

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

Case No. ADJ [REDACTED]

[REDACTED],
Applicant,

vs.

COUNTY OF [REDACTED] DEPARTMENT OF
PROBATION, Permissibly Self-Insured,
Administered by [REDACTED],
[REDACTED]

Defendants.

FINDINGS AND ORDER

The matter having been heard by and submitted for Decision to the
Honorable [REDACTED], Workers' Compensation Administrative
Law Judge, said Judge Finds and Orders as follows:

FINDINGS OF FACT

1. The Stipulations of the parties as specified on page 2 of the Minutes of Hearing and Summary of Evidence filed on December 20, 2011 are true and are adopted by reference as though fully set forth herein.
2. Applicant did not sustain injury arising out of and in the course of employment to his digestive system, growth on skin and severe diarrhea.

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ORDER

It is ordered that applicant take nothing by way of the application on file herein.

DATE: 3-1-12

[REDACTED]

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served by mail on all parties listed on the
Official Address record on the above date.

[REDACTED]

[REDACTED]

OPINION ON DECISION

Applicant claims he is entitled to a presumption of injury based on the provisions of L. C. §3212.8. Based on the parties stipulation, it is undisputed that applicant was employed by the County [REDACTED] as a Juvenile Correctional Officer in the Probation Department. Unlike the presumptions as specified in L. C. §3212.6 and 3212.9 L. C. §3212.8 does not state that its presumption applies to Correctional/Probation Officers. If the Legislature intended to include Correctional/Probation Officers in the L. C. §3212.8 presumption it would have done so. Therefore, absent the inclusion of Correctional/Probation Officers in L.C. §3212.8, I find that said presumption is not applicable. Consequently I find that applicant is not entitled to a presumption of injury in this case.

Applicant testified that he does not know when or where he was exposed to the MRSA virus and does not know how he was exposed to said virus.

It is well established that even if the presumption of L.C. §3212.8 applied to Correctional/Probation Officers, applicant still must prove by a preponderance of the evidence that he was exposed to MRSA at work. L. C. §5705, *Faust v. City of San Diego* (2003) 68 CCC 1822 (Appeals Board en banc Opinion).

Based on applicant's un rebutted trial testimony, it is clear that he does not know if he was exposed to MRSA at work. Therefore, applicant has not met his

burden of proof to trigger the presumption of injury as specified in L. C. §3212.8 even if it was applicable in this case.

Finally, to meet the burden of proof regarding injury arising out of and in the course of employment, applicant must have substantial medical evidence to support his claim. Dr. [REDACTED], the Panel Qualified Medical Examiner is an Internal Medicine Specialist who opined that applicant did not sustain an industrial injury. Applicant is relying on the opinion of [REDACTED] a Chiropractor, who concluded that applicant did sustain an industrial injury. Quite frankly, not only did [REDACTED] not review all of the relevant records like Dr. [REDACTED] did, but also MRSA is clearly outside his area of expertise. On the other hand, not only is Dr. [REDACTED] the appropriate medical specialist agreed to by the parties, his report is comprehensive and in my opinion constitutes substantial medical evidence that applicant did not sustain injury arising out of and in the course of employment in this matter.

Therefore, applicant is not entitled to any workers' compensation benefits by way of the application filed herein.