WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DELILAH MARTIN, ***Applicant***

vs.

GENERAL MOTORS, PERMISSIBLY SELF-INSURED, ADMINISTERED BY SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., ***Defendants***

Adjudication Number: ADJ8344382, ADJ8219108
Los Angeles 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 the 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.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ NATALIE PALUGYAI, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 21, 2023

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

DELILAH MARTIN, IN PRO PER
FINETE LAW FIRM
EDD, LOS ANGELES

PAG/pm

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

DELILAH MARTIN, aged 59 while employed as a WAREHOUSE WORKER at Rancho Cucamonga, California, by GENERAL MOTORS, who was PERMISSIBLY SELF-INSURED for workers' compensation and Administered By SEDGWICK CLAIMS MANAGEMENT, alleged injury in ADJ8344382 from 11-1-2004 to 1-20-2012 to the psyche, head, cervical spine, thoracic spine, lumbar spine, both shoulders, both arms, both wrists, both hands, all fingers, sleep dysfunction, internal systems and hypertension. The applicant in ADJ8219108 alleged injury on 1-20-2012 to the head, cervical spine, thoracic spine, lumbar spine, stomach, shoulders, hypertension, emotional system and psyche.

Petitioner is the applicant in [propia] persona, having on 6-20-2023 filed a Dismissal of Attorney for the firm of Solov and Teitell who represented her since filing the Application for Adjudication on 5-22-2012. The applicant filed a timely Petition for Reconsideration on 6-20-23 of the Joint Findings and Order, Opinion on Decision issued 5-26-2023. The Findings and Order found no industrial injury in both cases.

The Petition is unverified and attaches 32 pages of exhibits which were not submitted at trial. At this time, no Answer has been filed.

The Petitioner's contentions are not in the required format, but appear to be:

a. The Board should consider 28 pages of exhibits and considerable unverified facts not in evidence at trial that are included in the Petition.

b. The WCJ erred in not finding that she was the subject of discrimination and harassment in the workplace.

c. The WCJ erred in the analysis of predominant cause.

d. The WCJ erred in not finding injury based on the report of AME Stalberg although Dr. Stalberg deferred to the trier of fact, and without consideration of actual events of employment or good faith personnel actions.

e. The WCJ erred in not finding her litigation in other forums persuasive.

f. The Petitioner also contends that she should be awarded remedies not available at the WCAB.

II
FACTS

Petitioner, the applicant, was fully and actively represented at all times during the 11 years of litigation. Petitioner dismissed her counsel only after the Joint Findings and Order issued. The trial lasted 8 days. The applicant attended each day of trial, testifying on direct and cross extensively over 5 days, MOH/SOE 12-2-2020, 3-3-2021, 6-8-2021, 9-22-202, 5-24-2022. Applicant called no corroborating witnesses. Defendant called 2 witnesses, present or former employees, MOH/SOE 4-6-2022. The Petitioner offered 43 exhibits. The parties jointly offered the 7 medical reports of AME John Stalberg, M.D., Exhibits BB to HH, with the transcript of the doctor's deposition, Exhibit AA. Defendant offered 11 exhibits, Exhibits A to K.

The record was vacated after submission on 7-28-2022 to develop the record with a re-examination by Dr. Stalberg, who had issued reports apportioning the causation among applicant's interactions with certain named individuals without addressing any specific percentage of causation attributable to that individual. The Doctor re-examined the applicant, issuing a report of 9-20-22, Exhibit HH. On 3-22-2023 the case was again submitted. The Joint Findings and Award that resulted is the subject of this Petition for Reconsideration.

III
DISCUSSION

The Petition Is Properly Viewed As A Petition For Reconsideration.

A Petition for reconsideration may only be taken from a final order, decision or award, Labor Code Sections 5900(a), 5902 and 5903. A final order is one that "determines any substantive right or liability of those involved in the case", Rymer v. Hagler (1989) 211 Cal.App.3d 1171, 45 Cal.Comp.Cases 410; Hansen v. Workers' Comp. Appeals Bd.(1988) 53 Cal.Comp.Cases 193 (Writ Den.): Jablonski v. Workers' Comp. Appeals Bd. (1987) 52 Cal.Comp.Cases 399 (Writ Den.)

Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings are not considered to be final orders because they do not determine any substantive question, Maranian v. Workers' Comp. Appeals Bd. (2000) 81 Cal.App.4th 1068, 1075, 65 Cal.Comp.Cases 650, 655. Pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues are non-final interlocutory orders that do not determine any substantive right of the parties. In the instant case a final order issued resolving all outstanding issues, therefore appropriately a Petition for Reconsideration as filed.

Petitioner's Contentions.

a. General Contentions by the Petitioner

The 50 page Petition begins with 17 pages, single-spaced, of free flowing discussion. This Report on Reconsideration will begin with general contentions made by Petitioner throughout the Petition. Then attention will turn to contentions of specific errors by the WCJ alleged by the Petitioner.

1. Facts and Exhibits Not in Evidence Cannot Be Considered

The Petitioner attaches 28 pages of exhibits that are not admissible, where not offered previously at trial. Evidence not offered at trial cannot be raised after trial in the Petition for Reconsideration. This is a clear attempt to submit new evidence after trial which deprives the defendant of due process, with no notice of the documents and no opportunity to be heard. There is no evidence that the 28 pages of exhibits have been previously served on defendants prior to the final Mandatory Settlement Conference or listed in the Pretrial Conference Statement, depriving defendants of their discovery rights as well.

2. General Complaints Regarding Working Conditions Are Irrelevant.

Petitioner at multiple points raises general allegations about working conditions without any claim, filed or not, that those conditions caused an injury to the Petitioner. The Petitioner includes unverified assertions offered as facts, that are unsupported in the evidence. As only one example, the Petition at page 12 paragraph 1, describes general exposure to talc, industrial grade pesticide and toxic fumes from hazardous materials. The Application for Adjudication does not include allegations of injury to the applicant through these conditions, no exhibits regarding such exposures were included in the Pretrial Conference Statement, there was no testimony at trial regarding them, and no exhibits offered at trial. These allegations are irrelevant, unproven, and serve to deprive the defense of due process rights. Accordingly, the portion of the Petition regarding those statements should be denied.

3. The Petitioner Had Full and Fair Due Process.

The applicant had complete notice and opportunity to be heard. There is no basis to reopen the record to include any new evidence. The applicant was skillfully and assertively represented throughout the 11 years of litigation. The Petitioner appeared at every day of the lengthy trial, testified extensively, and offered 43 applicant's exhibits, with more joint exhibits. Counsel for Petitioner submitted a Trial Brief. The undersigned vacated to develop the record, ordering the applicant to return to the AME for a re-examination: the applicant fully participated in that psychiatric medical evaluation. The effect of the re-examination was to give the applicant another opportunity to explain her position and experiences to the examining psychiatrist. The undersigned found the applicant to be an articulate, intelligent individual who is a native English speaker. There were no barriers to communication between the applicant and the examining physicians, or at trial

with counsel and the WCJ. The applicant had due notice and every opportunity to be heard. The new information the Petitioner is attempting to bring forward at this late date should be excluded.

4. Petitioner Seeks Remedies Not Available At the WCAB.

Petitioner requests remedies of rehabilitation and tuition expenses, which are not remedies available in WCAB cases, by statute. Petitioner also seeks a finding of fraud against the Unemployment Appeals Board for a finding in 2014, which is again beyond the jurisdiction of the WCAB.

c. PETITIONER'S SPECIFIC CONTENTIONS

1. Petitioner Mistakes the Law Regarding Predominant Cause.

Petitioner reviews the reports of Dr. Stalberg as Psychiatric AME finding injury. Petitioner seems to believe that is the final result. This assumption fails to consider the requirements of Labor Code Section 3208.3. Dr. Stalberg, as required by law, left to the WCJ as the trier of fact the determination of predominant cause of injury. The undersigned, as trier of fact, reviewed every item of evidence and all the testimony, then determined that the applicant did not demonstrate by a preponderance of the evidence that actual events of employment were the predominant cause of the injury Labor Code Section 3208.3(b)(1). In the Opinion on Decision, the WCJ conducted 5 separate detailed Rolda Analyses to determine if any of the actual events of employment alluded to by Dr. Stalberg were lawful, non-discriminatory, good faith personnel actions, and considering the effect of general working conditions versus actions directed against the applicant's employment status. (Rolda v. Pitney Bowes, Inc. (2001), 66 Cal. Comp. Cases 241 (Appeals Board en banc; Kaiser Foundation Hosp v. Workers' Comp. Appeals Bd. (Berman) (2000) 65 Cal. Comp. Cases 563 (writ den.). The actual events of employment were extensively discussed in the course of 7 pages in the Opinion on Decision which will not be restated here, for brevity. In the final analysis, the Petitioner failed to testify credibly and persuasively, to prove actual events of employment were not good faith personnel actions to support a finding of predominant cause. Taken as a whole, with all the exhibits and testimony by all witnesses including the applicant, this trier of fact found there was no industrial injury.

Petitioner also contends that the WCJ erred in not finding management selectively targeted the Petitioner for unjustified discipline and engaged in a pattern of discrimination against Petitioner. These are vague general allegations and were not per se in issue at trial. To the extent that the Petitioner may believe these are new issues which should be addressed, again such new issues should not be allowed post trial in violation of defendant's due process rights. Section 3208.3 requires actual events of employment. To the extent that these allegations may have been proved by specific events, the undersigned exhaustively examined each specific incident mentioned in testimony or raised during examinations by the Petitioner with AME Dr. Stalberg for actual events, within the Rolda Analysis framework. The undersigned did not make a specific finding on these twin contentions because they were not specific issues at trial, but they were a factor in the analysis of actual events of employment, to the extent there was an offer of proof by testimony or exhibit. The allegations of discrimination and targeting were not in any way discounted or ignored.

2. The Petition Includes Material Misstatements Of Fact.

The unverified Petition notes that Petitioner was elected Alternate Shop Committee Person in June, 2006, Petition p.2. The Petitioner omits the fact that the position lasted for 3 years, expiring in June of 2009. She was not an alternate Shop Committee Person after June 2009, MOH/SOE 6/8/21, p.7 l.1-4. On the date in 2012 when the applicant chose not to appear for work one hour early because the Shop Committee had not been informed of the shift time change, she was not on the Shop Committee. At trial, the Petitioner did not offer any evidence or basis for her testimony that the Shop Committee had not been informed.

The Petition also includes erroneous statements regarding the Petitioner's prior litigation at the Equal Employment Opportunity Commission, Unemployment Appeals Board, and the Court of Appeals, offered as proof of her treatment by defendant. On close scrutiny, the evidence shows that neither of those cases ended in a final Decision which could bear on the present case. The Court of Appeals case was dismissed based on the Statute of Limitations, MOH/SOE 9-22-2021 p.7 l.4. The case filed with the Department of Fair Employment and Housing, not the EEOC, was closed in 2002 based on lack of probable cause to prove a violation of the statute, MOH/SOE 6-8-2021 p.8. The Petitioner had full and fair opportunity to submit evidence at trial of other litigation. To the extent that she did not do so, discovery is long closed. To the extent that substantial and relevant evidence was offered at trial, it was carefully, completely read and considered in coming to a decision. The mere filing of the case is not proof that all the claims are true and correct. Petitioner fails in her burden of proof that there was a final ruling in either case, and that it is relevant.

IV.
RECOMMENDATION

It is respectfully recommended that the Petition for Reconsideration be denied.

Dated: 6-30-2023

Jerilyn Cohen
Workers' Compensation Judge

JOINT OPINION ON DECISION

Psychological Injury

Section 3208.3 governs claims for psychiatric injury. As relevant herein, it provides that to establish a compensable psychiatric injury, an employee must demonstrate by a preponderance of the evidence that actual events of employment were the predominant cause of the injury. (Lab. Code Section 3208.3(b)(1).) However, a psychiatric injury is not compensable if it was substantially caused by a personnel action that was lawful, nondiscriminatory and made in good faith. (Lab. Code Section 3208.3(h).) To determine this, a Rolda Analysis is required. (Rolda v. Pitney Bowes, Inc. (2001), 66 Cal.Comp.Cases 241 (Appeals Board en banc). The multi-step analysis requires the WCJ to first determine whether actual events of employment are involved. Next medical evidence must prove the employee met the burden of proving that the injury was predominately caused by actual events of employment. The WCJ then makes a factual third determination if the employee meets this burden of proof, and whether the injury was substantially caused by personnel actions that were lawful, nondiscriminatory, and made in good faith. At this point, the WCJ must determine whether the employment events were personnel actions, and if so the WCJ make the next determination, which is whether any of the personnel actions were lawful, nondiscriminatory, and made in good faith.

Not all employment events constitute personnel actions pursuant to section 3208.3. The distinction between the effect of working conditions, and the effect of an action directed towards an individual's employment status, has been recognized and applied by several Appeals Board panels in determining whether a psychiatric injury was barred because it was substantially caused by lawful, nondiscriminatory, good faith personnel actions. (Kaiser Foundation Hosp v. Workers' Comp. Appeals Bd. (Berman) (2000) 65 Cal.Comp.Cases 563 (writ den.)

Substantial Evidence

The analysis begins with the consideration of whether there was a finding of industrial injury. Agreed Medical Examiner John Stalberg M.D. made a prima facie finding of industrial injury for the specific injury and the continuous trauma while deferring to the trier of fact regarding the actual events. The AME is entitled to great weight, but his findings must be substantial evidence. Closely reviewing 6 reports, two cross-examinations, he reports only the vaguest facts regarding actual events of employment leading to the question of exactly what history the applicant reported to the Doctor. The Doctor does not report any incident in sufficient detail for the trier of fact to determine the actual events on which he is basing his opinion. There is no history given to the Doctor of the many grievances and lawsuits the applicant has filed. The 6 reports and 2 depositions, taken as a whole, are not substantial medical evidence of psychological industrial injury, so the applicant fails in her burden of proof.

The lack of substantial evidence is sufficient to make a determination regarding causation, but a medical determination is also part of the Rolda Analysis, so a detailed analysis of the actual events

of employment and medical determination for each of the 5 people and related incidents, where possible to ascertain, is now undertaken.

Specific Injury of 1-20-2012

Dr. Stalberg finds a specific injury of 1-20-2012 which he finds was caused on that date when the applicant was told she no longer had a job and was laid off, Exhibit FF, p 3. At trial, the applicant's testimony was entirely different from the history she reported to the doctor. There is no trial testimony by the applicant that she was laid off or terminated that day. To the contrary, the applicant testified that she understood that she could not be terminated based on the write-up by Mr. Mercer, MOH 9-22-21 p4. There is no actual event of employment to form the mechanism of injury described by the doctor. The applicant fails in her burden of proof of a specific injury on 1-20-2012.

Continuous Trauma 11-1-2004 to 1-20-2012

Dr. Stalberg attributes the continuous trauma injury equally to interactions with superiors Ben Fenton, Tonya Ackles, Michael Mercer, Mr. Mosher(first name unknown) and Al Norman. The evidence and testimony of the applicant as well as other witnesses makes it clear that Tonya Ackles is Tanya Echols, Al Norman is Al Newman, and Mr. Mosher is Ms. Colleen Mosher. It is symptomatic of the lack of focus on causation by the parties that in 6 reports and 2 depositions, as well as at least 2 interviews with the applicant by the Doctor, the attorneys and the applicant never informed the doctor of the proper spelling of names, or the sex of one of the people of interest. In order to complete the Rolda Analysis, the undersigned will examine the actual events of the interactions with the people identified by Dr. Stalberg as contributing to the impairment, in alphabetical order. The issue of preponderance of the evidence will be considered at the end.

<u>Ben Fenton</u>

The applicant testified that she was told about a temporary job that was expected to last more than 8 weeks in 2000. At the end of 8 weeks, she was told there was no more work available, and told to leave immediately. MOH 6-8-21 p7. Dr. Stalberg finds only that injury was caused by an incident where Ben Fenton was upset with her work restrictions, Ex. FF 12-3-13 p9. The applicant did not give the doctor a history that describes any particular event, location, or date, what was said by anyone, or the psychological impact on the applicant, so the finding of injury based on virtually no facts is not substantial medical evidence and not credible on its face. There is no evidence that Bob Fenton was upset with the applicant's work restrictions, so no actual event of employment.

The applicant at trial testified to an entirely different of events, that she was laid off in a way that related to a non-industrial work restriction. The applicant offers no credible or persuasive evidence the temporary job was actually intended to last beyond 8 weeks, does not offer evidence that there was work within the restriction, or that there was any discrimination by Bob Fenton. There is no credible evidence that any conversation with Bob Fenton regarding a work restriction actually

occurred. The applicant was not permanently terminated, as she returned to work for the employer at a later date. The applicant fails in her burden of proof that there was an actual event when Bob Fenton was upset about her work restriction. There is also no evidence that the layoff was not a good faith personnel action.

Tanya Echols

Dr. Stalberg reports the applicant offers a history that "Tonya Ackles" refused to accommodate applicant's work restrictions. No further information about the failure to accommodate is reported. The doctor is not given a history of when or where a work restriction was presented to Ms. Echols, what it said or who the treating physician was, Ms. Echols' position or title. The applicant gave the doctor no evidence of any contemporaneous documentation or witnesses, Exhibit FF, Stalberg 12-3-13 p9. Without any foundational facts, the medical report is not substantial medical evidence of causation regarding the event of Tanya Echols' refusal to accommodate the applicant's work restriction.

It is noted that a medical report of 11-11-2008 offered at trial releases the applicant to regular duty and refers the applicant to the Plant doctor. The applicant testified without witnesses, evidence or credibility that Ms. Echols was part of a conspiracy against her. Dr. Stalberg does not find this a cause of injury, but focuses only on the failure to accommodate. The applicant fails in her burden of proof that there was any actual event of employment in which Tanya Echols failed to comply with applicant's work restrictions.

The doctor does not attribute causation to any other interaction with Tanya Echols but notes vague hostility. The applicant testified at trial that Ms. Echols refused to allow the applicant to become the civil rights representative for her local. However, there is no medical evidence of causation, no evidence that applicant actually applied for the position, no evidence that Ms. Echols had any power or obligation to allow her to take the position, or actually deprived her of it. The applicant offers brief, vague allegations and hearsay with no actual facts, so she is neither credible nor persuasive. Based on the allegations regarding Tanya Echols, it is found that there are no actual events of employment or medical evidence on which to base causation related to this claim of applicant.

Michael Mercer

Dr. Stalberg states that 'there was a problem with Mike Mercer', then quoting the notes of a psychotherapist, he 'accused her of being late 3-21-2012'. Again the Doctor is reporting the historygiven to him with no further details whatsoever, and referring to a date after the applicant ceased to work. The reports are not credible and not substantial evidence of causation. However, the evidence will be scrutinized to determine if there are actual events of employment and/or a good faith personnel action.

The issues with Mike Mercer center on 2 events: the applicant's arrival at 11:30 on 1-20-2010 and separately, a request for a medical pass on that date. As to the late arrival, it is undisputed, and actual events of employment that the defendant changed the shift time and that applicant appeared

late for that new time. At trial, Mike Mercer credibly and persuasively testified that the new time was announced to all concerned the day before at a stand- up meeting at approximately 11:30, and a sign was posted. The change applied to many employees, not just the applicant. Based on the contract between UAW and GM, Exhibit 41, "Any change in the established shift hours or lunch period shall be first discussed with the Shop Committee as far in advance as possible of any such change…." Ex 41 pg 73.

Applicant was not credible nor persuasive in testifying without corroboration of any kind that she was aware the Shop Committee had not been notified in advance. There is no physical evidence or testimony by anyone claiming the applicant was a member of the Shop Committee or an alternate at that time, and no members were called to testify. The applicant offered no source or documentary evidence for her claim of personal knowledge. The applicant does not meet her burden of proof to show that the notice to the Shop Committee was unreasonable. The actions of the Defendant and Mike Mercer related to the shift change are found to be a lawful, non-discriminatory good faith personnel action.

The second incident regarding Mike Mercer was again not part of the history reported by Dr. Stalberg as a basis for causation. The incident arose from applicant's request for a medical pass. Again there is a dispute between uncorroborated witnesses about what occurred. The applicant testified that she asked for a pass and Mr. Mercer told her 'no', but less than 5 minutes later he returned to the same spot, where applicant was still standing, and gave her the pass. Applicant testified she was too shocked to move from the spot.

Mr. Mercer credibly and persuasively testified that the applicant did not ask, but rather informed him, that she was going to the medical department, to which he replied "no", because she would need a pass based on company procedures. He then left the applicant to get the pass, filled it out and returned to give it to her, taking 5 to 6 minutes. There is no evidence of any delay or abuse by Mike Mercer in obtaining the pass, filling it out and returning to her, or any effort to unreasonably withhold the pass. This delay, all parties agree, took 5 to 6 minutes which on its face is not unreasonable. The applicant had the required pass in hand in 6 minutes or less with no further action on her part. There is no evidence that this was any violation of procedure. It is found that the supervisor made and carried out a regular and routine personnel decision with subjective good faith and his actions were objectively reasonable. Again, the actions of Mr. Mercer are found to be a lawful, non-discriminatory good faith personnel action.

Colleen Mosher

The trier of fact notes that the applicant testified at trial about an incident involving a female supervisor, yet Dr. Stalberg stated the applicant gave him a history of an incident where a male named Mosher blocked the Locker Room doorway. Ex. FF Stalberg 12/3/13, pgs 9,11.

In Dr. Stalberg's report of 6-4-2015, Exhibit CC, he quotes the transcript of the deposition of the applicant on 7-3-2013 giving a history of going to the Ladies Room around 2000 or 2008, trying to open the door to squeeze by when Colleen Mosher said "why don't you make me". The applicant testified at trial that a Ms. Colleen Mosher blocked the doorway to the locker room.

The medical determination of causation is based on an inaccurate history given by the applicant to Dr. Stalberg, who was not informed that the applicant was able to move around her to get in, or that the person blocking the doorway was a female, and that the doorway may have been to either a locker room or restroom testified to at trial. The applicant did not report to Dr. Stalberg that applicant filed a formal Grievance against Colleen Mosher demanding in writing that Ms. Mosher "be psychoanalyzed and subject to psychiatric treatment to deprogram her deviant (sic) and her accountable for her actions, which are destructive to the survival of the Rancho SPO/ facility". Exhibit 12 GM Personnel File p 28, C739372. Such a filed written grievance evidences a course of animosity on both sides that makes it clear the doctor was not given a truthful or accurate picture of applicant's dealings with Colleen Musher. An incident in a doorway may have occurred. However, the inaccurate and incomplete history provided to the doctor renders the report lacking in substantial medical evidence of causation.

Al Norman

Dr. Stalberg reports a history from the applicant of Al Newman saying she 'messed up' the flow by using a wrong room for her work on 8-11-2009. There are no further details given to the Doctor. This history is completely inconsistent with the applicant's testimony at trial, and also completely inconsistent with grievance documents in the Personnel File, Exhibit 12 GM Personnel File p36-37. The history offered to the Doctor failed to include any of the details of any 'Coach and Counsel', Grievance or Appeal. The Doctor's report also failed to note the applicant was described in the Greivance Appeal as given the counselling in part because of her 'abrupt and loud response'.

The applicant did not testify regarding any details of this series of incidents, and failed to disclose to Dr. Stalberg that she was put on notice on 8-10-2009 and 8-11-2009 for job performance issues, involving loading, and filed a grievance regarding being reminded on 8-10, 8-11 and 8-12-2009 that she was still on notice. Exhibit 12 GM Personnel File p22, 37. Given the Personnel File documents prepared by the applicant and supervisors, and the lack of testimony by the applicant regarding work flow, it is found that the history offered to Dr. Stalberg are false and inaccurate, so not actual events of employment, and are not substantial evidence to support a finding of industrial causation. Based on the record, at root there may have been an actual event related to workflow. But considering all documents available, including the description in the Appeal of the grievance that supports Al Norman's conduct in the face of applicant's loud and distracting response to his comments, the actual event was a good faith personnel action, Exhibit 12, p37 of the GM Personnel file.

Preponderance of the Evidence

In some cases there was no credible actual event of employment proved regarding one of the people named as causes. In some cases, the medical evidence failed to describe any mechanism of injury, based on a true and accurate history, or the applicant's testimony did not support the medical evidence. Finally, in some cases there was a valid good faith personnel action defense. In combination, each of the 5 causes fails to individually establish a psychiatric injury, and taken as a whole, they fail to establish a psychiatric injury by a preponderance of the evidence.

Physical Injury

Applicant alleges several physical parts of body injured. In the 11 years since her last day of work, the only doctor of physical medicine properly designated as a treater is Dr. Lawrence Miller. Dr. Miller determined that the physical complaints arose out of the psychological stress both over time and on 1-20-2012, in his initial report of 6-12-2012, Exhibit 14 p10. There are 20 medical reports over 5 years. None find independent physical injury. The doctor fails to report on range of motion or any clinical diagnostic tests whatsoever after the first examination. It appears the doctor simply monitored her hypertension and psychotropic medications every 6 months. The applicant was never found TTD on any physical basis by Treating Dr. Miller. Given the failure to offer any factual or legal basis for actual physical injury, Dr. Miller's reports are not substantial evidence of an industrial injury to any physical body parts. It is noted that in 11 years, the parties chose not to obtain a QME in physical medicine of any kind. Applicant fails in her burden of proof that there is any physical industrial injury.

Credibility

Dr. Stalberg repeatedly finds the applicant a 'grievance collector' and an 'injustice collector'. In his report of 3-10-2014 he reiterates his finding of paranoid and passive-aggressive traits that cause the applicant to "be grumbling, moody, contentious, fractious, quarrelsome, argumentative, fault finding, resentful and sullen" but does not find the applicant created her own hostile work environment and does not apportion to these traits. Against this background the undersigned focused on the voluminous testimony and documentary evidence to determine credibility. As noted in the Rolda Analysis above, very often the history given to examining physicians by the applicant was vague and incomplete, with contrary evidence omitted or denied, rendering both the medical reporting and the applicant's testimony lacking in credibility and not persuasive.

Evidentiary issues

Joint Exhibits 13 and 14 are admitted into evidence as the reports of the designated treater.

Because the applicant does not prove causation, the validity of the Almaraz/Guzman finding, occupation group and apportionment issues raised at trial will not be addressed.

DATE: 5-26-2023

Jerilyn Cohen
WORKERS' COMPENSATION JUDGE