

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

JUANA MUNOZ, *Applicant*

vs.

**ARCHDIOCESE OF LOS ANGELES, permissibly self-insured,
administered by YORK, *Defendants***

**Adjudication Number: ADJ9756837
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.¹

In the Finding of Fact of February 4, 2019, the Workers' Compensation Judge ("WCJ") found that on October 11, 2012, applicant, while employed as a housekeeper by the Archdiocese of Los Angeles, sustained injury arising out of and occurring in the course of employment.

Defendant filed a timely petition for reconsideration of the WCJ's decision. Defendant contends that the WCJ's finding is inconsistent with the requirements of Labor Code section 5313, and that applicant's injury did not arise out of employment.

Applicant filed an answer.

We have considered the allegations of defendant's Petition for Reconsideration and the contents of the WCJ's Report and Recommendation ("Report") with respect thereto. Based on our review of the record, and for the reasons stated below and in the WCJ's Report, which we adopt and incorporate, we will affirm the Finding of Fact of February 4, 2019.

The WCJ's Report, in conjunction with our Decision After Reconsideration herein, cures any technical or alleged defect in the WCJ's failure to satisfy the requirements of Labor Code section 5313. (*City of San Diego v. Workers' Comp. Appeals Bd. (Rutherford)* (1989) 54

¹ Commissioner Deidra E. Lowe signed the Opinion and Order Granting Petition for Reconsideration dated April 24, 2019. As Commissioner Lowe is no longer a member of the Appeals Board, a new panel member has been substituted in her place.

Cal.Comp.Cases 57 (writ den.); *Smales v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 1026 (writ den.) Further, we have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the applicant, who was the only witness in this matter. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) We also conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id.*)

We begin by noting that the legal principles governing the inquiry whether applicant's injury arose out of employment were aptly summarized by the Court of Appeal in *Atascadero Unified School Dist. v. Workers' Comp. Appeals Bd. (Garedes)* (2002) 98 Cal.App.4th 880, 884 [67 Cal.Comp.Cases 519] ("Garedes"):

"It is not sufficient for purposes of finding industrial causation if the nature of the employee's duties "merely provided a stage" for the injury (*Transactron, Inc. v. Workers' Comp. Appeals Bd.* (1977) 68 Cal. App. 3d 233, 238 [137 Cal. Rptr. 142]); " 'if the employment were an after the fact rationalization' " (*Albertson's, Inc. v. Workers' Comp. Appeals Bd.* (1982) 131 Cal. App. 3d 308, 313 [182 Cal. Rptr. 304]); or if " 'the evidence established that the employment was a mere passive element that a nonindustrial condition happened to have focused on' " (*ibid.*). A finding of industrial injury is proper only where the employment plays an "active" or "positive" role in the development of the psychological condition. (*Id.* at pp. 316-317; *Bingham v. Workmen's Comp. App. Bd.* (1968) 261 Cal. App. 2d 842, 848 [68 Cal. Rptr. 410].)

"An injury that grows out of a personal grievance between the injured employee and a third party does not arise out of the employment if the injury occurred merely by chance during working hours at the place of employment, or if the employer's premises do not place the injured employee in a peculiarly dangerous position. Thus, when a third party intentionally injures the employee and there is some personal motivation or grievance, there has to be some work connection to establish compensability. (*California Comp. & Fire Co. v. Workmen's Comp. App. Bd., supra*, 68 Cal. 2d at pp. 161-162; *California State Polytechnic University v. Workers' Comp. Appeals Bd.* (1982) 127 Cal. App. 3d 514, 518-520 [179 Cal. Rptr. 605]; [*Murphy v. Workers' Comp. Appeals Bd.* (1978) 86 Cal. App. 3d 996, 1002 [150 Cal. Rptr. 561]]; *Transactron, Inc. v. Workers' Comp. Appeals Bd., supra*, 68 Cal. App. 3d at pp. 238-239, 137 Cal. Rptr. 142; *Ross v. Workmen's Comp. Appeals Bd.* (1971) 21 Cal. App. 3d 949, 956 [99 Cal. Rptr. 79].)"

(*Garedes, supra*, 98 Cal.App.4th at 884.)

In this case, the WCJ's Report correctly points out that it is uncertain whether Roberto's attack on the applicant was based solely on some personal motivation or grievance. Whatever Roberto's motive was, we agree with the WCJ that the preponderance of evidence justifies the finding that Roberto's attack on the applicant had "some work connection," thus establishing compensability of her injuries. (Lab. Code, § 3202.5.)

According to applicant's testimony at trial on January 7, 2019, she was doing her usual housekeeping work on October 11, 2012 at St. Stephen's Church, which ordinarily was kept locked. Then Roberto, a fellow churchgoer, approached the church and said he wanted to talk to a priest. Applicant's supervisor, a secretary named Monica, opened a locked door to let Roberto in. Both applicant and Monica knew Roberto. Applicant and Roberto would greet each other at church services. Roberto had been to applicant's home, but she had not been to Roberto's home.

But Roberto did not go to see a priest, rather he started yelling that he had an emergency to go to the bathroom, which was next to the room where applicant was doing some ironing. Roberto went straight to that room and attacked the applicant. He grabbed and hit her with his fist, striking her shoulder, face, and stomach. It is important to note that applicant testified she did not know why Roberto was punching her. The police were called, and they took Roberto away. By the time Roberto returned to get his car from the parking lot, applicant had left. Applicant was afraid and still is afraid of Roberto. In another part of applicant's testimony, she testified that she and Roberto were not girlfriend and boyfriend. (Summary of Evidence, January 7, 2019, 3:4-4:19.)

On cross-examination, applicant testified that she met Roberto the first time at a bus stop near the church, that Roberto had been in applicant's house more than once, and that Roberto and applicant and her two children would go out together. (Summary of Evidence, January 7, 2019, 4:21-5:3.) Again referring to the day of the attack, applicant further testified upon cross-examination that the first time Roberto tried to get into the church, Monica told Roberto the priest was busy. But with Roberto yelling continuously, Monica opened the door for him. Although Roberto claimed he had a bathroom emergency, he did not use the bathroom but immediately attacked the applicant. According to applicant's testimony, Roberto told the police officers that applicant was seeing another man and called her a whore. Applicant also testified on cross-examination that days later she heard from other people that on the same day Roberto attacked applicant, "he hit another lady in the hall where we would praise God." (Summary of Evidence,

January 7, 2019, 5:3-6.) We further note that applicant's trial testimony about the circumstances of Roberto's attack matches, in essential detail, the history of injury recorded by Dr. Tooke, the Panel Qualified Medical Evaluator ("PQME") in orthopedics. (Exhibit C, Tooke report dated November 19, 2015, p. 4.)

On this record, we conclude the evidence does not support a finding that Roberto's attack on the applicant was purely personal. It is reasonable to infer that Roberto came to the church to discuss with a priest what he believed was some sort of romantic relationship he had with the applicant. It also is clear that Roberto attended this church, as did the applicant, in addition to her work as a housekeeper and custodian. Applicant's testimony also establishes that although she and Roberto had gone on outings together with her two children, they were not in a romantic relationship. In fact, applicant testified that she was and still is afraid of Roberto, and it was her understanding that he hit another woman at church.

In further considering whether Roberto's attack on the applicant had a connection to work, it bears repeating that the only evidence on the point is applicant's unrebutted testimony that there was no romantic relationship between her and Roberto, that he attended services at this church, and that on the date of the attack, he first asked to see a priest who worked where applicant was working. Only after being denied that request did Roberto gain entry and attack the applicant.

Reasonable doubts about whether an injury is compensable are to be resolved in favor of the employee, consistent with the statutory mandate that workers' compensation laws are to be liberally construed with the purpose of extending their benefits for the protection of persons injured in the course of their employment. (See *Guerra v. Workers' Comp. Appeals Bd.* (2016) 246 Cal.App.4th 1301, 1310 [81 Cal.Comp.Cases 324], citing Lab. Code, § 3202.)

Based on our analysis of the facts highlighted above, in this case we are persuaded applicant made a prima facie case that Roberto's attack on her at the church arose out of employment, because the attack had some connection to applicant's work there. Defendant failed to rebut applicant's prima facie showing that Roberto's attack was related to applicant's work. Accordingly, we will affirm the WCJ's finding. However, the WCJ did not address and resolve the issue of which body parts were injured in Roberto's attack on the applicant. Therefore, we will return this matter to the trial level for further proceedings and determination of that issue by the WCJ.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Finding of Fact of February 4, 2019 is **AFFIRMED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that this matter is **RETURNED** to the trial level for further proceedings and determination by the WCJ of the body parts injured in the attack suffered by applicant on October 11, 2012, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA
DECEMBER 21, 2022**

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

**JUANA MUNOZ
SOLOV AND TEITELL
KEGEL, TOBIN & TRUCE**

JTL/ara

I certify that I affixed the official seal of
the Workers' Compensation Appeals
Board to this original decision on this date.
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REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I.
INTRODUCTION

According to the Application for Adjudication of Claim, the applicant, Juana Munoz, born [], did sustain injury on October 11, 2012 to her neck, arm, right shoulder, back, jaw, chest, stress, psyche and insomnia while employed as a housekeeper while attacked by individual.

On February 4, 2019 the court issued a Find of Fact which found that the applicant did sustain injury arising out of and occurring in the course of employment.

On February 28, 2019 the defendant filed a timely Petition for Reconsideration. According to the Petition for Reconsideration, the applicant was injured in an attack which was personal in nature and for which there was no nexus to the applicant's employment other than occurred at work. According to the petition the applicant and Roberto had a friendly relationship. He had been to the applicant's home and they had dined together. According to the petition, Roberto explained to the police that the applicant was seeing another man, and Roberto told the applicant's daughter that her mother was a whore.

According to the petition, the attack on the applicant was motivated by jealousy. According to the petition the attack occurred at work but the applicant failed to provide sufficient evidence that it occurred because of work.

II.
DISCUSSION

The applicant did not testify that Roberto hit her due to jealousy. The Minutes of Hearing and Summary of Evidence for January 7, 2019 at page 3, line 21, show that the applicant testified that she does not know why Roberto was punching her.

According to the Petition for Reconsideration at page 2, lines 22 and 23, Roberto explained to the police that the applicant was seeing another man. If the basis for the contention made in the Petition for Reconsideration that Roberto's attack on the applicant was motivated by jealousy is the explanation given by Roberto to the police, then in the court's opinion the explanation given by Roberto is not a reliable basis to conclude that the attack was motivated by jealousy because much of the details as to what Roberto said are missing.

In the Minutes of Hearing and Summary of Evidence for January 7, 2019 at page 5, lines 3 through 5 the applicant, testified that she heard that on the day Roberto hit her, he hit another woman in the hall where we would praise God.

Roberto might have hit that other lady for the same reason he hit the applicant but we do not know why Roberts hit that other lady.

Given the amount of evidence as to whether or not Roberto hit the applicant for personal reasons, it is best in the court's opinion to accept the applicant's testimony that she does know why Roberto was punching her, and to accept that it is not known why Roberto hit the applicant.

If it is unknown as to why Roberto hit the applicant, a finding should not be made that would deny the applicant an opportunity to receive workers' compensation benefits.

III.
RECOMMENDATION

It is respectfully recommended that the Petition for Reconsideration, filed on February 28, 2019 (and also dated February 28, 2019), be denied.

Dated: 3/12/19

KACEY JOSEPH KEATING
WORKERS' COMPENSATION JUDGE