

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

AMBER FAIRRIS, *Applicant*

vs.

DEPARTMENT OF SOCIAL SERVICES, *Legally Uninsured, Defendants*

**Adjudication Number: ADJ10475606
Anaheim 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. Pursuant to our authority, we accept defendant's supplemental pleading. (Cal. Code Regs., tit. 8, § 10964.) 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.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 13, 2022

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

**ADAMS FERRONE & FERRONE
AMBER FAIRIS
STATE COMPENSATION INSURANCE FUND**

PAG/oo

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

REPORT AND RECOMMENDATION ON RECONSIDERATION

I **INTRODUCTION**

Applicant has filed a timely and verified petition for reconsideration wherein she disputes the Findings and Order dated 6/21/2022 finding that applicant did not sustain injury to her psyche while employed during the period 05/17/2006 through 01/11/2016 as an office assistant for the Department of Social Services. Applicant contends that the finding that she did not sustain an industrial injury is not based on substantial medical evidence

II **STATEMENT OF FACTS**

Applicant, born [...], while employed during the period 05/17/2006 through 01/11/2016 as an office assistant at Riverside, California by Department of Social Services, then legally uninsured administered by State Compensation Insurance Fund, claims to have sustained injury arising out of and occurring in the course of employment to psyche. The issue in dispute was injury arising out of and occurring in the course of employment.

A trial was held in this matter on 05/19/2022. Testimony was taken of the applicant. Following review of the testimony of the applicant and the medical reports and records of all physicians in this matter as well as other documentary evidence the Court issued a Findings and Order finding that applicant did not sustain injury to her psyche while employed during the period 05/17/2006 through 01/11/2016 as an office assistant for the Department of Social Services and that the injury claim during the period 05/17/2006 through 01/11/2016 is not presumed compensable pursuant to Labor Code section 5402(b). It was ordered that applicant take nothing from the injury herein.

III **DISCUSSION**

Applicant contends that the opinion of QME Dr. Andrew Dean (Psychologist) on the issue of injury does not constitute substantial medical evidence because it is based on an incorrect legal theory.

On pages ninety-one through ninety-three of Dr. Dean's 03/12/2019 report (Defendant's Exhibit "F") he states:

““In my opinion, with reasonable medical probability, the predominant cause (>50%) of the claimant’s psychiatric diagnoses pre-dated the work-related stress she described as beginning in the middle of 2013. As such, her psychiatric diagnoses were predominately caused on a non-industrial basis. Evidence suggests that her work-related stress significantly exacerbated her pre-existing conditions.

The claimant was on leave from work on medical disability for end-stage renal disease from approximately April 2013 until November, as she was on a wait-list to receive a kidney transplant. She reported that her workplace stress began in the middle of 2013 when a new manager, Kimberly Taylor, was assigned to oversee her position at the Department of Social Services, while the applicant was on leave (see below).

Although the claimant reported that she generally had mild chronic anxiety (1-2/10) and infrequent panic attacks (1-2 x per year) prior to her workplace stress beginning in the middle of 2013, the medical record suggests a more significant pre-existing psychiatric history.

Medical notes indicate that the claimant was taking Xanax for anxiety approximately three times per day in 2007, with continued use of this medication noted in 2011, 2012, 2013 and into the present. She was also prescribed Ambien for sleep in 2007 (January 12, 2007; Mr. Andries). A note on January 13, 2013 by Dr. Stinnett, prior to her reported work stress, indicates that she had a prior history of bipolar disorder, anxiety, ADHD and panic attacks. She had reportedly previously taken various psychotropic medications, including Zoloft, Paxil, Celexa, Seroquel, Lamictal and others. She reported that previous medications for bipolar disorder made her feel “emotionless”. She needed to increase her Xanax use due to her medical issues. Dr. Stinnett diagnosed her with Bipolar II disorder, Depression and Panic Disorder without Agoraphobia on January 13, 2013. Other records in January and February of 2013 indicate symptoms of opiate intolerance (January 11, 2013; Rusokoff. R.N.; February 26, 2013; February 27, 2013), claustrophobia (January 15, 2013), emotional instability (February 27, 2013; Dr. Kim) and argumentative behavior (January 17, 2013 email; February 27, 2013 email). On February 27, 2013, Dr. Kim diagnosed her with anxiety disorder, ADHD, methamphetamine dependence in remission and marijuana abuse and continued her prescriptions of Lamictal, Effexor and Xanax (3 x per day).

Therefore, the medical record indicates that diagnoses of anxiety disorder, panic disorder, bipolar disorder and substance abuse were already in place prior to the time at which she reported that her work stress began. It is also noted that the medical record and current testing suggest the presence of a Personality Disorder, NOS (See Discussion of Diagnoses section). By definition, personality disorders reflect enduring personality traits that are typically manifest by early adulthood. Her personality temperament is likely associated

with her pattern of attachment to her primary caregivers during development; for example, she described her mother as lacking boundaries, “not emotionally there,” and “sociopathic in emotions,” She has a limited relationship with her mother currently.

In the context of the claimant’s pre-existing history of anxiety, panic attacks, mood instability and substance abuse, it appears that she experienced a significant exacerbations of symptoms when exposed to alleged mistreatment in the workplace. . . .

As a result of the above issues, the claimant reported that her previously mild anxiety spiked to a 10/10 in severity (particularly following the yelling and email to department staff). Her panic attacks evidently occurred almost daily and she became fearful to be around Kimberly. She also developed insomnia, particularly on Sunday night before work. She felt that Kimberly treated her “like garbage” and showed “zero empathy.” She evidently reported Kimberly’s behavior to her union and the EEOC (it is unclear what followed after those complaints).

The medical record supports the claimant’s report that she developed work-related stress in 2016. . . .

In summary, the existing medial record is consistent with the claimant’s reported work-related stress and it does appear that she developed a significant exacerbation of symptoms after going back to work at the end of 2015/early 2016. However, the medical record also documents that she had pre-existing diagnosis of anxiety disorder, panic disorder, bipolar disorder and substance abuse at the time at which her reported work-related stress began. As such, her psychiatric diagnoses were predominately (> 50%) caused on a non-industrial basis.”

At his deposition dated 02/22/2022 (Defendant’s Exhibit “G”) Dr. Dean testified that:

“Q. So based on that history from 2014 to 2016, what is the trigger that caused her injury to go off work in 2016?

A. I think that work stress contributed to her going out at work in 2016.

Q. Okay. And so with reasonable medical probability, then, her injury in 2016 when she was paced off work, was caused by work?

A. I mean it depends how we define “injury.” I’m defining “injury” as a new-onset psychological condition. So I’m not really defining “injury” as when she’s going out at work. I’m defining it as psychological condition.

Q. Okay. So there’s – there’s two causation here, one is cause of injury, which caused her to go off work and need to seek medical treatment, and then we have the cause

for disability, which is her remaining impairment based on numerous factors over her life, and that's what we apportion to. That's the apportionment section.

A. *Sure.*

Q. *And so I understand your analysis as to apportionment. I'm trying to understand the analysis as to causation.*

Now, we understand that she had preexisting anxiety, but there was – she was able to work during that time for eight years with preexisting anxiety, and then something triggered her to go off work.

So I'm just wondering what was the trigger that caused her to go off work, that caused that injury in 2016?

A. *Yeah. Again, it depends how we define "injury." But, you know, I believe that there was partial disability on a psychological basis, you know, more longstanding. So, again, you know, I'm defining the injury as the development of a new psychological diagnosis.*

Q. *Okay. But, if –*

A. *You're kind of asking -- you're defining "injury" at the point in time as when she's leaving work.*

Q. *Correct.*

A. *I'm not really defining "injury" as a psychological condition that affects work, certainly." (Depo. Transcript of Dr. Andrew Dean dated 02/22/2022, at 16:24-18:18.)*

Applicant contends that Dr. Dean's definition of injury is not consistent with the definition of injury found in the Labor Code. Applicant contends that:

"The Labor Code defines an injury as "any injury defined in Labor Code section 3208 which results in medical treatment beyond first aid, lost time beyond the date of injury, or death. As such, a psychiatric injury is compensable when actual events of employment are a predominant cause of either (1) medical treatment beyond first aid, (2) lost time beyond the date of injury, or (3) death is an injury." (Pet. for Recon., at 2:24:28.)

Applicant also contends that Dr. Dean incorrectly determined that the work stress exacerbated rather than aggravated her preexisting conditions because the events at work caused

temporary disability. (Pet. For Recon., at 3:14-24.) Since the applicant's pre-existing conditions were aggravated by work stress, applicant contends that this constitutes an injury.

Applicant's contentions misstate the law and lack merit.

Labor Code section 3208.3 (a), (b) (1) and (c) states:

“(a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, it is diagnosed using the terminology and criteria of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine. (Emphasis added.)

(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 the psychiatric injury.

(c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.”

Applicant's reliance on Labor Code section 3208 for the definition of a psychiatric injury is improper. It is clear from section 3208.3 (c) that the legislature established a different and higher threshold of compensability for a psychiatric injury than the one set forth in section 3208.

Section 3208.3(a) makes it clear that a physician must find that there is a mental disorder which causes disability or need for medical treatment before there can be a finding of a compensable injury.

On page eighty-four of his 03/12/2019 report Dr. Dean discusses his diagnosis as follows:

“Presented DEM-IV-TR psychiatric diagnoses based upon the history provided, review of records, psychological testing and clinical examination are:

Axis I: Clinical Disorders (and Other Conditions That May Be a Focus of Clinical Attention)

- 1. 300.02 Generalized Anxiety Disorder*
- 2. 300.21 Panic Disorder with Agoraphobia*
- 3. R/O 296.80 Rule Out Bipolar Disorder, Not Otherwise Specified*
- 4. R/O 307.89 Rule Out Pain Disorder Associated with both*

- Psychological Factors and a General Medical Condition*
5. *R/P 304.00 Rule Out opioid Dependence, in remission*

Axis II: Personality Disorders and Developmental Disorders

1. *301.9 Personality Disorder, Not Otherwise Specified (with Borderline and Dependent Features)*

Axis III: General Medical Conditions

1. *Lupus, history of two kidney transplants, history of history of cardiovascular disease, history of embolic stroke, migraines; see medical records*

Axis IV: Psychological and Environmental Problems

1. *Problems with primary support group: conflict and limited contact with mother*

Axis V: Global Assessment of Functioning

GAF Score = 55 (MMI)''

It is clear from Dr. Dean's report and testimony that he determined that applicant has mental disorders consistent with the requirements of section 3208.3(a).

Dr. Dean also testified that the reason applicant went off work was due to work stress.

In addition, Section 3208.3(b) (1) requires that a physician also find that actual events of employment were predominant as to all causes combined of the psychiatric injury before the injury claim can be compensable.

As discussed above Dr. Dean determined that applicant's mental disorders were predominately (> 50%) caused on a non-industrial basis.

Applicant contention that since the work stress aggravated her preexisting psychiatric conditions causing the applicant to go off work is sufficient to establish that she sustained a compensable psychiatric injury is inconsistent with the requirements of section 3208.3. The analysis required by subsection 3208.3(a) and (b) (1) must be followed even if applicant is claiming the events at work caused an aggravation of a preexisting psychiatric conditions.

IV
RECOMMENDATION

The petition for reconsideration should be denied.

DATE: July 28, 2022

Howard Lemberg
WORKERS' COMPENSATION JUDGE