



California Workers' Compensation Institute

1333 Broadway Suite 510, Oakland, CA 94612 • Tel: (510) 251-9470 • Fax: (510) 763-1592

APRIL 29, 2016

SIGNIFICANT DECISION 16-05

GUERRA V WCAB (RODAS)

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO
B266633**

FILED: MARCH 30, 2016

PUBLICATION ORDER: APRIL 27, 2016

Employee's death was determined to be industrial based on the evaluating physician's reasonable inferences from the record.

SIGNIFICANCE: Circumstantial evidence, including reasonable inferences drawn from the record as a whole, is sufficient to uphold an award of benefits.

FACTS: Carlos Rodas was employed as a dishwasher by Guido's Restaurant and his duties included taking out the trash. A passer-by found him lying unresponsive in the restaurant parking lot; he was later declared dead. The coroner determined that the cause of death was a lung hemorrhage, complicated by tuberculosis and fungal infection. The only known exposure was that Mr. Rodas had been exposed to TB as a child. His parents filed a death claim and obtained med-legal opinion finding that Mr. Rodas had pre-existing TB, cavitary lesions, and lung infection unrelated to his employment. But the physician further stated that Mr. Rodas "could have" been exposed to strong fumes while taking out the trash, which "could have" caused him to develop a strong cough, or he "could have" exerted while performing heavy lifting of the trash bins. On this basis, the physician opined "with reasonable medical certainty" that his employment was a substantial factor in his death. At trial, the WCJ awarded benefits, but a divided WCAB panel reversed, holding that the physician's opinions were based on speculation and did not constitute substantial evidence.

HOLDING: The Court of Appeal reversed again, and held that the death had occurred AOE/COE. Contrary to the Appeals Board, the Court held that the physician's opinions were based on "reasonable inferences" drawn from the evidence. Citing the Supreme Court in *South Coast Framing*, the Court ruled that for the purposes of causation, it is sufficient if the work is a contributing cause of the injury.

DISCUSSION: In reaching its decision, the Court of Appeal confirmed that circumstantial evidence is sufficient to support an award of benefits. Even though there was no direct evidence that Mr. Rodas was exposed to strong fumes, or that he had coughed due to the fumes, or that he had performed any physical exertion, the Court found that it was “eminently reasonable” for the physician to have based his causation opinion on all of these inferences. These inferences, combined with the “liberal construction rule,” led the Court to confirm that it was not medically probable that the death was entirely unrelated to the employment. Given the causation standard from *South Coast Framing* (a medical opinion that industrial causation was “not zero” is sufficient to award benefits), the Court ruled that the death was industrial.

That the Court had to reach all the way back to a 1942 IAC case to find support for the idea that circumstantial evidence is sufficient to support an award of benefits is telling. More recent cases have, like the Appeals Board decision here, trended toward a finding that medical opinion based on “surmise, speculation, conjecture or guess” is not sufficient to support an award. With the help of *South Coast Framing*, that tide may be turning.

ESL/