

11-7-01

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

[REDACTED] (Deceased) by and
through [REDACTED] (Widow),
Individually and as Guardian ad Litem of
[REDACTED]
[REDACTED], Minor Surviving Children

Case No.: [REDACTED]

Applicant,

**FINDINGS;
AWARD;
AND ORDER**

vs.

[REDACTED], permissibly self-
insured, administered by [REDACTED]
[REDACTED]

Defendants.

In accordance with the Opinion on Decision this day filed and served concurrently on the parties, with the applicant and defendant having appeared and having the matter submitted for decision to The Honorable Terry R Menefee, Workers' Compensation Administrative Law Judge, said Judge now Finds, Awards and Orders as follows:

FINDINGS OF FACT/CONCLUSIONS OF LAW

1. [REDACTED], born 11/20/62, while employed as a Corrections Officer, during the period ending on or about 3/28/01, pursuant to the stipulation of the parties, paragraph 1, as set forth in the Pre Trial Conference Statement (last day at work not later than 3/21/01), at Fresno, California, by [REDACTED] [REDACTED], claims to have sustained a cumulative emotional stress injury arising out of and occurring in the course of employment that resulted in his suicide.

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2. At the time of the injury, the employer was permissibly self-insured, administered by [REDACTED].

3. Decedent was employed by the [REDACTED] from 3/19/01 through 3/28/06. He resigned his employment as a Corrections Officer, after spending two or three days on the job, attending an orientation program that primarily was in a briefing room setting with occasional jail tours, not exceeding a total of two hours' time.

4. Decedent resigned his position on 3/26/01, and his request for transfer/demotion to the position of Community Relations Officer with the Sheriff's Department was under consideration at the time he took his own life by self-inflicting a fatal gunshot wound outside his residence on 3/30/01.

5. Decedent was experiencing anxiety as the result of his unsettled employment situation, and he sought treatment from [REDACTED] who prescribed medications, including sleeping pills and an anti-anxiety medication, the dosage for which was increased within the week before his death.

6. Decedent deliberately and intentionally took his own life, while no one else was home by inflicting a gunshot wound to his head through his mouth while sitting in a chair in the yard outside his residence.

8. Applicants' claims for Death Benefits must be disallowed because Decedent was employed by the [REDACTED] for less than six months, his death was not the result of a sudden and extraordinary employment event, and his suicide was not the result of an irresistible impulse.

9. Applicants' claim for statutory Burial Expenses must be disallowed for the reasons stated in No. 8, above.

10. There are no funds from which an award of Attorney Fees can be made.

11. Applicants' attorney is entitled to recover litigation costs in the amount of \$572.40.

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AWARD

AWARD is made in favor of Lien Claimant [REDACTED] against [REDACTED], as follows:

- a) Litigation costs in accordance with Findings of Fact No. 11, above.

ORDER

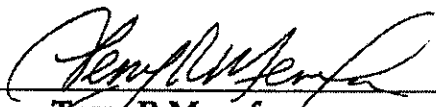
Based upon the foregoing, and

GOOD CAUSE APPEARING THEREFOR:

IT IS HEREBY ORDERED that APPLICANTS shall take nothing by virtue of their respective claims.

A PETITION FOR RECONSIDERATION FROM THIS DECISION SHALL BE FILED ONLY AT THE FRESNO DISTRICT OFFICE OF THE WORKERS' COMPENSATION APPEALS BOARD.

Dated: March 22, 2006


Terry R Menefee
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Filed and Served by mail on all parties as listed on
The Official Address Record (excluding all employers)
On March 22, 2006

By: RR Cortez 

[REDACTED], et al
[REDACTED]

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[REDACTED] (Deceased) by and
through [REDACTED] (Widow),
individually and as Guardian Ad Litem for
[REDACTED]
[REDACTED], minor surviving children

Applicants,

vs.

[REDACTED], permissibly
self insured, administered by
[REDACTED]

Defendants.

Case No. [REDACTED]

OPINION
ON
DECISION

The above-entitled case having been heard by and submitted for decision to Terry R Menefee, Workers' Compensation Administrative Law Judge, said judge opines as follows:

OPINION ON DECISION

Introduction:

This case involves a death claim presented by the Applicant [REDACTED] (widow) of [REDACTED] (deceased), individually and as Guardian Ad Litem their two minor children, [REDACTED], which arise from a fatal self-inflicted gunshot that allegedly resulted from sudden and extraordinary events in the workplace that caused cumulative emotional stress, or an irresistible impulse, that renders the claims compensable as an exception to the 6 month employment requirement. (Labor Code 3208.3)

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Background:

Decedent commenced his employment with the ██████████ Sheriff's Department as a trainee Corrections Officer on 3/19/01. It is undisputed that he knew he would be assigned to the County Jail upon completion of a one week orientation program, administered by ██████████

There also is no dispute that Decedent had non-industrial stressors, including financial difficulties and the childhood illnesses of his son Andrew (DOB 6/13/00), which ██████████

██████████ testified had largely resolved when Decedent commenced his county employment.

The couple filed for Bankruptcy in March 2001, before he began his employment. ██████████

██████████ characterized the Bankruptcy as a relief and a chance to start over. (Summary, Testimony of ██████████)

As part of its pre employment screening, the County routinely did credit/financial checks, which did not prevent Decedent from starting his job with the Sheriff's Department. He also was given a pre-employment psychiatric evaluation, the results of which were compatible with his job requirements.

There is a dispute as to whether Decedent completed the first two or three days of his orientation program. ██████████ recalls him being there only for sessions on Monday and Tuesday, but ██████████ recalls that he also worked on Wednesday, which is corroborated by his payroll records. (Ex. 6)

In any event, there is no dispute that Decedent did not report for work after Wednesday 3/21/01, that he signed resignation papers on 3/26, and that he applied for a transfer/demotion to the position of Community Services Officer, which was being

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considered by the [REDACTED]. There also is no dispute that he committed suicide on 3/30/01, when he died from a self-inflicted gunshot wound. (Ex 3 collectively pgs. 009-012) The Post Mortem Toxicology lists Decedent's blood alcohol level at .02%. (Ex 3, collectively, pg. 012) No testimony or evidence was received with regard to what Decedent's blood alcohol level might have been at the time of his death.

The [REDACTED] disputes Applicants' contention that there were sudden and extraordinary events to which he was exposed in the workplace that caused extreme stress, resulting in his suicide. Testimony from [REDACTED], in substance, was to the effect that Decedent was participating in classroom sessions during the 8 hour days he reported, with no more than 2 hours touring the jail facility. The classes were held in the 2nd floor briefing room. Also located on the 2nd floor are the central control room and medical unit. During his orientation, Decedent was instructed on Basic Security, and Officer Safety. He does not recall that inmate suicides or attempted suicide procedures were addressed.

[REDACTED] testified that her husband told her that he had undergone training regarding inmate suicide/attempted suicide procedures and that he was distraught, in part, because of a mandate prohibiting any attempt to intervene, until backup arrived, which could lead to the death of an inmate. [REDACTED] did not recall any attempted suicide at the jail during Decedent's orientation, but [REDACTED] does recall Decedent telling her he overheard a radio transmittal concerning such an event, which came on the same day that he had been instructed on the suicide/attempted suicide procedures. Decedent was also upset about additional costs for uniforms, union dues and downtown parking that he did not realize he would have to incur before his pre-employment interview on 2/27/01, when he also was notified of his starting date.

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Decedent sought medical treatment from his wife's physician, [REDACTED] during the last weeks of his life, and he was taking prescribed fast acting anti depressants and other medications at the time he expired. Before his death, he consulted with the [REDACTED].

Issues:

The following issues are submitted for adjudication:

Injury AOE/COE (LC 3600, with employment less than 6 months-LC 3208.3);
Death Benefits;
Burial Expenses-to be adjusted by the parties if compensability found;
Costs in accordance with LC 5811, and
Attorney Fees.

Injury AOE/COE:

Decedent began his employment with the [REDACTED] as a beginning Corrections Officer on 3/19/01, when he reported for a one week orientation program at the jail. He had left his prior position as a washing machine repairman, in part, because he sought a career and to avoid being on call. (Summary of Evidence, Testimony of [REDACTED]; Ex 19, Memorandum of Telephone Conversation with [REDACTED])

Decedent died as the result of a self inflicted gunshot wound outside his residence on 3/30/01, some 4 days after he had resigned his position as a trainee corrections officer on 3/26/06. (Exhibit 3, collectively; Summary of Evidence, Testimony of [REDACTED])

It is undisputed that he did not report for work at after 3/21/01. There also is no dispute that Decedent did not satisfy the 6 month employment requirement that applies to psyche

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injury cases, as set forth under LC 3208.3(d). Applicants allege that the death claim is not barred by the 6 month requirement because [REDACTED] death resulted from a sudden and extraordinary work event, or, in the alternative, as the result of an irresistible impulse that was not "intentional" or "self inflicted" within the meaning of LC 3600 (a)(5).

Accordingly, the analysis now shifts to determining whether "sudden and extraordinary" employment conditions caused an industrial psychiatric injury. LC 3208.3(e) (1) In making that determination, the employee's subjective perception of a sudden and extraordinary industrial event must be reasonable from an objective perspective. *Murad v WCAB* (2001) 66 CCC1223 (writ denied). In *Murad*, the WCAB granted reconsideration, reversed the WCJ's findings, and substituted the Board's own findings to the effect that Applicant's psyche injury claim for repeated sexual harassment by her supervisor was barred by the six month requirement and that her injury was not caused by a sudden and extraordinary work event. (pg 1224) The WCAB described the following two part test, considering *Ezzy v WCAB* (1983) 48 CCC 611:

- (1) [W]hether the employee subjectively believes his or her participation in an activity is expected by the employer, and
- (2) {W}hether the belief is objectively reasonable... (Id. Pg 1225)

The WCAB in *Murad* found that the exchanges between applicant and her supervisor were not unexpected, and they did not amount to "sudden or extraordinary" events sufficient to avoid the 6 month employment requirement. The DCA denied Applicant's Petition for a Writ of Review. See also, *Romero v CIGA* (2005) 33 CWCR 75 (evidence did not show psychiatric condition was caused by an extraordinary employment condition)

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In applying an objective test to the facts presented here, consideration has been given to the entirety of the record, including the trial testimony of the witnesses, the deposition testimony of Decedent's father, [REDACTED] the Memorandum of a Telephone Conference with him, and documentary evidence, including medical records.

Applicants rely on the QME report of [REDACTED] (psychiatry and neurology), dated 5/7/04, which states in pertinent part:

I am aware that [REDACTED] was employed by [REDACTED] for less than six months. Nevertheless, it is my belief that the psychiatric injury he experienced because of his work was due to sudden and extraordinary employment conditions. In my opinion, it is speculative to state that he would have taken his life but for those conditions.
(Ex. 1, pg 24)

It is necessary to evaluate the factual background in some detail in order to evaluate the findings of [REDACTED], including his opinion that Decedent did, in fact, suffer a psychiatric injury that was industrial in nature.

The record shows that Decedent was concerned about his ability to meet the physical demands of his chosen position. [REDACTED] testified that he was complaining of shin splints from walking up and down stairs and that he was concerned about successfully completing required Academy training that included running. She encouraged him to go as far as he could, and if he was dropped, he would be eligible for unemployment benefits, which would give them financial relief while he looked for another job. She considered him to be highly employable. An inference is drawn from the record that Decedent had the full

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support and encouragement of his wife with regard to his employment situation, both before and after he resigned his position with the County.

Decedent's application for transfer to the position of Community Service Officer was still pending on the date of his death. The dissatisfactions/concerns Decedent voiced about the unforeseen expenses that were explained to him on 2/27/01, are found to be relatively trivial in nature, and they were grossly disproportionate to the action he took in ending his own life. He had previously treated with health care providers for psychiatric concerns. Nothing in the record appears to constitute a preponderance of evidence that Decedent did, in fact, encounter a sudden and extraordinary event at work, which on an objective basis that reasonably could have caused a psyche injury that resulted in his suicide, notwithstanding a masterful presentation of evidence at trial by Applicants' attorney.

Decedent was a trainee corrections officer, who reported to classroom training sessions for only one or two days, which includes incidental touring of the jail facility that totaled less than two hours. His contact with inmates was extremely limited. He did not observe any sudden or extraordinary events, nor was he directly impacted by any such events. He merely attended 2 or 3 days of training. The Saldana jail suicide occurred after his last day at work, and he learned of that event only through the news media. Based on the entirety of the record, the only reasonable inference that can be drawn is that Decedent became dissatisfied with his new job after just a few days of classroom orientation, that he wanted out and got out, while keeping open the possibility of transferring to another job with the Sheriff's Department.

The notes of [REDACTED] (Ex 11, collectively) confirm that he prescribed medications to assist Decedent in getting to sleep (Sonata) and that he increased the dosage of anti-anxiety

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medication (Celaxa) prior to his death. [REDACTED] records dated 3/31/01 (the day following Decedent's suicide) state, in pertinent part:

I did not ask what the method of suicide was. Patient was noted to be quite depressed in my earlier notes and this was related to sudden changes in employment that he had undergone. He had left a secure job to try out for correctional work. Unfortunately, he found out that the work was incompatible after working only one day.

This caused him a lot of grief because of his loss in his role as primary breadwinner for the family. (Ex 11, pp1)

[REDACTED] has identified Decedent's sudden job changes, including his resignation as a Corrections Officer, as the apparent cause of his depression. It is noted that [REDACTED] assessment is not in conformance with the criteria set forth in the DSM diagnostic protocols, but it is nevertheless considered relevant. [REDACTED] findings appear to be a correct assessment of the primary stressor that was adversely affecting Decedent; i.e. uncertainty about his future employment and his ability to provide for his family in light of his recent employment history that included leaving two jobs within a relatively short interval. These findings are further supported by the Memorandum of Telephone Conference with Decedent's father, [REDACTED], which indicate that [REDACTED] felt his son had not told him about his decision to begin work for the County because he was ashamed of that decision, "which was as disappointment to him". (Ex 19)

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The reliance Applicants' attorney places on the decision in *Wells v WCAB* (1985) 50 CCC 599 in an attempt to find a compensable injury appears misplaced. In *Wells* there was no evidence sufficient to support a finding of industrial injury, and the same is true here, notwithstanding the findings and opinions of Applicants' QME, [REDACTED], which will be addressed further, below.

Whether there was a sudden and extraordinary event at work is considered to be a question to be resolved by the trial judge, as a finding of fact, rather than a medical issue. In this instance, the question is determined in the negative. Accordingly, it is found that Decedent's death was not the result of a compensable psyche injury (cumulative emotional stress), that falls within the exception to the six month employment requirement. LC 3208.3 (d) It also is found that Decedent's suicide was willful and deliberate based on the fact that he had not expressed suicidal ideations (Summary, Testimony of [REDACTED]; Ex 11, collectively; Ex. 19) and the manner of his suicide by gunshot, which he committed sitting in a chair in the yard of his residence, while no one was at home.

Accordingly, it is found that it was the sudden changes in his employment status, and the uncertainties related to those changes insofar as his future employment was concerned, not an on the job injury that primarily contributed to Decedent's suicide, rather than an industrial psyche injury, whether a sudden and extraordinary event or irresistible impulse.

However, even if that factual finding should be to the contrary, the evaluation report of [REDACTED], Applicant's QME (psyche) is found to lack substantial medical evidence. [REDACTED] opines Decedent suffered from a Depressive Disorder, Not Otherwise Specified, with Anxiety features. He also finds "[t]hat [REDACTED] may well have been experiencing a low

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grade clinical depression prior to his undertaking employment with [REDACTED]. " [REDACTED].
[REDACTED] also finds:

However, he was in no way work disabled by any pre existing depression, nor was he suicidally prone prior to commencing his employment with [REDACTED]

[REDACTED] was emotionally/psychologically injured by events of his employment with [REDACTED]. There were a number of events which surfaced after he commenced his employment with the county which caused him emotional stress. However, it is my belief he would not have taken his life but for those work events surrounding the suicides of two inmates in jail, as well as the specific stressful training experience he had concerning the subject of suicide.

Actual events of his employment were predominant as to all causes combined of the psychiatric injury.

I am aware that [REDACTED] was employed by [REDACTED] for less than six months. Nevertheless, it is my belief that the psychiatric injury he experienced because of his work was due to sudden and extraordinary employment conditions. In my opinion, it is speculative to state that he would have taken his life but for those conditions.

The work stresses led to an emotional disturbance which gave rise to suicidal thinking and an impulse to take his life which he could not resist. (Ex 6, pg 24)

[REDACTED] does not define the "sudden and extraordinary employment conditions" that he attributes to [REDACTED] suicide. His opinion is not stated to be within a reasonable degree

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of medical probability. Furthermore, [REDACTED] opinion does not explain how or why an irresistible impulse caused Decedent to take his life, nor does he explain why Decedent did so after a passage of at least 9 days following his last day of training, when the prospect of transfer to another position in the Sheriff's Department was still open.

As noted above, the record does not contain evidence from which a reasonable inference can be drawn that occurring during Decedent's relatively benign two or three day orientation period reasonably could have resulted in his suicide, notwithstanding [REDACTED] testimony that he heard a radio transmission concerning an attempted inmate suicide, which might have occurred at about the time he may have received instruction on suicide response procedures. Any such radio transmission that might have been heard did not pertain to anything that the Decedent personally witnessed or was directly involved in. [REDACTED] finding that two inmate suicides had occurred in the jail that he found were contributing factors to Decedent's suicide does not appear to be supported by the Record. Accordingly, [REDACTED] opinion is found to be partially based upon incorrect findings. Based on all of the foregoing, it is found that [REDACTED] QME findings lack substantial medical evidence and they are not persuasive.

Therefore, notwithstanding the findings of Applicants' QME to the contrary, that Applicants' claim for Death Benefits must be denied because Decedent worked for less than 6 months, the injury was deliberately and intentionally self-inflicted, and it was not the result of either an sudden or extra ordinary work event, nor an irresistible impulse remains unchanged.

Death Benefits:

Based on the Stipulation of the Parties, as set forth in their Pre Trial Conference Statement, it is found that [REDACTED] (widow) and both [REDACTED], born 2/8/95 and [REDACTED]

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██████████ born 6/13/00 (minor surviving children) are total dependents. However, based on the foregoing findings, Applicants' claims for death benefits must be disallowed.

Burial Expense:

Based on the foregoing findings, Applicants' claim for statutory burial expenses must be disallowed.

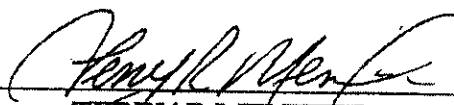
Costs (LC 5811):

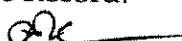
The lien of Applicants' attorney for litigation costs in the amount of \$572.40, as set forth in Ex 20, is allowed.

Attorney Fees:

There is no award of benefits from which an award of Attorney Fees can be made.

A PETITION FOR RECONSIDERATION FROM THIS DECISION MUST BE FILED ONLY AT THE FRESNO DISTRICT OFFICE OF THE WORKERS' COMPENSATION APPEALS BOARD.


TERRY R MENELEE
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Filed and Served by mail on
3/22/06
On parties as listed on the
Official Address Record.
By: RR Cortez 

██████████ (Deceased)
██████████