

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **DENNIS WIZEMANN,**

5 *Applicant,*

6 **vs.**

7 **SAN LUIS OBISPO COUNTY SHERIFF**
8 **DEPARTMENT;**
9 **Permissibly Self-Insured,**

10 *Defendant(s).*

Case No. GRO 17538

**OPINION AND DECISION
AFTER RECONSIDERATION**

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13 On June 30, 1998, we granted defendant's Petition for
14 Reconsideration to allow time to study the record. We now issue our
15 decision.

16 Defendant County of San Luis Obispo seeks reconsideration of the
17 Findings and Award issued by the workers' compensation referee (WCR) on
18 April 9, 1998. The WCR found that applicant sustained industrial injury
19 resulting in hypertension which caused permanent disability of 46-3/4%
20 and need for further medical treatment. The WCR allowed an attorney's fee
21 and reimbursement for reasonably and necessarily incurred medical-legal
22 costs. Defendant contends that the finding of industrial injury is not
23 justified when the WCR relied on the opinion of Edward J. O'Neill, M.D.,
24 which does not constitute substantial evidence because Dr. O'Neill based his
25 opinion on a hypothesis without documenting an accepted medical theory or
26 literature as support and when his second opinion described a different
27 cause of the injury without a medical history or new examination.

E. CHARLES MAKI

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1 Applicant worked as a peace officer for defendant San Luis Obispo
2 County Sheriff Department between 1982 and February 14, 1997. He
3 sustained an admitted industrial injury resulting in hearing loss. He also
4 claimed an industrial injury resulting in hypertension. Dr. O'Neill reported
5 on behalf of applicant and concluded that the condition was an industrial
6 injury. Donal F. Sweeney, M.D., reported on behalf of defendant and
7 concluded that applicant did not sustain hypertension as an industrial injury.
8 The WCR relied on the opinion of Dr. O'Neill.

9 As indicated by the WCR in his report on reconsideration, the issue is
10 whether Dr. O'Neill's opinion constitutes substantial evidence. After
11 reviewing the record, we conclude that Dr. O'Neill's opinion does not
12 constitute substantial evidence.

13 In his initial report of September 8, 1997, Dr. O'Neill concludes that "I
14 feel that his hypertension is occupationally related in large part secondary to
15 the history of noise exposure and additionally from the stress of recent years
16 related to his increasing difficulty with hearing and related insecurity which
17 has evolved secondary to that hearing problem."

18 The main factor in Dr. O'Neill's theory of causation is that applicant
19 has hypertension as the result of noise exposure at work. In relating
20 applicant's history of work, Dr. O'Neill does so with respect to various duties
21 and level of noise exposure. He notes that "it has been theorized "over the
22 last three or four decades" that "repetitive noise exposure was a causative
23 factor in the development of hypertension" and that it has been "clearly
24 documented in animals." Dr. O'Neill, however, admits that this "has not
25 been well proven in humans," but stated that "there are sufficient examples
26 of such an effect in humans to support the relationship such as this patient
27 has developed." Dr. O'Neill, however, does not cite any medical literature

1 or references to support his link between noise exposure and hypertension
2 in humans.

3 Additionally, Dr. O'Neill states:

4 ". . . if one looks at the records carefully, particularly the
5 psychological evaluations, it becomes clear that he is
6 overqualified for his current level of activity in the
7 Sheriff's Department. He has a Master's Degree with
8 extensive years of training and experience, working side
9 by side with other officers who are probably high school
10 graduates. It appears that this has produced a certain
11 amount of frustration with lack of advancement."

9 We find Dr. O'Neill's speculation as to applicant's Masters Degree level
10 of education causing frustration in having to work with "probably high school
11 graduates" to be unpersuasive.

12 Dr. Sweeney was critical of Dr. O'Neill's diagnosis of hypertension and
13 conclusion that "noise related hearing loss" (NRHL) is a cause of sustained
14 high blood pressure. In his report of November 21, 1997, Dr. Sweeney
15 states:

16 "Noise related hearing loss (NRHL), as a cause of
17 sustained high blood pressure has not been established as
18 a fact in the medical literature. There is some data that
19 indicates very loud noise may temporarily increase blood
20 pressure by sympathetic stimulation. This would, of
21 course, be similar to any anxiety situation, eg a doctor's
22 visit. Mr. Wizeman's history indicates that, even if one
23 suggests that he has NRHL, his exposure to noise was
24 intermittent. There is no documentation that he was ever
25 exposed to continuous loud noise. I cannot find any
26 medical information, that would suggest that Mr.
27 Wizeman's noise exposure history, is a causative factor in
producing hypertensive disease in anyone. The hearing
loss has been slowly worsening in his instance, not so the
blood pressure. The stated history, Dr. Freed's
comments, other notes in the medical review, the
medical data on NRHL - all indicate that the blood
pressure problem (not considered to be true essential
hypertension), was not caused by noise exposure.

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1 Dr. Sweeney concludes:

2 "My conclusion is that Mr. Wizemann does not have true
3 essential hypertension and the hyperactive blood vessel
4 reflexes that cause his blood pressure to be occasionally
5 recorded as elevated, are not work or occupationally
6 related. The blood pressure recordings and the hearing
7 loss are not related. He needs the appropriate care for
8 his hearing disorder and should get the same amount of
9 medical follow up that is consistent with his age. I see no
10 reason that he cannot continue at the high level of
11 exercise that he is currently on. Other physicians might
12 feel more comfortable doing occasional stress
13 electrocardiograms on this patients, but most physicians
14 would not in view of his history of excellent exercise
15 tolerance."

16 Thus, Dr. Sweeney casts considerable doubt on Dr. O'Neill's undocumented
17 theory of noise exposure causing applicant's hypertension. Dr. Sweeney
18 concludes that applicant had "intermittent elevation of blood pressure -
19 anxiety related," not a true continuous essential hypertension.

20 Dr. O'Neill, after reviewing additional records including Dr. Sweeney's
21 report, provided a second supplemental report of January 7, 1998, and
22 concluded:

23 "The only remaining question is whether his
24 hypertension has an occupational component. It is my
25 opinion that the patient's work as a police officer was
26 sufficiently stressful to have contributed to the
27 development of his hypertension and was an
28 aggravating/accelerating factor and thereby his
29 hypertension is occupationally related."

30 Dr. O'Neill did not examine the patient prior to writing his
31 supplemental report wherein he comes up with an entirely different
32 rationale than that set forth his first report.

33 Dr. O'Neill appears to discard the theory of noise exposure as the main
34 causative factor of the hypertension and espouses a theory that it was
35 applicant's work as a police officer that contributed to his hypertension.

1 The initial report does not contain a detailed history of alleged work
2 stress reported by applicant. The history of applicant's work is provided
3 only in connection with the noise exposure. Dr. O'Neill did not re-examine
4 applicant, or obtain an additional history for the newly placed emphasis on
5 stress as the cause of applicant's condition as stated in the second
6 supplemental report. Dr. O'Neill's consideration of stress, therefore, appears
7 to rest on his theory that applicant was overqualified in comparison to his co-
8 workers and that "this has produced a certain amount of frustration with
9 lack of advancement." Dr. O'Neill does not set forth a reasoned analysis on
10 the connection between the "stress" of applicant's employment and his
11 development of hypertension. His opinion is speculative.

12 Dr. O'Neill, moreover, does not discuss fully how the effects of the
13 prescribed stimulants that applicant takes contributes to the hypertensive
14 condition. Applicant started taking prescribed stimulants in 1994 for his
15 Attention Deficit Disorder. There is mention in the medical records as
16 reviewed by Dr. O'Neill that applicant's hypertension was related to the
17 prescribed stimulants. On December 12, 1994, it was noted that applicant
18 had hypertension related to the drug Ritalin, as well as a familial essential
19 hypertension. On September 18, 1995, it was noted that applicant's blood
20 pressure had become poorly controlled since the medication Dexedrine had
21 been added. According to Dr. Sweeney, both the Ritalin and Dexedrine were
22 stimulants prescribed for applicant's Attention Disorder Deficit. Dr. Sweeney
23 concludes that the prescribed stimulants caused a rise in applicant's blood
24 pressure. Dr. O'Neill notes that applicant had high blood pressure readings
25 before taking the stimulants, however, does not discuss how the stimulants
26 contribute to applicant's current hypertensive condition.

27 Dr. Sweeney casts further doubt on Dr. O'Neill's opinion by stating

1 the diagnosis of hypertension. Dr. Sweeney discusses Dr. O'Neill's report:

2 "In Dr. O'Neill's record review from the San Luis Medical
3 Clinic, he noted the September 1980 blood pressure of
4 156/96, the normal blood pressures, on many occasions
5 during the early 1980's, blood pressure of 126/88 in
6 1990, and the most recent blood pressure of October
7 1996. Dr. Smilovitz's physicals from 1992, 1993, 1994
8 and 1995 showed blood pressures, according to Dr.
9 O'Neill of systolics from 120-140 over diastolics from 80-
10 96. Dr. O'Neill concludes that the hypertension is
11 occupationally related due to noise exposure and stress."

12 Dr. Sweeney reviews the same records and concludes:

13 "It should be pointed out at this time that having
14 occasional elevated or even more-than-occasional elevated
15 blood pressures, does not mean that the person has
16 essential hypertension. There is the well-known problem
17 of 'white coat hypertension' In this instance, the
18 individual does not have true high blood pressure
19 problems, but gets a little anxious in the doctor's office.
20 As mentioned in my record review in 1995, when the
21 nurse took it when he first arrived, his blood pressure
22 was elevated, but by the time Dr. Cooper took it his blood
23 pressure was normal. This is a classic picture of 'white
24 coat' hypertension which not truly hypertension but it is
25 due to blood vessel hyperactivity when under slight stress.
26 The vascular system, in a reflex manner responds, and
27 the blood pressure recorded goes up slightly. An example
that I use with my patients, for blood vessel reflex
phenomenon a 'blush'; during which, the blood vessels of
the fact become dilated due to a slight anxiety producing
situation. Hyperactivity of blood vessels is not true
hypertension.

28 Dr. O'Neill takes issue with Dr. Sweeney's opinion that applicant does
29 not have "true essential hypertension." Dr. O'Neill, however, does not
30 address the hypertensive issue sufficiently. Dr. O'Neill does not address Dr.
31 Sweeney's conclusion concerning "white coat" hypertension. Dr. O'Neill's
32 report shows that applicant had hypertension beginning in 1980, before his
33 employment with defendant, as well as a familial hypertension .us,
34 applicant's hypertensive condition pre-existed his employment with

1 defendant. Applicant's mother has a history of hypertension. Dr. O'Neill,
2 however, does not address these factors and provide a reasonable medical
3 conclusion which explains how these factors play a part in applicant's
4 current condition, or how applicant's employment with defendant aggravated
5 or accelerated the condition.

6 In view of the pertinent deficits in Dr. O'Neill's opinion, we find his
7 opinion speculative. Dr. O'Neill does not provide a solid basis supported by
8 the record for the conclusion that applicant sustained hypertensive industrial
9 injury. The Board "may not blindly accept a medical opinion that lacks a
10 solid underlying basis. . . ." (*Bracken v. Workers' Comp. Appeals Bd.* (1989)
11 214 Cal.App.3d 246 [54 Cal.Comp.Cases 349, 355].) The record is persuasive
12 that Dr. O'Neill's opinion does not constitute substantial evidence. Applicant,
13 therefore, has not carried his burden of proof to establish that he sustained
14 an industrial injury resulting in hypertension.

15 Accordingly, we reverse the finding that applicant sustained industrial
16 injury resulting in hypertension. We will also amend the decision to reflect
17 that applicant is not in need of further medical treatment for his
18 hypertensive condition, that applicant's permanent disability is 13-1/4% in
19 connection with his admitted hearing injury, and that a reasonable attorney's
20 fee is \$726.00 which is consistent with the WCR's determination of 12% of
21 the permanent disability award as a reasonable fee.

22 For the foregoing reasons,

23 IT IS ORDERED as the Appeals Board's Decision After Reconsideration
24 that Findings of Fact Nos. 2, 3, 5, and 8 of the Findings and Award issued
25 April 9, 1998, are AMENDED as follows:

26 FINDINGS OF FACT

27 2. Applicant did not sustain injury arising out of and occurring in

1 the course of employment resulting in hypertension.

2 3. Applicant's industrial injury caused permanent disability of 13-
3 1/4%, equivalent to 43.25 weeks of permanent disability indemnity, payable
4 at the rate of \$140.00 per week, in the total sum of \$6,055.00. Permanent
5 disability is payable the day after rehabilitation ends or applicant's
6 entitlement to benefits under Labor Code section 4850 ends, whichever
7 occurs later.

8 5. Applicant is in need of further medical care for his hearing loss.

9 8. The reasonable value of the services of applicant's attorney is the
10 sum of \$726.00; said sum to be commuted from the far end of the award to
11 the extent necessary.

12 IT IS FURTHER ORDERED that the Findings and Award issued April 9,
13 1998, AS AMENDED herein, is AFFIRMED.

14 WORKERS' COMPENSATION APPEALS BOARD

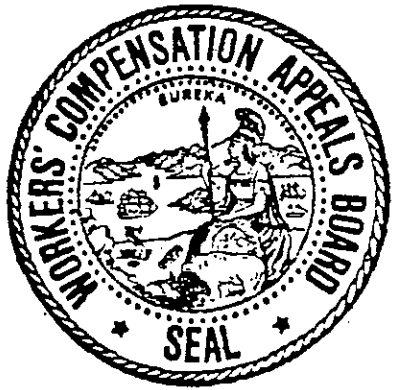
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16 _____ *[Signature]*

17 I CONCUR.

18
19 _____ *[Signature]*

21 I DISSENT:
22 (See Attached Dissenting Opinion)

23 _____ *[Signature]*



24 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

25 JUL 22 1998

26 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES SHOWN
ON THE OFFICIAL ADDRESS RECORD.

27 mnl *[Signature]*

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DISSENTING OPINION

I dissent. I would deny the petition for reconsideration.

The opinion of Edward J. O'Neill, M.D., constitutes substantial evidence and justifies the decision of the workers' compensation referee (WCR). In his initial report of September 8, 1997, Dr. O'Neill states:

"The patient notes he worked as a deputy patrol officer for approximately his first year and a half of employment with the county and then transferred to the training department where [he] was responsible for in-services and maintaining a current status for the department's officers. In 6/85 he promoted to detective, noting he worked a minimum of 40 hours per week with variable overtime, up to a maximum of 70 or 75 hours per week. He was also a member of the SWAT team for nine years until 1/94 which he feels also contributed to his hearing loss, noting that although he wore hearing protection, he was exposed to live hand grenades and did fire military weapons. He did not serve in the military."

Thus, Dr. O'Neill sets forth a work history which shows applicant's employment included long work hours and work as a member of the SWAT team for 9 years until 1994.

Dr. O'Neill continues:

"His hearing loss is well documented and is not in question. The combination of events and circumstances are probably responsible for that as described by Dr. House. Certainly for a young man, he has an unusually marked degree of hearing loss, even though he has had potential exposure to noise trauma in the workplace greater than anticipated for the usual police officer. he has been a member of a SWAT team for many years with the associated increased training demands and exposure to significant increased noise in the form of different types of ordnance. In addition to the hearing loss itself, he has had associated symptoms related to dysfunction of the organs of hearing and, according to the various records, he has cochlear damage and, with this, has developed certain labyrinthine symptoms, probably all interrelated.

"Confounding the picture is the fact that he has a developed hypertension. Although it has been tre

1 since the 1993-1994 time frame, if one looks at the
2 records carefully, this has evolved dating back further,
3 probably as early as 1990 and 1991. The importance of
4 this finding has to do with the fact that over the last three
5 or four decades it has been theorized that repetitive noise
6 exposure was a causative factor in the development of
7 hypertension. Although this has not been well proven in
8 humans, it is clearly documented in animals and there are
9 sufficient examples of such an effect in humans to support
10 the relationship such as this patient has developed. In
11 addition, regarding the hypertension, if one looks at the
12 records carefully, particularly the psychological
13 evaluation, it becomes clear that he is overqualified for his
14 current level of activity in the Sheriff's Department. He
15 has a Master's Degree with extensive years of training and
16 experience, working side by side with other officers who
17 are probably high school graduates. It appears that this
18 has produced a certain amount of frustration with lack of
19 advancement."

20 Dr. O'Neill, therefore, considers that applicant had significant increased
21 noise exposure which played a factor in causing the hypertension, along with
22 the lack of advancement at work. Dr. O'Neill concludes that "I feel that his
23 hypertension is occupationally related in large part secondary to the history
24 of noise exposure and additionally from the stress of recent years related to
25 his increasing difficulty with hearing and related insecurity which has
26 evolved secondary to that hearing problem."

27 Dr. O'Neill addresses the comments made by Dr. Sweeney concerning
applicant's condition and blood pressure readings. Dr. O'Neill states in his
supplemental report of January 8, 1998:

"In fact, if one goes back through the records of the San
Luis Medical Clinic, as early as 1980, his blood pressure
was significantly elevated at 156/96. Most importantly, it
should be recalled that in 1980, this patient was 31 years
old. This goes on and if one looks at the records in 1983,
his blood pressure was 156/108, 152/108, 140/100, etc.
These blood pressures which I have noted all occurred
when this patient was in his early 30s. No matter how
hard one tries to rationalize that away, these are
remarkably elevated blood pressures for a man of that age.
Importantly, there is no indication that at the time he was

1 taking stimulants or blood pressure medications. He did
2 not start these medications (either) until about 1994.

3 "With due respect to the doctor, it appears that he did
4 not review the records of the San Luis Medical Clinic but
5 rather reviewed the records of other physicians.

6 "There is absolutely no question that Mr. Wizeman had
7 and does have hypertension. The fact that there have
8 been intermittent periods where his blood pressure was
9 at normal or near normal levels is totally irrelevant when
10 one considered we are dealing with a dynamic vascular
11 function with frequent changes in character and degree.

12 "The only remaining question is whether his
13 hypertension has an occupational component. It is my
14 opinion that the patient's work as a police officer was
15 sufficiently stressful to have contributed to the
16 development of his hypertension and was an
17 aggravating/accelerating factor and thereby his
18 hypertension is occupationally related." (Emphasis
19 added.)

20 Dr. O'Neill's conclusion is not inconsistent with the history or conclusions
21 provided in his initial report. Dr. O'Neill provides a well-reasoned analysis
22 based on the records why applicant's hypertensive condition exists and
23 arises from his work. Furthermore, it is well recognized that police work is
24 inherently stressful as under Labor Code section 3212 cardiovascular injuries
25 are presumed to be industrial.

26 Dr. Sweeney disagrees with Dr. O'Neill and does not find that applicant
27 has hypertensive condition. The diagnosis of hypertension has been
documented in the medical records as set forth by Dr. O'Neill in his initial
report. The record further reflects applicant's treatment with medication
for his hypertensive condition. While Dr. Sweeney concludes that applicant
does not have true essential hypertension, the diagnosis of hypertension is
well-documented in the records.

Dr. O'Neill and Dr. Sweeney disagree on the diagnosis and causation,
including the effect noise has on causing hypertension. Dr. O'Neill, how

1 discusses the issues and provided a well reasoned analysis based on the
2 records. He provides a sufficient discussion of the issues of work stress and
3 noise exposure to support his determination. It is unnecessary for a
4 physician to provide medical literature to support his or her conclusion
5 merely because another physician disagrees. A disagreement between
6 physicians on causation, moreover, does not mean that the opinions are
7 speculative or do not constitute substantial evidence. It is well established
8 that the relevant and considered opinion of one physician, though
9 inconsistent with other medical opinions, may constitute substantial
10 evidence. (See *Place v. Workers Comp. Appeals Bd.* (1970) 3 Cal.3d 372 35
11 Cal.Comp.Cases 525.) On this record, Dr. O'Neill's opinion constitutes
12 substantial evidence.

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1 The WCR considered medical opinions in light of the record and
2 concluded that Dr. O'Neill's opinion is the most persuasive and consistent
3 with the record. The WCR specifically noted that Dr. Sweeney found that
4 applicant does not have hypertension. Dr. O'Neill's opinion constitutes
5 substantial evidence. There is no evidence of considerable substantiality to
6 require a reweighing of the evidence and a rejection of Dr. O'Neill's opinion.
7 (*Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246 [54
8 Cal.Comp.Cases 349, 355].)

9 Therefore, I would deny the petition.

10 WORKERS' COMPENSATION APPEALS BOARD

11
12 Colleen S. Casey

13 COLLEEN S. CASEY, COMMISSIONER

14 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

15 JUL 22 1998

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17 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES SHOWN
18 ON THE OFFICIAL ADDRESS RECORD.

19 mnl

20 Colleen S. Casey

