.
- Limited to injuries occurring after January 1, 2020.



MITIGATING PRESUMPTIVE CASES

- Consider the potential penalties during the initial AOE/COE discovery phase
- **SB 1127: Beware of \$50,000 Penalties**
 - » Increased penalty for bad faith denials of presumptive injuries
 - » Five times the value of the delayed benefit up to \$50,000
- **75 Days to Investigate and Reject Liability**



BAD FAITH DENIALS AND THE \$50K PENALTY

- Reasons to deny a case:

- » No actual diagnosis

- This will be more prevalent in a heart trouble, cancer, or PTSD case, less so in a duty belt case.

- » Decision requires a med-legal opinion

- Duty Belt requires a cumulative trauma which may be a med-legal decision
 - Latency issues with cancer require a med-legal opinion



BAD FAITH DENIALS AND THE \$50K PENALTY

- **What is a bad faith denial?**
 - » No timely discovery was attempted by defendant before issuing the denial
 - » Medical evidence was ignored
 - » No factual evidence was timely conducted
- **Because of the risk, the fight may not be in the AOE/COE decision**
 - » Is apportionment an option? Dividing up the body parts so that apportionment can be available. Multiple DOIs?



STRATEGIES FOR MITIGATING PRESUMPTIVE CASES

- **1st - Always check the statute to verify if the applicant qualifies based on job classification, years of employment and the exact diagnosis**
- **2nd - Fight back! Consider all of the defenses available, including those we covered today**
- **3rd – If the injury is compensable, keep the 4850 lost time under control with light duty**



QUESTIONS?

