

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

KATHRYN GARNETT THOMPSON, *Applicant*

vs.

**COUNTY OF LOS ANGELES COMMUNITY & SENIOR SERVICES, permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES,
*Defendants***

Adjudication Number: ADJ10372746

Los Angeles District Office

**OPINION AND DECISION
AFTER
RECONSIDERATION**

We previously granted defendant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case.¹ This is our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on March 4, 2020, wherein the WCJ found in pertinent part that applicant sustained a compensable psychiatric injury arising out of and occurring in the course of employment, while employed by defendant during the period from May 1, 2009, through August 15, 2015.

Defendant contends that the F&A does not include a determination as to whether any acts of employment were personnel actions, and whether the personnel actions "were lawful, non-discriminatory, and made in good faith." (Petition, p. 9.)

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from applicant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will rescind

¹ We granted the Petition to allow further study of the factual and legal issues. Commissioner Lowe and Deputy Commissioner Schmitz were members of the panel. Commissioner Lowe no longer serves on the Appeals Board and Deputy Commissioner Schmitz is not presently available to participate in this matter; new panel members have been assigned.

the F&A and return the matter to the WCJ to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

Applicant claimed injury to her psyche and in the form of hypertension while employed by defendant as a Community Center Specialist during the period from May 1, 2009, through August 15, 2015. Defendant accepted the claim of injury in the form of hypertension and denied the psychiatric injury claim.

Applicant was evaluated by psychology qualified medical examiner (QME) Michael Z. Mekjian, Ph.D., on March 24, 2016. Dr. Mekjian took a history, reviewed the medical record and performed various psychology tests. (See Joint Exh. A, Michael Z. Mekjian, Ph.D., April 21, 2016, pp. 10 – 13.) The doctor diagnosed applicant as having a major depressive disorder, in remission, and he assigned a Global Assessment of Function (GAF) score of 70. (Joint Exh. A, p. 14.)

In his September 11, 2019, supplemental report, Dr. Mekjian corrected clerical errors made in his previous (August 16, 2019) report and addressed the causes of applicant's psychiatric condition. He explained his opinion that:

The areas of primary industrial contribution are as follows:

The investigation of the previous Center Director, Ms. Curry ... To this end. I would apportion 25%. ¶ Additionally. Ms. Garnett-Thompson developed difficulties with a replacement Director who came into the patient's workplace at approximately March 2014. ... I would apportion 30% to these interactions between the patient and the new Center Director. ... ¶ Additionally, Ms. Gannett-Thompson studied for and completed an exam as part of an application: process for a job opening in the Human Resources Office in 2014 but was turned down for the position. According to the patient, she was provided with a copy of the Center Director's report regarding the patient's work performance, and that she did not recommend, Ms. Garnett-Thompson for the new work position. ... To this I would apportion 5% to these stressors. ¶ In terms of non-industrial stressors, I would apportion 25% to Ms. Garnett-Thompson's preexisting psychiatric condition, 10% to the stressors associated with the patient's daughter's psychiatric condition ... and 5% to the stressors associated with Ms. Garnett-Thompson's brother's dementia ...

(Joint Exh. C, Dr. Mekjian, September 11, 2019, pp. 2 – 3.)

The parties proceeded to trial on February 3, 2020. The issues submitted for decision included the psychiatric injury claim and the period of temporary disability claimed by applicant. (Minutes of Hearing and Summary of Evidence (MOH/SOE), February 3, 2020, p. 2.)

DISCUSSION

To be timely, a petition for reconsideration must be filed with (i.e., received by) the WCAB within 25 days from a “final” decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, former § 10507(a)(1), now § 10605(a)(1), former § 10845(a), now § 10940(a); former § 10392(a), now § 10615(b) (eff. Jan. 1, 2020).) A petition for reconsideration of a final decision by a workers’ compensation administrative law judge must be filed in the Electronic Adjudication Management System (EAMS) or with the district office having venue. (Cal. Code Regs., tit. 8, former § 10840(a), now § 10940(a) (eff. Jan. 1, 2020).) Labor Code section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (Lab. Code, § 5909.) Section 5315 provides the Appeals Board with 60 days within which to confirm, adopt, modify or set aside the findings, order, decision or award of a workers’ compensation administrative law judge. (Lab. Code, § 5315.)

The Division of Workers’ Compensation (DWC) closed its district offices for filing as of March 17, 2020, in response to the spread of the novel coronavirus (COVID-19). In light of the district offices’ closure, the Appeals Board issued an en banc decision on March 18, 2020, stating that all filing deadlines are extended to the next day when the district offices reopen for filing. (In re: COVID-19 State of Emergency En Banc (2020) 85 Cal.Comp.Cases 296 (Appeals Board en banc).) The district offices reopened for filing on April 13, 2020. The filing deadline for a petition for reconsideration that would have occurred during the district offices’ closure was tolled until April 13, 2020, and the Petition was timely filed. Therefore, the petition for reconsideration is deemed filed on April 13, 2020, and the opinion granting the petition for reconsideration issued within the 60-day period.

Regarding the issues raised by the Petition, Labor Code section 3208.3 states in part:

- (a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, ... ¶ ... (b)(3) For the purposes of this section, “substantial cause” means at least 35 to 40 percent of the causation from all sources combined. ¶ ... (h) No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue. (Lab. Code, § 3208.3)

The Appeals Board has laid out the four-step “good faith personnel action defense” analysis that a WCJ must perform when that defense is an issue submitted for decision. (*Rolda v. Pitney Bowes* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc) (*Rolda*)). The analysis is to be conducted as follows:

After considering all the medical evidence, and the other documentary and testimonial evidence of record, the WCJ must determine: (1) whether the alleged psychiatric injury involves actual events of employment, a factual/legal determination; (2) if so, whether such actual events were the predominant cause of the psychiatric injury, a determination which requires medical evidence; (3) if so, whether any of the actual employment events were personnel actions that were lawful, nondiscriminatory and in good faith, a factual/legal determination; and (4) if so, whether the lawful, nondiscriminatory, good faith personnel actions were a "substantial cause" of the psychiatric injury, a determination which requires medical evidence. The WCJ must then articulate the basis for his or her findings in a decision which addresses all the relevant issues raised by the criteria set forth in Labor Code section 3208.3, including specific references to the trial record to support the findings. (*Id.* at p. 247; see also *San Francisco Unified School District v. Workers' Comp. Appeals Bd. (Cardozo)* (2010) 190 Cal.App.4th 1 [75 Cal.Comp.Cases 1251].)

Our review of the record indicates that although the good faith personnel action defense was an issue submitted for decision neither the Opinion on Decision nor the Report, include a detailed *Rolda* analysis. Thus, it is appropriate that we rescind the F&A and upon return of the matter to the WCJ, we recommend that he issue a new decision that includes a detailed *Rolda* analysis as discussed above. Also, we note that if upon review of the trial record, the WCJ determines that the record needs to be further developed, the WCJ has the discretion to request a supplemental report from Dr. Mekjian and/or to confer with the parties to determine the appropriate means for further developing the record. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc); *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].)

Accordingly, we rescind the F&A and return the matter to the WCJ to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 4, 2020, Findings and Award is **RESCINDED** and the matter is **RETURNED** to the WCJ to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 13, 2023

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

**KATHRYN GARNETT THOMPSON
JACOB BORENSTEIN, WSQ.
PARK & GUENTHART**

TLH/mc

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