

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

IRMA ALFARO, *Applicant*

vs.

**POMONA UNIFIED SCHOOL DISTRICT, Permissibly Self-Insured; YORK RISK
SERVICES GROUP, *Defendants***

**Adjudication Numbers: ADJ11114734; ADJ11114739
Pomona District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report 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, which we adopt and incorporate, 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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

I DISSENT, (see attached dissenting opinion)

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 6, 2023

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

**IRMA ALFARO
ESPINOZA LAW GROUP
DOMINGO, ELIAS & VU**

PAG/pc

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

DISSENTING OPINION OF COMMISSIONER DODD

I dissent. I would grant reconsideration, rescind the WCJ’s decision, and send this matter back to the trial level for further development of the record. Panel qualified medical examiner (PQME) Allen Lee, M.D., should have an opportunity to review and opine on the trial testimony and the WCJ’s credibility determinations.



WORKERS’ COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

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IRMA ALFARO

vs.

POMONA UNIFIED SCHOOL DISTRICT, YORK,

WORKERS' COMPENSATION JUDGE: Sharon Bernal

DATE: April 26, 2023

**REPORT AND RECOMMENDATION ON PETITION FOR
RECONSIDERATION**

INTRODUCTION

Petitioner:	Applicant
Timeliness of Petition:	Timely
Verification:	Verified
Issue:	Joint Findings of Fact and Opinion

Applicant filed a Petition for Reconsideration in response to the Joint Findings of Fact and Opinion on Decision issued March 13, 2023. Applicant filed the Petition for Reconsideration on the following grounds:

1. The evidence before the WCJ in this matter does not justify the Findings of Fact; and
2. The Findings of Fact do not support the Order and Decision

Applicant while employed on August 7, 2017, as a receptionist at Pomona, California by Pomona Unified School District, claims to have sustained injury arising out of and occurring in the course of employment to the psyche (ADJ11114734).

The issue of psyche injury AOE/COE was tried over multiple hearing dates. Applicant appeared to testify on her own behalf. Applicant did not present any other witness to corroborate her allegations of injury. Defendant presented multiple employer witnesses which rebutted the testimony and allegations of injury by applicant.

The Joint Findings of Fact and Opinion on Decision dated March 13, 2023 found the applicant failed to sustain the burden of proof of injury as alleged, both with regard to the specific as well as the cumulative trauma. The applicant was not found to be a credible witness as to the allegations made for both claimed injuries. Those findings were based on the entirety of the record submitted at time of trial with the conclusion the applicant shall take nothing.

Defendant has filed an Answer to applicant's Petition for Reconsideration.

DISCUSSION

At all times relevant to the claimed specific injury on August 7, 2017 and the claimed cumulative trauma for the period June 29, 2017 through November 6, 2017 applicant was employed as a receptionist by Pomona Unified School District.

Applicant alleges that on August 7, 2017 she was battered and verbally intimidated or harassed by a co-worker, Veronica Bravo Marquez. The only testimony to support that claimed injury was from the applicant. Defense witness Veronica Bravo Marquez appeared to testify and denied in its entirety the claims made by the applicant.

The allegations made by the applicant as to the claimed August 7, 2017 incident are discussed in detail in the Joint Findings of Fact and Opinion on Decision dated March 13, 2023. Applicant claims that Veronica Bravo Marquez humiliated and embarrassed her when she spoke to the applicant following a meeting on August 7, 2017. There was testimony from defense witnesses in addition to Veronica Bravo Marquez that there was no reason for the applicant to be in or near that meeting as part of her job as a receptionist. Applicant further claims on that date Veronica Bravo Marquez grabbed applicant at her shoulder/upper arm, and growling at her within an inch of her face. Applicant's claims were completely rebutted by the testimony of Veronica Bravo Marquez. Also, despite that fact applicant claims this incident occurred in an open area accessible to many people, and claims this incident occurred immediately following the conclusion of a staff meeting in that open area, there were no identified witnesses to this alleged event.

Following the testimony of the applicant and defense witness Veronica Bravo Marquez as to that claimed specific incident it was concluded applicant failed to sustain the burden of proof of injury. The testimony of the defense rebuttal witness was found to be the most credible taking into account both witness testimony.

Applicant's Petition for Reconsideration contends the WCJ ignored material evidence by not following the findings of the QME Dr. Lee (exhibit "B") and misreading other medical evidence.

The QME reports of Dr. Lee (exhibit "B") were entered into evidence and considered in the analysis of the facts and issues presented in this case. The QME relied on the history as given by the applicant as to the claimed specific injury and cumulative trauma. The medical reports of Dr. Lee to the extent they were based on the representations made by the applicant then deferred issues to the trier of fact when it came to determining the credibility of the witness. The QME does not hear the testimony at trial, the QME does not have the opportunity to hear and observe rebuttal witnesses at trial. Taking into account the entirety of

the record submitted at trial the WCJ determined the applicant's testimony was not persuasive.

The Petition for Reconsideration argues the WCJ failed to take into account the number of reports issued by QME Dr. Lee (5 reports) or the reviews of other medical records. The number of reports issued by or reviewed by the QME does not change the fact the statements made by the applicant, at time of trial, were not found to be sufficiently credible or persuasive so as to sustain the burden of proof of injury.

The Petition for Reconsideration argues the WCJ failed to take into account contemporaneous medical reporting from Kaiser, wherein applicant contends the records find work-related psychiatric difficulties. Submitted at trial (exhibit "D") were 170 pages of subpoenaed Kaiser records from which neither applicant nor defendant designated relevant portions. Other Kaiser records submitted (exhibit "6") were work status reports. None of those work status reports set forth any reference to the claimed industrial injuries. The work status reports did not state the reasons for the applicant to be off work. The work status reports reference an diagnosis of anxiety but did not contain information which would make those reports relevant to the pending claims of industrial injury. The Court did not ignore the medical evidence properly submitted for consideration.

The Petition for Reconsideration contends the WCJ improperly considered the number of rebuttal witnesses as factors of credibility while ignoring what is argued to be the applicant's consistent testimony. The credibility of each witness, the applicant and all other witnesses, was evaluated and considered. The Petition for Reconsideration argues the applicant's testimony was consistent and therefore ignored when found to not sustain the burden of proof of injury. The testimony of the applicant was not found to be persuasive, whether that testimony was consistent or not. Applicant argues the WCJ ignored what is described as material contradictions in the testimony of defense witness Veronica Bravo Marquez. The focus of that argument by applicant, whether applicant was described as "popping out" from behind a pillar or whether she spotted applicant "out of the corner of her eye" is not what was found to be relevant. The issue was whether the defense witness grabbed the applicant by the shoulder and verbally abused her and to that point the perceived "contradiction" in the defense witness testimony was not relevant.

The Petition for Reconsideration references to applicant's deposition testimony should not be considered. The deposition transcript was offered into evidence (exhibit "E") but there was no rebuttal testimony taken with regard to the applicant's prior deposition testimony. No specific pages of the deposition transcript were identified at time of trial.

CONCLUSION

For the reasons stated in the Joint Findings of Fact and Opinion on Decision it is respectfully recommended that the Petition for Reconsideration be denied.

DATE: April 26, 2023

Sharon Bernal
WORKERS' COMPENSATION JUDGE

JOINT OPINION ON DECISION

PSYCHIATRIC INJURY AOE/COE

Applicant, Irma Alfaro, has alleged psychiatric injury as a result of both a claimed specific injury (August 7, 2017) and a claimed cumulative trauma (June 29, 2017 through November 6, 2017). Applicant has alleged that on August 7, 2017 she was battered and verbally intimidated or harassed by a co-worker, Veronica Bravo Marquez. Applicant has further alleged that during the period from June 29, 2017 through November 6, 2017, she sustained psychiatric injury due to a hostile work environment created by co-workers Susanna Chavez and Veronica Perez and Veronica Bravo-Marquez.

Testimony was taken at Trial over many months and from multiple witnesses. Applicant was the first witness to testify and that testimony was taken over multiple Trial settings. Applicant did not call any additional witnesses to corroborate her testimony or rebut any of the testimony of the defense witnesses.

Defendant called multiple witnesses to testify at Trial: Christina Zavala Acosta, Veronica Perez, Susana Chavez, Pamela Jean Mathes, Veronica Bravo Marquez, and Darren Knowles. Those defense witnesses provided testimony in rebuttal to the factual contentions made by applicant of harassment and bullying and creating a hostile work environment.

Both applicant and defendant filed Trial briefs. The Trial brief filed by applicant did not cite any case or statutory authority in support of the allegations of industrial injury. The Trial brief filed by defendant cited holdings in Rolda v. Pitney Bowes Inc. (2001), 66 CCC 214 and Verga v. United Airlines (2008), 73 CCC 63. In these cases as to the two alleged dates of psychiatric injury those decisions, Workers' Compensation Appeals Board (en banc) and Court of Appeal of California provide binding case authority.

Based on the allegations of psychiatric injuries Labor Code Section 3208.3(b)(1) is pertinent and applicable to the present cases. Labor Code Section 3208.3 (b)(1) states as follows:

“(b)(1) 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 psychiatric injury. As stated in *Verga*, that 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. And psychiatric injuries arising from nondiscriminatory good faith personnel decisions do not qualify for compensation (Labor Code Section 3208.3(h)).

The holding in *Rolda* requires a multilevel analysis by the trier of fact when a psychiatric injury is alleged and the defense of a lawful, nondiscriminatory, good faith personnel action has been raised. Initially, the Workers' Compensation Judge must make a determination whether the alleged psychiatric injury involves actual events of employment, and if so, whether competent medical evidence establishes the required percentage of industrial causation. If these first two conditions are met, the WCJ must next determine whether the personnel action or actions were lawful, nondiscriminatory and made in good faith. Finally, if all these criteria are met, competent medical evidence is necessary as to causation, whether or not the personnel action or actions are a substantial cause of the psychiatric injury.

Under Labor Code Section 3208.3, the WCJ must first determine as to compensability of an alleged psychiatric injury whether actual events of employment are involved. This determination is a factual/legal issue for the WCJ and is not a determination of a medical issue.

Applicant claims to have sustained injury arising out of and occurring in the course of employment on August 7, 2017 as a result of being battered and verbally intimidated or harassed by Veronica Bravo Marquez. At the time the applicant and Ms. Bravo Marquez were co-workers. Ms. Bravo Marquez was not the applicant's supervisor but was the program supervisor for the preschool Child Development Department.

Applicant claims injury as a result of more than one incident. Applicant did file a claim alleging she sustained psyche injury specifically on August 7, 2017.

Applicant testified that on June 29, 2017 she was hired as a receptionist for the Child Development Department at Pomona Unified School District. That was a full-time permanent position. She was assigned to work at the reception room in the Child Development Department on Holt in Pomona. Her first day on that job was June 29, 2017. She testified there was no training or formal orientation before that first day. On that first day on the job she had no formal training. Applicant testified she understood her primary job duties were to assist clients at the window and to answer phones. She did not know who the caseworkers were for clients on the phone who had questions. On her first day on that job she had to put the calls through. All three of the receptionists in that department, applicant and Veronica Perez and Susanna Chavez, had a phone and

a computer. When the phone rang any of them would answer at random. Applicant testified that when she was hired the basic fundamentals of her position were not explained to her. She knew from flyers that she was to answer phones and assist clients. She received on the job training from those who worked with her. She would also have to call caseworkers assigned to assist clients on welfare. (Minutes of Hearing and Summary of Evidence December 9, 2021 pages 5 to 8).

As to the claimed specific injury, applicant testified that on that date (August 7, 2017) she was unable to get a family specialist from the preschool section on the phone. She walked over toward where the family services specialists were and stated she saw them in a meeting on the open floor in a work area. Applicant had left the reception area and her desk and walked out through the door from the reception area to the open area. Applicant testified the meeting was in the open floor in a work area and that she was standing close to the reception room at the back of the room. She testified that Ms. Bravo-Marquez was talking to that staff and that when she asked the staff if there were any questions applicant raised her hand. She said Ms. Bravo-Marquez told her no and that made her feel humiliated and embarrassed and she turned to walk away. When applicant heard her name called loudly she stopped and turned and at that point she described Ms. Bravo-Marquez as standing about one inch from her face. She claims Ms. Bravo-Marquez was holding onto her shoulder at the upper arm on both sides with a tight grip. She described Ms. Bravo-Marquez as growling and groaning and stating “no little receptionist is going to tell my people what to do, you understand?” Applicant testified she said that three times and applicant responded yes. Applicant then started walking backwards when she said “are we done” and after a distance turned around and walked back into the reception area. Applicant’s testimony was she intended to ask if that department could tell reception to hold calls if the specialists were in a meeting. Applicant testified after that incident she returned to her work station and tried to continue to work but she was shaken and not able to focus or concentrate. She felt emotional and disturbed the rest of the day. Applicant said she described the incident to Elva Claustro, who she described as a family services specialist. Applicant testified she reported that specific incident involving Ms. Bravo-Marquez to Ms. Acosta on November 3, 2018 (Minutes of Hearing and Summary of Evidence December 9, 2021 pages 8, 9 and 10). Under cross-examination, applicant testified she went into the area where Ms. Bravo-Sanchez was holding that meeting with the ERSEA staff. Applicant was in the back of the area near the reception area. She left the reception area to go to where the meeting was being conducted because she wanted to find out why the family services specialists were not answering their phones. She waited and stood in the back. She testified that she was able to put the calls through to voicemail and she did not have to be at the meeting to do her job functions.

(Minutes of Hearing and Summary of Evidence June 22, 2022 pages 2 and 3). Under re-direct examination applicant testified she was standing in the back

during that short meeting but was not actually attending that meeting. Her intent was to learn something that might further her long-term career with the Child Development Department or with Pomona Unified School District. (Minutes of Hearing and Summary of Evidence June 22, 2022 page 5).

As to that claimed specific injury of August 7, 2017, defense witness Veronica Bravo-Marquez was called to testify. Under direct examination Ms. Bravo-Marquez testified she was employed at Pomona Unified School District as a supervisor in the Child Development ERSEA Department. Her duties as a supervisor are to help the family services advocates. She has been in her current position 11 years and does know the applicant. As supervisor the witness would conduct staff meetings for her staff members and those staff meetings did not include the receptionists. Ms. Alfaro was not invited to Ms. Bravo-Marquez' staff meetings. On that specific date the applicant entered that meeting uninvited. Ms. Bravo-Marquez stated she was caught off guard when she saw applicant standing behind a pillar. She was speaking to her staff regarding attendance issues. She described the applicant as having "popped out from behind the pillar" and then applicant started speaking to Ms. Bravo-Marquez's staff members. This was outside the scope of applicant's job duties. Applicant was telling the staff members that Ms. Alfaro needed for all of them to hear what she needed for them to do when she was in the reception area. They were ten minutes into the meeting when Ms. Bravo-Marquez saw the applicant behind the pillar and that disrupted the meeting and it had to be concluded. She stated the applicant's conduct was disruptive. After the meeting was over the witness saw the applicant standing by the door going out to the lobby. She asked applicant to talk and explained why she ended the meeting. Ms. Bravo-Marquez testified she never growled or laid hands on the applicant. When she was called to testify at trial was the first time Ms. Bravo-Marquez heard the accusations that she growled at applicant and laid hands on her. Under cross-examination it was represented to the witness that the ERSEA meeting was on August 9, 2017. After the disruption by the applicant that meeting lasted less than a minute before it was concluded. The witness did not see the applicant until she came out from behind the pillar. The witness wrote an email dated August 9, 2017 within a few hours of that meeting. (Minutes of Hearing and Summary of Evidence December 20, 2022 pages 2 to 4).

APPLICANT HAS THE BURDEN OF PROOF OF INJURY ALLEGED ON 8-7-2017

The only evidence offered by applicant at Trial as to this alleged event was her own testimony. There were no corroborating witnesses called by applicant. There was testimony applicant described the incident to Elva Claustro, who she described as a family services specialist. Under cross-examination applicant testified she was on good terms with Ms. Claustro but they have not spoken. She was asked why she did not call Ms. Claustro as a witness, and she stated she thought it would be a conflict because Elva is an employee working with

Susanna Chavez. (Minutes of Hearing and Summary of Evidence April 28, 2022 page 8).

The Complaint Form prepared by applicant dated November 8, 2017 (exhibit “3”) did include a reference to that alleged incident with Ms. Bravo-Marquez. The conclusions reached after an investigation (exhibit “G”) where consideration was given to the all the allegations made by applicant was that she had not been bullied, harassed or discriminated against.

Applicant’s Complaint Form (exhibit “3”) claims that her first day on the job was also marked by warnings by a group of staff members whom she had never met before regarding the behavior of Ms. Perez. She states in the Complaint that one of the staff said “those two, Ms. Perez and Ms. Susana Chavez) are going to give you a hard time, but just don’t mind them” (page 4). Also in Applicant’s Trial Brief she raised as an issue that the District never interviewed her before reaching the conclusion that she was not bullied, harassed or battered. This was in spite of the fact the report noted the applicant was not interviewed because her attorney had sent a letter instructing them not to contact the applicant. Applicant’s Trial Brief also questioned why another witness, Rocio Valdez, was not interviewed as part of the District’s investigation. There was nothing to stop the applicant from being interviewed by the District in the presence of her attorney. There was nothing to stop the applicant from contacting Rocio Valdez, obtaining a written statement or calling Rocio Valdez to testify at Trial. There was nothing to stop the applicant from obtaining a written statement or calling Elva Claustro to testify at Trial.

As stated in Findings of Fact Number 5, in order to establish that a psychiatric injury is compensable the applicant has the burden of proof by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the alleged psychiatric injury. It is concluded the applicant failed to sustain that burden of proof of injury as alleged to have occurred on August 7, 2017. Therefore, the first of the multilevel analysis per Rolda finds no evidence of actual events of employment. Also, applicant relies on the medical findings of the PQME Dr. Lee (exhibit “B”) as evidence of competent medical opinion to establish the required percentage of industrial causation. Having concluded that applicant failed to sustain the burden of proof of injury, the findings of Dr. Lee are insufficient to establish the required percentage of industrial causation.

The credibility of both applicant and defense witnesses is an issue for the trier of fact to determine. In addition to having the burden of proof of injury, the applicant still must be a credible witness in her own behalf. Over the course of time where the applicant appeared at Trial to testify, the WCJ was in a position to evaluate and assess her credibility. The testimony of the applicant alone was not found to be sufficiently compelling or credible. Her testimony as to the alleged actions of Ms. Bravo-Marquez on August 7, 2017 was not supported by

any other witness, despite that fact applicant alleges in her Trial brief there were other potential witnesses not called by defendant but who could have also been called by the applicant. Based on the entirety of the record submitted at Trial it is the conclusion of the WCJ there was not sufficient evidence to show the event as alleged even occurred.

Applicant shall take nothing as to that allegation of injury. Therefore, all other issues raised or deferred are deemed to be moot.

APPLICANT HAS THE BURDEN OF PROOF ON THE ALLEGED (CT)

Applicant has alleged that during the period from June 29, 2017 through November 6, 2017, she sustained psychiatric due to a hostile work environment created by co-workers Susanna Chavez, Veronica Perez and Veronica Bravo-Marquez.

As stated above, both parties filed Trial briefs. Applicant appeared to testify on her own behalf but did not call any other witnesses or any potential rebuttal witnesses.

Defendant called multiple witnesses to testify at Trial also in response to the claimed cumulative trauma injury.

Previously stated case and statutory authority is applicable to that claimed injury.

Applicant testified at Trial that the mood on her first day on the job as a receptionist in the Child Development Department was “hostile”. Her testimony was when she first met one of the other receptionists, Veronica Perez, that Ms. Perez did not acknowledge applicant when she was greeted. Applicant testified the other receptionist, Susanna Chavez, got to work about half an hour later and that she was equally as cold. Applicant testified she asked Ms. Perez for extension numbers for particular caseworkers and Ms. Perez would not answer immediately but eventually helped her. According to applicant Ms. Perez’s demeanor was hostile, mean, negative, and rude and got worse as the weeks went by. She claimed there was a time when she had coffee in her hand and Ms. Perez slammed the door on her causing applicant to have coffee spilled on her chest. She described that as occurring approximately in July after she was in that department a couple of weeks. She stated the stonewalling got worse. She testified she continued to try to get Ms. Perez to help her but Ms. Perez would scoff and give applicant wrong phone numbers. On her first day in that department she described Ms. Perez as pacing back and forth, had her arms crossed and hollered “if you think I’m going to train you, I’m not. No one trained me, so I’m not training you”. Applicant contends her interactions with Ms. Perez were hostile and she described Ms. Perez as having a very foul mouth. Also that Ms. Perez would talk about supervisors, managers and employees and gave them

nicknames like “vomit face”. She contends the alleged stonewalling lasted the entire time applicant worked in that department.

Describing her interactions with Ms. Chavez, she said generally Ms. Chavez tried to get her help and would answer if Ms. Perez was not there. She claims at times Ms. Chavez would ignore her questions if Ms. Perez were there. She described Ms. Chavez as coming up on her from behind and raising her hand pretending to sock and kick applicant and that this happened at least 5 or 6 times. Ms. Perez was also present and applicant stated they both would laugh about it. (Minutes of Hearing and Summary of Evidence December 9, 2021, page 6, 7).

Applicant continued to testify she had ongoing problems. She stated Ms. Perez would give her wrong extensions and would turn and laugh and smirk at applicant. Applicant’s testimony was she encountered daily sabotage and given bad information and was unable to perform her job. She testified that it was her last day of work (November 3, 2017) that for the first time she told her supervisor Christina Acosta about a prior incident with Ms. Bravo-Marquez from August.

Applicant testified to a meeting which took place August 9, 2017 between her and Christina Acosta, Susanna Chavez and Pamela Mathis. Applicant stated she requested that meeting to discuss what Ms. Perez was doing and her concerns about not getting proper training. At that meeting she described herself as feeling threatened by comments from Christina Acosta. She denied that in that meeting she said that God put her in child development for a reason. Applicant stated there never were meetings where she could address her concerns with Ms. Chavez. (Minutes of Hearing and Summary of Evidence April 28, 2022 pages 2 and 3).

Under cross-examination applicant stated she took a job at USC beginning on July 23, 2018. Her full-time position is Administrative Assistant II. Her duties are to manage the front office daily operations. She works with Ph.D. and graduate students, directing them to counselors for assistance. She said she handles reimbursements for Ph.D. students and professors. Among special projects she testified she worked the commencement events on May 13. (Minutes of Hearing and Summary of Evidence April 28, 2022 page 4).

In her current position at USC applicant stated she has daily contact with co-workers who work in the same office. When she started she had 5 assistants now down to 2 assistants. Her daily commute to USC is roughly 4 hours round trip. She denied any complaints to HR or anyone at USC regarding any job issues. (Minutes of Hearing and Summary of Evidence April 28, 2022 page 4 and 5).

Continuing under cross-examination applicant stated it was July 26, 2017 when she first went to her supervisor, Christina Acosta, with her complaints about Ms. Perez. She described as “sabotage” her complaints that Ms. Perez was

stonewalling her and being given what she described as wrong caseworker extensions and phone numbers. In response to the question why she didn't go to her supervisor for help in doing her daily job duties applicant stated she did not think her supervisor would help. However she did testify that her supervisor did not deny her access to information. As to that meeting with Christina Acosta on July 26, 2017, applicant denied ever shaking her finger in Ms. Acosta's face and telling her she could not sweep this under the rug, that God sees everything. (Minutes of Hearing and Summary of Evidence April 28, 2022 page 6).

Applicant's last day worked was November 3, 2017, she testified before going on medical leave. She resigned her employment from PUSD in June, 2018. The medical reports submitted as work status reports (exhibit "6") were not adequate medicals to support a contention applicant was taken off work due to medical issues. Those Kaiser work status reports did not describe any type of claimed work injury or exposure. Also the medical reports submitted from Dr. Dorsey (exhibit "2") are not persuasive due to the fact they rely on the history given by the applicant which has been concluded to not meet the burden of proof of injury. The medical reports (exhibit "2") are not substantial evidence of injury as alleged herein.

Still under cross-examination, applicant had testified that it took 4 months on the job to get cleared for her to be provided with the County's CC3 computer system. At that same time she did testify that she was able to do her job functions during that 4 month period. (Minutes of Hearing and Summary of Evidence June 22, 2022 page 2).

Defense witness Christina Acosta was responsible to supervise all the receptionists. She testified the other 2 receptionists were excited to have applicant join them because it took months to hire the needed third person. She described the primary duties of the receptionists are to greet people in the lobby and that is why they are lovingly called "first ladies". She testified the applicant was welcomed on her first day and as with all new hires she was shown around the office. Ms. Acosta stated the applicant was given the support for any questions she might have had and she was told to come to Ms. Acosta with any questions and that applicant was given all the support and help with job related questions. Ms. Acosta described the CC3 computer system as not needed for the applicant to perform her job duties. She denied the applicant was ever given wrong extensions or outdated material. She was not aware of Ms. Perez ever stonewalling the witness. She was not aware of Ms. Chavez ever throwing air kicks or air punches toward the applicant. She described the reception area as a very open public place and that no such incidents were ever brought to her attention.

Ms. Acosta did bring the applicant into her office about three times to address issues. The first was when the applicant had left an application on the desk of a secretary who was out on vacation. Ms. Acosta testified the

receptionists know applications have sensitive information and that the applicant did not comply with protocol. Another meeting was to address the manner in which applicant had spoken to a client which Ms. Acosta stated was not acceptable. There was another time when Ms. Acosta spoke to the applicant after speaking with two other supervisors regarding the applicant's conduct in the reception area. It was during the second meeting described by Ms. Acosta, the meeting on August 9, 2017, that applicant stood up and yelled at Ms. Perez and called her a liar and also said that God was listening and saw everything.

Ms. Acosta testified she had biweekly meetings on Fridays with the receptionists to discuss work issues. The purpose was to provide information and work support. It was the primary responsibility of the receptionists to greet the public and the meetings were to help all of the receptionists support working together and for purposes of team building.

Ms. Acosta testified she told applicant it was not acceptable for her to peek in on someone else's meetings as she had with Ms. Bravo-Perez and the ERSEA meeting. She also told applicant it was not valid for the receptionist to go to the ERSEA meeting in order to do her own job. Ms. Acosta also said that Ms. Perez and Ms. Chavez both came to her with concerns regarding the applicant not being supportive of the team and taking matters into her own hands and not complying with policies and procedures.(Minutes of Hearing and Summary of Evidence June 22, 2022 pages 2 to 9).

It was the testimony of Ms. Acosta the applicant was encouraged to ask questions. That she was not treated any differently from the other receptionists or any other workers or employees in the Child Development Department. She had an open door policy for all the employees and she told the applicant more than 5 times to come to her if applicant had any questions.

Ms. Acosta was asked about a meeting stated to have been on July 26, 2017 (record corrected to August 9, 2017). That meeting was in Ms. Acosta's office and present with her were the applicant, Ms. Perez and Ms. Mathes. She also testified that was the time when applicant made a reference to the Bible. She described the applicant's demeanor in that meeting as angry and she displayed anger. That Ms. Alfaro stood up and yelled that Ms. Acosta was trying to sweep things under the rug and that she should just put her hand on a Bible because God sees all and doesn't like liars.

Ms. Acosta described the applicant as having a tendency to misperceive her instructions and misinterpret her actions.

Under cross-examination Ms. Acosta was asked why the applicant was not disciplined. She stated she never wrote up a formal performance evaluation to be given to the applicant. She did work on a performance evaluation but did not deliver it because the applicant did not return to work. When shown a

performance evaluation document (exhibit "9") the witness did say the applicant's overall rating was inadequate. She considered her own observations and also complaints that had been made. (Minutes of Hearing and Summary of Evidence August 11, 2022, pages 2 to 6).

Under direct-examination defense witness Veronica Perez stated she knows the applicant as she worked with her in the Child Development Department. She testified for a period of one to two years they had only 2 receptionists and that the desperately needed help, and that a third receptionist was very welcomed. On her first meeting with applicant she introduced herself and told applicant to feel free to ask her any questions. She denied ever giving Ms. Alfaro the impression that she would not help her and denied saying that she would not help train her, also she never saw the applicant being bullied in the reception area. She never saw Ms. Chavez do any air kicks towards the applicant.

Ms. Perez described a good team environment between her and Ms. Chavez but Ms. Alfaro did not see it that way. Applicant was always closed off to herself in her area. She didn't want to wait to be shown anything, if she wanted help she wanted it now.

Ms. Perez described a meeting with herself and Ms. Alfaro in Ms. Acosta's office. In that meeting she said the applicant was upset and told Ms. Perez she needed to put her hand on a Bible, and that when the applicant stood up and said this she had her finger pointed at Ms. Perez's face.

Ms. Perez testified she felt the applicant created a toxic work environment. She testified she never treated the applicant with disrespect or talked about her with anyone else. (Minutes of Hearing and Summary of Evidence September 8, 2022 pages 6 and 7).

Defense witness Susana Chavez testified she had been a receptionist in the Child Development Department for many years, and that she tried to be welcoming and was happy for the additional help. She denied ever doing any air kicks or punches. She said she had to ask people what that meant, she had no idea what that was and had no idea why the applicant would accuse her of doing that. She described the work environment as a little difficult. They had to work as a team and she felt at times that the applicant wouldn't go to the other receptionists and would go directly to the supervisor. Also that Ms. Alfaro would tend to walk out a lot and that would make it difficult for the other receptionists to help her or rely on her. Applicant kept to herself and did not want to participate with the other receptionists. She testified the applicant had a hard time following directions and would take it upon herself to redefine her job duties. She felt she had a cordial relationship with the applicant. Under cross-examination Ms. Chavez stated the duties and procedures for the receptionists were written down

and all of them had those instructions. (Minutes of Hearing and Summary of Evidence September 8, 2022 pages 9 and 10).the

Defense witness Pamela Jean Mathes testified she is the office manager and did have interactions with the applicant. She met the applicant when Ms. Alfaro first came into the office and they were happy to welcome her, they needed a third receptionist. She said everyone was very welcoming to the applicant. Ms. Mathes was called into meetings to be a neutral party when meetings were called because the applicant was upset or wanted to change something. Ms. Mathes testified she worked with everyone in the Child Development Department and did not see anyone disrespecting the applicant. She never saw any air kicks or punches by Ms. Chavez and never saw Ms. Perez stonewall or refuse to help the applicant when requested. Ms. Mathes also had an open door policy for the receptionists to come in with any questions. She was asked about the ERSEA meeting and stated applicant's attending that meeting was acting outside the scope of her job duties. She described Ms. Alfaro as trying to change things to suit her and stated the applicant was given extra support. She denied seeing any hostility toward applicant by any of her co-workers.

Under cross-examination Ms. Mathes testified the applicant misperceived a lot of things. She never saw any air kicks done toward Ms. Alfaro. In a meeting with Ms. Perez and the applicant on August 9, 2017 she recalled the applicant was upset and angry. (Minutes of Hearing and Summary of Evidence September 8, 2022 pages 11 and 12).

Defense witness Veronica Bravo-Marquez is a supervisor in the Child Development ERSEA Department, her duties are to help the family services advocates. She was introduced the the applicant when she started as a receptionist. Ms. Marquez would normally interact with Ms. Alfaro when she needed to assist with families that had to be helped by the staff. Ms. Marquez would hold staff meetings and those meetings did not include the receptionists. There was a meeting where Ms. Marquez said she was caught off guard when she saw the applicant standing behind a pillar. She described the applicant as having "popped out" from behind the pillar then started to talk to the staff. The witness stated that was outside the scope of applicant's job duties. After the meeting Ms. Marquez went to the applicant's supervisor for guidance and also to inform her of what had happened. Ms. Marquez asked applicant to talk after that meeting was ended. Ms. Marquez testified she never touched the applicant and stood no closer than three feet away. She never put a hand on her or growled at Ms. Alfaro. She first learned of these allegations when she was called to testify at trial. (Minutes of Hearing and Summary of Evidence December 20, 2022 pages 2 and 3).

Defense witness Darren Knowles testified he is currently the interim superintendent and has been with the Pomona Unified School District for 30 years. He is familiar with the applicant, he was not on the panel for her hiring

process but was aware that at the time additional receptionists were needed. He did recall a complaint being filed by the applicant, it was then sent to HR. Ms. Knowles confirmed the conclusion of the investigation that the complaints were not substantiated. It was found the applicant was not bullied or harassed or discriminated against due to any protected characteristics. (Minutes of Hearing and Summary of Evidence December 20, 2022 pages 5 and 6).

As stated in Findings of Fact number 5, in order to establish that a psychiatric injury is compensable the applicant has the burden of proof by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the alleged psychiatric injury. (Labor Code Section 3208.3(b)(1)). It is for the trier of fact to decide if a psychiatric injury resulted from actual events of employment.

As to the alleged cumulative trauma, applicant's testimony was the only evidence offered in support of those claimed injuries. Applicant was not found to be credible in the complaints she has made. In rebuttal, testimony was given from all defense witnesses who applicant testified were responsible for her claimed injuries. The defense witnesses provided credible rebuttal testimony to the various allegations made by applicant. No witnesses were presented to corroborate any of the allegations made by the applicant.

Based on the entirety of the record submitted at trial, it is concluded the applicant has failed to sustain the burden of proof of injury as alleged in the cumulative trauma that she was injured due to a hostile work environment. Applicant shall take nothing and all other issues are deemed moot.

DATE: March 13, 2023

Sharon Bernal
WORKERS' COMPENSATION JUDGE