

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

CONSUELO PALACIOS, *Applicant*

vs.

**STATE COMPENSATION INSURANCE FUND, legally uninsured, administered by
ACCLAMATION INSURANCE MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ11717579
San Bernardino 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, and for the reasons discussed below, we will deny reconsideration.

In order to establish the compensability of a psychiatric injury under Labor Code section 3208.3, an injured worker has the burden of establishing "by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury." (Lab. Code, § 3208.3(b)(1).) "Predominant as to all causes" means that "the work-related cause has greater than a 50 percent share of the entire set of causal factors." (*Dept. of Corrections v. Workers' Comp. Appeals Bd. (Garcia)* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356, 1360]; *Watts v. Workers' Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 684, 688 (writ den.); *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 246 (Appeals Board en banc).)

In his May 16, 2019 psychiatric panel qualified medical examiner (PQME) Arnold L. Gilberg, M.D., Ph.D., states:

The most revealing records are authored by Margaret Bauman, M.D., a Psychiatrist. Entries on May 17, 2017 indicate that the applicant has a history of severe Major Depression with overwhelming anxiety, agitation, and paranoia. There was paranoia about family members talking about her with similar feelings about coworkers. Dr. Bauman talked about two recent hospitalizations and emergency room visits for taking too many pills "because I just wanted to sleep, not die."

She also had a 5150 involuntary psychiatric hospitalization. Dr. Bauman also felt there was a minimal support system for her.

There was effort to provide the applicant with psychotherapy with Dr. Silva-Palacios, who felt that the applicant was too ill to benefit from working with him.

If you review the appended Review of Records, it is quite clear that the applicant has had serious psychiatric problems for many years. In an entry of August 9, 2017 by Dr. Cruz, he makes a diagnosis of schizophrenia, paranoid type, history of carcinoma and thyroid problems.

There are a variety of personnel records submitted. More often than not, the applicant received adequate reviews for her work efforts. However, things became seriously derailed and there are reports submitted by Rosemarie Morales, coworker Y, coworker X, and others indicating Ms. Palacios' behavior. It was for this reason that Mr. Gage, the Vice President of HR Connect-State Compensation Insurance Fund, took an action against the applicant for cause specified on the subsections of Government Code §19572 to include inexcusable neglect of duty, insubordination, dishonesty, discourteous treatment of public or other employee, willful disobedience, violation of probation set forth in accordance with §19990 or other failure of good behavior.

Evidently, Mr. Gage also felt there was a threat to kill a member of the State Fund workforce.

It was for this reason that there was a Restraining Order provided by the Courts. According to the applicant, that Restraining Order was later dismissed. Under any circumstances, I have reviewed the file and the face-to-face interview with the applicant, and my conclusion is that the applicant has serious psychiatric problems that long antedate her employment.

Dr. Cruz says the applicant has schizophrenia, which has a strong genetic predisposition and means that her paranoia and other symptomatology in all probability long antedated her employment.

For these reasons, I feel there is not industrial psychiatric causation with predominance. I find no period of temporary disability psychiatrically, and there would be no evidence to suggest that the work environment was causative of her psychiatric difficulties. Dr. Bauman, a treating psychiatrist, felt her paranoia against family members existed in a similar fashion with coworkers. Two treating psychiatrists have felt that her psychiatric problems are associated with her own genetic predisposition and do not have a relationship to the work environment.

(Dr. Gilbert's 5/16/19 report, at pp. 2-3, applicant's Exhibit 7.)

We agree with the WCJ that Dr. Gilbert's opinion is substantial medical evidence that applicant did not meet her burden of proving her psychiatric condition was predominantly caused by actual events of employment.

Lastly, applicant's contention that Dr. Gilbert's January 27, 2020 deposition transcript establishes that he did not have an accurate history regarding problems between applicant and co-worker McGinnis is without merit. Dr. Gilbert reviewed and described employment records in his September 6, 2018 and May 16, 2019 reports. (Applicant's Exhibits 8 & 7, respectively.) Moreover, applicant fails to allege with specificity what information Dr. Gilbert is allegedly missing and its significance to the issue of causation.

Accordingly, for the reasons stated herein, we deny reconsideration.

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

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 5, 2021

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

**CONSUELO PALACIOS
GHITTERMAN GHITTERMAN & FELD
GOLDMAN MAGDALIN & KRIKES**

PAG/bea

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

REPORT AND RECOMMENDATION **ON PETITION FOR RECONSIDERATION**

I. **INTRODUCTION**

1. Applicant's Occupation: Legal secretary
Age of Applicant: October 7, 1975
Date(s) of Injury: September 3, 2007 – September 26, 2007
Parts of Body Injured: In dispute – psyche and nervous system.
Manner in Which Injury Occurred: Conflict with co-worker as alleged
2. Identity of Petitioner: Applicant
Timeliness: The petition is timely
Verification: The petition is verified
Services: The petition was served on all parties
3. Date of Issuance of Order: January 4, 2021
4. Petitioner's contention: The WCJ erred in finding Applicant did not meet the predominant cause standard.

II. **FACTS**

Applicant was employed as a legal secretary and claimed industrial injury to her nervous system and psyche as a result of her inter-actions with a co-worker.

Arnold Gilberg, M.D., reported in the capacity as a PQME, and authored two narrativemedical reports and was deposed.

Dr. Gilberg opined Applicant did not meet the predominant threshold pursuant to L.C. §3208.3 (b) (1).

A Findings and Award was issued finding Applicant failed to meet her burden of proof and take nothing.

It is from that determination, Applicant files this petition for reconsideration.

III. DISCUSSION

It should be noted that the Opinion on Decision clearly states the basis for each issue decided. All medical reporting, transcript and documentary evidence relied upon is clearly identified. However, to the extent that the Opinion on Decision may seem skeletal, pursuant to Smales v. WCAB (1980) 45 CCC 1026, this Report and Recommendation cures those defects.

Applicant contends Dr. Gilberg overlooked or misunderstood important information contained in his 5/16/2019 record review. However, Dr. Gilberg commented on Applicant's interpersonal conflict with Ms. McGinnis in his initial report of September 16, 2018. It is reflected in his reports and deposition that he was well aware Applicant was claiming Ms. McGinnis is the primary source of her psychiatric complaints.

Besides noting the interpersonal conflicts Applicant had with her co-workers, Dr. Gilberg noted in the prior medical records Applicant's long standing psychiatric issues that predate her employment with Defendant. Her family issues and at least one prior involuntary hospitalization.

Dr. Gilberg's report is substantial medical evidence because he did have an accurate history, reviewed the medical records provided with appropriate commentary and he explained the reasoning for his conclusions. He acknowledged all of the facts and factors and concluded Applicant did not meet the predominant cause threshold.

IV. RECOMMENDATION

For the reasons stated, it is respectfully recommended that Applicant's Petition for Reconsideration be denied based on the arguments and merits addressed herein.

Dated: February 17, 2021

Scott J. Seiden
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE