

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

JAMES REEDER, *Applicant*

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC HEALTH, legally uninsured,
adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11815716
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, which are both adopted and incorporated herein, we will deny reconsideration.

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 2, 2021

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**JAMES REEDER
STATE COMPENSATION INSURANCE FUND**

PAG/bea

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

1. Applicant's Occupation: Associate Government Program Analyst.
Applicant's Age at Injury: 46.
Date of Injury: Cumulative trauma through April 24, 2018.
Parts of Body Injured: Psyche.
Manner in Which Injury Occurred: Cumulative trauma.
2. Identity of Petitioner: Applicant.
Timeliness: The petition was timely filed.
Verification: The petition was properly verified.
3. Date of Issuance of the Findings of Fact: April 13, 2021.

Petitioner requests reconsideration of the finding that applicant did not sustain an injury to his psyche arising out of and in the course of employment on a cumulative trauma basis through April 28, 2018.

4. Petitioner's Contention:

That applicant met his burden of proof in that Dr. O'Dowd found that the actual events of employer were the predominate cause of his psychiatric injury and that his testimony, as well as the testimony from Mark Meis and Cheryl Ungerman, supports his claim of injury.

FACTS

The case came to trial on January 5, 2021 on the sole issue of whether applicant sustained an injury arising out of and in the course of his employment as an Associate Government Program Analyst on a cumulative trauma basis through April 24, 2018. The stipulation and issues were read into the record as well as the exhibits. Testimony was received from one witness and the matter was continued to February 16, 2021 to receive additional testimony.

At the February 16, 2021 trial, defendant offered an additional exhibit to which applicant's objection was sustained. The proposed additional exhibit was marked for identification purposes only. Further witness testimony was received and the matter was submitted for decision.

The subject Findings of Fact and Order issued April 13, 2021. In substance, the undersigned felt that applicant failed in his burden of proof in establishing that his claim of retaliation for uncovering fraud was an actual event of employment.

Applicant filed his timely and verified Petition for Reconsideration on May 7, 2021.

Defendant filed an answer on May 12, 2021.

DISCUSSION

Applicant argues that he met his burden of proof in establishing that he sustained injury arising out of and in the course of employment based upon the reports of Dr. O'Dowd, his testimony, and the testimony of Mark Meis, Cheryl. Applicant is asking that the WCAB reweigh the evidence and make a finding that he sustained his burden of proof. Additionally, applicant is alleging that he was unable to provide additional documentation because Judge Geller told him that he needed to limit his documents and witnesses.

Applicant correctly points out that QME Dr. O'Dowd believed that two events of employment were 51% of the cause of applicant's psychiatric injury, while 49% was caused by pre-existing psychiatric problems (Joint Exhibit 4, at page 19). Specifically, Dr. O'Dowd found that 36% was caused by applicant's allegation that he was retaliated against by upper management due to him exposing fraud. Applicant believes the retaliation took the form of shutting down his department and transferring him out of his position of investigating fraud and into a position he had no skills or experience in (Joint Exhibit 4, at page 18). Additionally, Dr. O'Dowd found that 15% was related to stress from the threat of violence from a co-worker who allegedly carried a concealed weapon to work (Joint Exhibit 4, at page 18). Dr. O'Dowd believed it was these two experiences that caused applicant significant stress and development of his depressive and anxiety symptoms (Joint Exhibit 4, at page 18). Dr. O'Dowd felt that without any information to the contrary, the events of exposing fraud and the transferring of applicant without reason, lead him to support Mr. Reeder's assumptions (Joint Exhibit 3, at page 27).

The undersigned found that applicant failed to establish that he was retaliated against for exposing fraud. Specifically, the undersigned relied upon the credible testimony of Christine Nelson, who provided context for the dissolution of the local integrity unit as well as the reasoning to not allow the analysts to interview the staff at PHFE (Opinion on Decision, April 13, 2021, at page 4). The undersigned found that applicant's belief that he was retaliated against for exposing fraud was not supported by objective evidence (see *Verga v. Workers' Compensation Appeals Bd.*, 73 Cal. Comp. Cases 63, 72).

With regard to the 15% that Dr. O'Dowd attributed to applicant's stress related to the threat of violence from a co-worker, the Workplace Violence Report notes that the investigation was unable to substantiate a violation of Public Health Administrative Manual Chapter 8, Section 2030 (Defendant Exhibit A, at page I). Furthermore, the report concluded that there was not enough specific evidence to determine that Cynthia Lopez-Yates harassed, threatened or intimidated any CDPH staff (Defendant Exhibit A, at page I). Furthermore, there is no evidence that Cynthia Lopez-Yates actually brought a concealed weapon to the workplace, as noted by Dr. O'Dowd, that allegedly caused applicant significant stress (Joint Exhibit 4, at page 6).

To the contrary, the testimony from Cynthia Lopez-Yates, regarding the anonymous texts sent to her by applicant, establish that Cynthia Lopez-Yates and applicant's supervisor both felt that she was being harassed by the applicant (Summary of Evidence, February 16, 2021, at pages 6-8). Cynthia Lopez-Yates testified that after she felt harassed by applicant, she made it a point not to have casual conversation with him (Summary of Evidence, at page 8, lines 1-2).

With regard to applicant's claim that he was unable to provide all of his documentary evidence at trial, because he was told to limit his documents, is not supported on this record. In the November 2, 2020 Pre-Trial Conference Statement, Judge Geller noted that he advised applicant that "he may be required to narrow his list of witnesses, or explain why the testimony is necessary and not duplicative" and instructed applicant to "identify the exhibits listed in his exhibit binder with specificity and provide this list to defendant and to the WCAB within 14 days".

There is no evidence that Judge Geller limited the number of exhibits applicant could offer at trial. Furthermore, all of the exhibits applicant wished to offer were received into evidence with no objection.

Nothing in applicant's Petition for Reconsideration has caused the undersigned to change the finding and conclusion made on April 13, 2021 that applicant did not sustain an injury arising out of and in the course of employment.

RECOMMENDATION

It is recommended that applicant's Petition for reconsideration be denied.

Dated: May 24, 2021

NOAH W. TEMPKIN
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

Applicant has alleged that he sustained a psychiatric injury on a cumulative trauma basis through April 24, 2018 as an Associate Government Program Analyst with the Department of Public Health. Labor Code section 3208.3 addresses the threshold requirements for the compensability of psychiatric injuries.

Labor Code section 3208.3 states, in pertinent part, that: "In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury." (§ 3208.3, subd. (b)(1).) This means that benefits for a psychiatric injury may be awarded only when the employee establishes that industrial factors account for more than 50 percent of the employee's psychiatric injury (*Verga v. Workers' Compensation Appeals Bd.*, 73 Cal. Comp. Cases 63, 70).

In interpreting Labor Code section 3208.3, the Court of Appeal agreed with a leading treatise on workers' compensation law that the "actual events of employment" language added by section 3208.3, subdivision (b)(1) "can be interpreted" as requiring the employee to establish "objective evidence of harassment, persecution, or other basis for the alleged psychiatric injury." (1 Hanna, Cal. Law of Employee Injuries and Workers' Compensation, supra § 4.02[3][b], p. 4-22.) (see *Verga v. Workers' Compensation Appeals Bd.*, 73 Cal. Comp. Cases 63, 72).

In this case, applicant is alleging that the actual events of employment, specifically his belief that he was retaliated against for exposing fraud and his belief that a co-worker may become an active shooter, were the predominate causes of his psychiatric injury.

The following is a summary of the medical evidence:

Applicant was first evaluated by Dr. O'Dowd on November 9, 2018 (Joint Exhibit 1). Dr. O'Dowd felt that Mr. Reeder had two psychiatric injuries while working at the Department of Public Health of California: 1) Mr. Reeder's belief that his employer was retaliating against him for exposing fraud and the subsequent transfers to different positions when his department was dissolved; and 2) Mr. Reeder's experience with a co-worker who he believed was licensed to carry a concealed weapon and began exhibiting odd behaviors, believing that there were not enough precautions and assurances provided to create a safe work environment (Joint Exhibit I, at page 24). Dr. O'Dowd initially felt that Mr. Reeder's psychiatric injuries were predominantly caused by the events of employments and apportioned causation of injury as follows: 25% due to pre-existing psychiatric disability; 20% due to retaliation by upper management; and 55% due to lack of safety in work environment due to co-worker (Joint Exhibit 1, at pages 24-26).

In a supplemental report, Dr. O'Dowd agreed that he should have a chance to review all of the relevant records before re-evaluating Mr. Reeder again (Joint Exhibit 2, at page 2).

In another supplemental report, Dr. O'Dowd reviewed extensive records related to Mr. Reeder's prior employment with the West Sacramento Police Department, the two depositions of Mr. Reeder and some treatment records (Joint Exhibit 3, at pages 5-24). Dr. O'Dowd was asked by the adjuster whether Mr. Reeder's anger management problem effect his perception of the incidents that occurred at the Department of Public Health. Dr. O'Dowd noted that following the June 2005 trauma, Mr. Reeder had eleven internal affairs investigations due to his aggressive interactions with the public and public servants as well as five disciplinary actions that resulted in his termination from the West Sacramento Police Department. Dr. O'Dowd noted that Mr. Reeder's police chief characterized these as "inappropriate interpersonal communication style and anger management at their core" (Joint Exhibit 3, at page 25). Dr. O'Dowd believed that Mr. Reeder had anger management problems prior to this claim of industrial injury that appear to have begun following his 2005 trauma (Joint Exhibit 3, at page 25). Dr. O'Dowd believed that Mr. Reeder's claim involved two incidents: 1) his perception that he was retaliated against for finding fraud and abuse; and 2) his fears about a co-worker becoming an active shooter (Joint Exhibit 3, at page 25). Dr. O'Dowd did not believe that either of these issues overlapped with Mr. Reeder's pre-existing anger problems (Joint Exhibit 3, at page 25).

Furthermore, Dr. O'Dowd believed that Mr. Reeder's pre-existing psychological issues had subsided after working at the Department of Public Health for three years (Joint Exhibit 3, at page 26). Dr. O'Dowd stated that due to the events at the Department of Public Health, Mr. Reeder experienced stress and depression due to his belief that he was the victim of retaliation and fears that a co-worker was a threat at work (Joint Exhibit 3, at page 26). Dr. O'Dowd felt that the events at the Department of Public Health are separate and distinct injuries from Mr. Reeder's pre-existing psychological disability (Joint Exhibit 3, at page 26).

When asked about retaliation, Dr. O'Dowd stated that Mr. Reeder alleged that he was retaliated by upper management due to his exposure of fraud and this took the form of shutting down his department and transferring him out of his position of investigating fraud to a department in finance for which he had no experience (Joint Exhibit 3, at page 27). Dr. O'Dowd concluded that without any information to the contrary, the events of exposing fraud and the transferring Mr. Reeder without reason lead him to support Mr. Reeder's assumptions (Joint Exhibit 3, at page 27). Ultimately, Dr. O'Dowd left it to the trier-of-fact to make a final decision on the issue.

Mr. Reeder was re-evaluated by Dr. O'Dowd on February 10, 2020 (Joint Exhibit 4, at page 4). Dr. O'Dowd noted that Mr. Reeder alleged that one component of his work stress was due to the retaliation by upper management for exposing fraud (Joint Exhibit 4, at page 18). Mr. Reeder alleges that as a result of exposing the fraud his duties were abruptly ended, that his department was dissolved, and that he was transferred to various positions that he had no skills or experience in (Joint Exhibit 4, at page 18). Mr. Reeder also alleged stress from the threat of violence from co-worker Cynthia Lopez who allegedly carried a concealed weapon to work (Joint Exhibit 4, at page 18). Mr. Reeder had filed a report against Cynthia Lopez, but did not believe that management provided enough assurances to create a safe environment (Joint Exhibit 4, at page 18). Mr. Reeder also alleged that after Cynthia Lopez learned of the complaint, she would harass him on a daily basis by walking by his side of the building to talk with a co-worker in the cubicle adjacent to his (Joint Exhibit 18, at page 18). Dr. O'Dowd felt that these two experiences had caused Mr. Reeder significant stress and Mr. Reeder reported the development of depressive and anxiety symptoms (Joint Exhibit 4, at page 18). Dr. O'Dowd felt that the events of employment were more likely than not the predominant cause of Mr. Reeder's psychological injuries (Joint Exhibit 4, at page 19). Dr. O'Dowd assigned causation of injury as follows: 49% due to pre-existing psychiatric disability; 36% due to the dissolution of his department and transfer to positions with no job title or responsibilities; and 15% due to lack of safety and protection by upper management regarding Cynthia Lopez (Joint Exhibit 4, at page 20).

One of the threshold issues in the case is whether or not the alleged retaliation was an actual event of employment. As noted above, Labor Code section 3208.3 can be interpreted" as requiring the employee to establish "objective evidence of harassment, persecution, or other basis for the alleged psychiatric injury".

At trial Cheryl Ungerman testified that she was the staff service manager at the local service branch and that she was applicant's supervisor (Minutes of Hearing, January 5, 2021, at page 4, lines 17- 18). She testified that applicant was assigned to her in March 2017 and that she worked with applicant with regard to Pacific Health Foundation (Minutes of Hearing, January 5, 2021, at pages 4- 5, lines 17-18 and lines 1). Ms. Ungerman testified that she was told to stop working on it as they were not pursuing it (Minutes of Hearing, January 5, 2021, at page 5, lines 3-4). Ms. Ungerman testified that applicant's duties were then shifted to two employees who reported directly to the director (Minutes of Hearing, January 5, 2021, at page 5, lines 7-8).

Mark Meis testified that when upper management found out that the local investigation unit was taking adverse action on work participants, they were told to stop without an explanation (Minutes of Hearing, February 16, 2021, at page 2, lines 15-17). Mr. Meis testified that he was never told that the local investigations unit was going to be dissolved (Minutes of Hearing, February 16, 2021, at page 2, lines 21-22). Mr. Meis testified that the assumption was that fraud was still happening and that once the unit was dissolved, no one was investigating fraud and

abuse (Minutes of Hearing, February 16, 2021, at page 3, lines 2-3). Mr. Meis testified that he did not know who Christine Nelson assigned to investigate the complaints of fraud and abuse (Minutes of Hearing, February 16, 2021, at page 3, lines 10-11). Mr. Meis testified that when he was managing the program integrity unit, there were two units which were both being dissolved (Minutes of Hearing, February 16, 2021, at page 3, lines 13-15). Mr. Meis testified that he does not recall talking with the administration about the amount of work they had, but believed there was enough work to keep them busy (Minutes of Hearing, February 16, 2021, at page 3, lines 15-17).

Christine Nelson testified that she was the current chief of the WIC division and that she had been in that position since 2014 (Minutes of Hearing, February 16, 2021, at page 10, lines 19-20). Ms. Nelson testified that applicant was hired as an AGPA in the business integrity section (Minutes of Hearing, February 16, 2021, at page 10, lines 23-24). Ms. Nelson testified that there were two business integrity programs and that Mark Meis had talked to her and Lisa Kawano about his staff not having enough work to do (Minutes of Hearing, February 16, 2021, at page 10, lines 23-25). Ms. Nelson testified that there was a decision to eliminate the department managed by Mark Meis because there was not enough work to do (Minutes of Hearing, February 16, 2021, at page 11, lines 1-2). Ms. Nelson testified that applicant was moved to another section where his role was a contracts manager and that he was not removed from the unit for uncovering fraud (Minutes of Hearing, February 16, 2021, at page 11, lines 3-5). Ms. Nelson also testified that the audit and review unit was disbanded because it was a pilot and the work load turned out to be a lot less than they anticipated (Minutes of Hearing, February 16, 2021, at page 11, lines 6-9). Ms. Nelson restated that applicant was definitely not moved because he uncovered fraud and that WIC finds and investigates fraud (Minutes of Hearing, February 16, 2021, at page 11, lines 14-16).

Ms. Nelson testified that there may have been times when Mark Meis was told to do or not to do something, but Mr. Meis was not told to stop pursuing fraud (Minutes of Hearing, February 16, 2021, at page 12, lines 13-15). Ms. Nelson testified that it would make sense to not pursue sanctions without some internal review as the parties are entitled to a hearing if they were sanctioned (Minutes of Hearing, February 16, 2021, at page 12, lines 16-18). Ms. Nelson also testified that it would be appropriate to transfer applicant from one AGPA position to all other AGPA position (Minutes of Hearing, February 16, 2021, at page 12, lines 19-20). Ms. Nelson testified that the local integrity unit had two employees, it was disbanded and the workflow was moved somewhere else (Minutes of Hearing, February 16, 2021, at page 12, lines 20-22). Regarding the Public Health Foundation Enterprises, Ms. Nelson recalls applicant working on a fraud case that was reported there, but the federal investigators told her not to have her analysts interview the staff at PHFE (Minutes of Hearing, February 16, 2021, at pages 12-13, lines 24-25 and lines 1-3).

After review of the entire evidentiary record, it is found that applicant failed in his burden of proof in establishing that he was retaliated for exposing fraud. This determination is based on the credible testimony of Ms. Nelson as noted above. Ms. Nelson provide context for the dissolution of the local integrity unit and the reasoning not to allow her analysts interview the staff at PHFE. Mr. Reeder's assumption that he was retaliated against for exposing fraud is not supported by objective evidence. As such, Mr. Reeder failed to establish that retaliation was an actual event of employment.

Therefore, it is found that applicant did not sustained injury to his psyche arising out of and occurring in the course of employment during a cumulative trauma period ending April 24, 2018.

DATE: April 13, 2021

Noah Tempkin
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE