

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

ILEANA IOSIF, *Applicant*

vs.

**COUNTY OF SACRAMENTO;
PERMISSIBLY SELF-INSURED AND SELF-ADMINISTERED, *Defendants***

**Adjudication Number: ADJ13410725
Sacramento District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Defendant seeks reconsideration of the June 3, 2022 Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a Deputy Sheriff from July 10, 2019 to July 10, 2020, sustained industrial injury to the psyche. The WCJ determined that actual events of employment were the predominant cause of applicant's claimed psychiatric injury.

Defendant contends that applicant's injury arose out of her subjective perceptions rather than actual events of employment. Defendant asserts applicant has not met the burden of establishing that actual events of employment were the predominant cause of the claimed psychiatric injury. (Petition for Reconsideration (Petition), dated June 22, 2022 at 6:18.)

We have received an answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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 affirm the Findings of Fact.

Applicant alleged injury arising out of mistreatment at the hands of co-workers, and in particular, an episode where applicant alleged a co-worker intentionally delayed opening a door to a holding tank where applicant was alone with an agitated criminal defendant. (February 9, 2022 Minutes of Hearing and Summary of Evidence (Minutes), at 6:35.)

The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) With respect to psychiatric injuries, section 3208.3 provides, in relevant part, as follows:

(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.

(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.

(2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

(3) For the purposes of this section, "substantial cause" means at least 35 to 40 percent of the causation from all sources combined.
(Lab. Code, § 3208.3(a)-(b).)

“Predominant as to all causes” for purposes of section 3208.3(b)(1) has been interpreted to mean more than 50 percent of the psychiatric injury was caused by actual events of employment. (*Dept. of Corr. v. Workers' Comp. Appeals Bd. (Garcia)* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356]; *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.)

Defendant contends that the factors giving rise to applicant's claimed psychiatric injury were not actual events of employment, and in support of this contention, cites to *Verga v. Workers' Comp. Appeals Bd.* (2008) 159 Cal.App.4th 174 [73 Cal.Comp.Cases 63]. In *Verga*, the Appeals Board made a finding that the alleged abuse and persecution claimed by applicant did not occur but rather that applicant brought the disdain of her co-employees on herself through her own actions. (*Id.* at 187.) However, our determination in *Verga* that applicant's injury did not arise out of actual events of employment was premised on the medical-legal determination of one of the Qualified Medical Evaluators (QMEs), who found applicant's history of conflict with her coworkers to be dispositive, as well as the credibility determination of the WCJ, who found applicant's testimony 'not as credible as was the evidence presented by other employees of [defendant].' (*Id.* at 182.)

Here, QME Nataliya Belfor, Ph.D. has completed a comprehensive medical-legal evaluation of applicant, and determined that applicant's report of the events of employment "is supported by the testing data, by the observations of the examinee during the evaluation, and by the results of mental status examination." (Ex. AA, report of QME Nataliya Belfor, Ph.D., dated November 13, 2020, p. 12.)

Additionally, the WCJ heard and weighed the testimony adduced at trial. The WCJ gave due consideration "to the credibility of all witness testimony including observations of the demeanor and expressions of the witnesses," and concluded that "[a]pplicant's testimony was credible and more persuasive." (Report, at p. 4.) We have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness(es). (*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 determination(s). (*Ibid.*)

Accordingly, we agree with the WCJ that applicant has established that actual events of employment were the predominant cause of the claimed psychiatric injury, and that applicant has carried her burden of proof pursuant to Labor Code section 3208.3(b). We will affirm WCJ's decision, accordingly.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact, dated June 3, 2022, is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER



I DISSENT, (See Dissenting Opinion)

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 7, 2022

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

**ILEANA IOSIF
LAW OFFICE OF GEORGE FOGY
HANNA BROPHY**

SAR/abs

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 RAZO

Labor Code section 3208.3 requires that “actual events of employment” be predominant to all causes combined. (Lab. Code § 3208.3(b).) Here, the greater weight of the evidence supports the conclusion that applicant’s erroneous perception of events was the predominant cause of the claimed injury. Because actual events of employment were not the predominant cause of applicant’s injury, compensation is barred by statute. Accordingly, I respectfully dissent.

Labor Code section 3208.3(b)(1) provides, “[i]n 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.” (Lab. Code § 3208.3(b)(1).) “The statutory language indicates that two conditions must be satisfied before a particular factor can support an award of benefits under section 3208.3, subdivision (b)(1). First, the factor must be an ‘event’ i.e. it must be ‘something that takes place’ (American Heritage Dict. (4th ed. 2000) p. 616) in the employment relationship. Second, the event must be ‘of employment’, i.e., it must arise out of an employee’s working relationship with his or her employer.” (*Pacific Gas & Elec. Co. v. Workers' Compensation Appeals Bd.* (2004) 69 Cal. Comp. Cases 21 [2004 Cal. Wrk. Comp. LEXIS 6].) The Court of Appeal has observed:

[I]n enacting section 3208.3, subdivision (b)(1), the Legislature disapproved a ruling permitting such benefits based on an employee's subjective misperception that the employment was stressful. In order to limit such claims for psychiatric injury, due to their proliferation and potential for abuse, the Legislature "establish[ed] a new and higher threshold of compensability for psychiatric injury" (§ 3208.3, subd. (c)) by requiring the claimant to demonstrate that "actual events of employment" were the "predominant" cause of the alleged psychiatric injury (§ 3208.3 subd. (b)(1)). This change in the statutory scheme constituted an intent to require the claimant to establish objective evidence of harassment, persecution, or other such basis for alleged psychiatric injury. (*Verga v. Workers' Compensation Appeals Bd.* (2008) 73 Cal. Comp. Cases 63, 65 [2008 Cal. Wrk. Comp. LEXIS 16].)

Here, Qualified Medical Examiner Dr. Balfor has addressed causation of applicant’s psychiatric injury, and identified nineteen factors of causation. Of those factors, the QME attributed 60% causation to one incident involving applicant’s co-worker allegedly “playing with keys” and slowly opening the door to the holding tank where she was alone with an agitated inmate.

The WCJ found applicant's testimony regarding this incident credible, and my colleagues in the majority have declined to disturb the WCJ's credibility determination.

However, I find the evidence supports a contrary conclusion. Applicant's testimony with respect to Deputy Brooks is wholly framed in terms of applicant's perceptions, rather than actual events. Applicant testified that she "knew" that Deputy Brooks was delaying opening the holding tank door, that it was his way of showing her "who was boss there." (February 9, 2022 Minutes of Hearing and Summary of Evidence (Minutes), at 7:28; 16:11.) However, applicant offers no objective evidence to support this belief. Deputy Brooks testified that he did not intentionally delay opening the door, or even know that it was applicant on the other side of the door. (*Id.* at 26:22.) Witness James Petrinovich, a Lieutenant with the County of Sacramento Sheriff's department, testified that after conducting an internal affairs investigation of applicant's complaints, they determined that the complaints were "unfounded," meaning that the alleged acts did not happen. (May 16, 2022 Minutes, at 19:20.) While applicant complained that she was locked for an "extensive period of time" in the holding tank with a criminal suspect, applicant testified that it typically took a few seconds to open the door, and there is no evidence that the criminal suspect in the holding tank threatened applicant in any way. (Ex. AA, report of QME Nataliya Belfor, Ph.D., dated November 13 2020, p. 5; February 9, 2022 Minutes, at 7:15.) Applicant acknowledged that the inmate was handcuffed during this entire episode. (February 9, 2022 Minutes, at 6:23.) In short, applicant's subjective perception of harassment by Deputy Brooks finds no support in the objective evidence in the record.

Similarly, many of the other slights and mistreatment alleged by applicant arose out of applicant's subjective misperceptions, rather than actual events of employment. Applicant alleged her training officer wanted an intimate relationship with her. (February 9, 2022 Minutes, at 11:1.) However, the evidence demonstrates neither specific words nor actions taken by the training officer to suggest this, only applicant's subjective perception. (*Id.* at 13:1; 13:8) Applicant was upset that the County denied her a transfer from her position at the courthouse, despite being informed the County had frozen all transfers during the COVID epidemic. (*Id.* at 5:42.) Applicant testified to verbal harassment and mistreatment in the elevators and in the cafeteria. (*Id.* at 9:35; 10:21.) However, multiple witnesses testified that these events did not take place. (*Id.* at 21:12; 22:18; 23:2; May 16, 2022 Minutes, at 2:17; 4:16.)

The sole causative factor identified by the QME as arising out of admitted actions of applicant's coworkers was their imitating applicant's accent. The QME ascribed five percent causation to this behavior, well below the predominance threshold. (Ex. AA, report of QME Nataliya Belfor, Ph.D., dated November 13, 2020, p. 5; February 9, 2022 Minutes, at 7:15; Labor Code § 3208.3(b).)

The primary causative factor identified by the QME was the slow opening of the holding tank door. Applicant offers no objective evidence that the event was unusually slow, that the deputy who opened the door slowly did so intentionally, or that he even knew that applicant was on the other side of the door. Applicant offers no evidence that the inmate in the holding cell, who was handcuffed throughout the incident, attempted any verbal or physical violence on her person. Moreover, the remaining eighteen causative factors identified by the QME were addressed by an overwhelming array of witnesses whose testimony directly contradicts applicant's perception of events as not based in reality. Having reviewed the totality of the evidence, I believe applicant has not sustained her burden of establishing that actual events of employment (rather than her subjective perceptions) were the predominant cause of the psychiatric injury.

Accordingly, I would grant defendant's Petition for Reconsideration, and amend the June 3, 2022 Findings of Fact No. 3, to reflect that actual events of employment were not the predominant cause of applicant's injury, thus barring compensation pursuant to section 3208.3(b). (Cal. Lab. Code § 3208.3(b); *Verga v. Workers' Comp. Appeals Bd.*, *supra*, 73 Cal. Comp. Cases 63, 65.)



WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 7, 2022

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

**ILEANA IOSIF
LAW OFFICE OF GEORGE FOGY
HANNA BROPHY**

SAR/abs

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.

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|---------------------------------|---|
| <u>Date of Injury:</u> | CT through July 10, 2020 |
| <u>Age on DOI:</u> | 42 years old |
| <u>Occupation:</u> | Deputy Sheriff |
| <u>Parts of Body Injured:</u> | Psyche |
| <u>Identity of Petitioners:</u> | Defendant |
| <u>Timeliness:</u> | Petition was filed timely |
| <u>Verification:</u> | Petition was verified |
| <u>Date of Order:</u> | June 3, 2022 |
| <u>Petitioners Contentions:</u> | Defendant contends the Board acted without or in excess of its powers by the order, decision or award, and the evidence does not justify the findings of fact, and that the findings of fact do not support the order, decision, or award. Specifically, Defendant contends the actual events of employment were not predominant and mental injuries cannot be judged purely on Applicant's subjective perception of job harassment and Applicant's testimony was in direct conflict with numerous witnesses showing a pattern of perception not actual events, and a finding that Applicant was more persuasive and credible was not of considerable substantiality in light of the entire record. |

II

FACTS

Applicant claimed an injury to the psyche arising during the cumulative trauma period through July 10, 2020 while she was working as a Deputy Sheriff for the County of Sacramento. After trial, an order issued finding Applicant sustained an injury arising out of and in the course of employment. Defendant filed a Petition for Reconsideration.

III DISCUSSION

INJURY AOE/COE

Applicant claims injury arising out of and in the course of employment to her psyche. All other issues including apportionment were deferred and not decided.

Labor Code section 3208.3(b)(1) states as follows: "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."

Applicant saw psychologist Dr. Belfor for a QME evaluation on October 16, 2020. Dr. Belfor took a history from Applicant and performed a record review, examination, and psychological testing. Dr. Belfor diagnosed Applicant with panic disorder, adjustment disorder with mixed anxiety and depressed mood, other problem related to employment, and target of perceived adverse discrimination or persecution. Dr. Belfor found Applicant's psychiatric injury meets the 51 % predominant cause threshold. Dr. Belfor attributed 60% of the psychiatric injury to the incident on July 1, 2020 involving Deputy Brooks and the holding tank. (Joint Exhibit AA)

Applicant testified credibly at trial. She testified in pertinent part as follows: Deputy Brooks made fun of her accent on multiple occasions. In the beginning Deputy Brooks made jokes with other officers and then it escalated to sarcasm. Deputy Brooks asked her "How come I can imitate your accent, but you cannot imitate my accent?" Deputy Brooks made a slight touch to the jokes every time he saw her. She felt humiliated.

Applicant testified at trial regarding the incident on July 1, 2020, in pertinent part as follows: Deputy Brooks was assigned to work as a tank officer in the south tank. She escorted an inmate to Department 4. During the court proceeding, the inmate acted out toward the judge and his own counsel. The inmate was very irritated, agitated, and escalated to the point where she had to stand up more than once because she was afraid the inmate was going to jump up. After the hearing, she entered the cage with the inmate who was handcuffed. She locked the door behind her. There is a signal from the officer in the courtroom to the officer in the tank to open the door so the inmate in the courtroom can return to the tank. The officer in the tank has a key to open the door. Initially the door would not open to let her out of the cage. You are supposed to open the

door and get out of the cage right away. They have training on this because there are so many assaults on officers while the doors are being opened slowly. On average it takes a few seconds to open the door as soon as the key gets in. On this day, time stopped. She heard the keys and was waiting in the cage with the inmate for the door to open. She heard the keys inside and they were moving from right to left but the door did not open. She heard the keys playing in the door and knew it was Deputy Brooks. She knew he was doing it on purpose because she had been talking to Sergeant Ilaga that day. After Deputy Brooks opened the door he stared at her and she knew it had been intentional Deputy Brooks told her, you cannot open the door if you push on it. No one was pushing on the door.

Deputy Brooks testified at trial. He testified in pertinent part as follows: He is a Deputy Sheriff for the County of Sacramento and worked with Applicant for two or three years. He commented on Applicant's accent. He imitated Applicant's accent. He was joking with Applicant. She thought it was funny, smiled and laughed. He did not think Applicant was offended. Regarding the day of the incident he testified as follows: He was on the same escort team as Applicant leading up to July 1, 2020. He might not have been working the tank that day. He might have been down there to escort an inmate when the buzzer went off and then he grabbed the keys to open the door. He heard the buzzer, grabbed a key, and tried to open the door. He turned the key and tried again. He yelled to the inmate not to push on the door. Finally, the pressure was off the door and he was able to unlock the door. When he opened the door, he told the inmate not to press on the door. Applicant said no one was pushing on the door. He did not know if it was Applicant in the cage before he unlocked the door. He did not remember this whole thing happening initially but after going to internal affairs twice he realized what Applicant was talking about.

Lieutenant Petrinovich testified at trial. He testified in pertinent part as follows: He was in the Internal Affairs Bureau where he investigated cases of harassment and discrimination and worked on Applicant's complaint. He worked with Deputy Brooks for 17 to 18 years before the investigation. The alleged event occurred in Department 4 which is an actual courtroom with a metal cell inside. The allegation was that Deputy Brooks intentionally left Applicant inside the courtroom cell. He interviewed deputies Lawrence and Brooks but Applicant declined to speak with him formally. Deputy Brooks said he responded quickly and without delay to the door and attempted to open the door with the key but felt resistance on the key. Deputy Brooks said there was a delay in getting the door open but it opened eventually. Deputy Brooks told the inmate not

to push on the door and applicant responded that the inmate was not pushing on the door. Lieutenant Petrinovich testified at trial that each deputy has a radio on their duty belt with a microphone and earpiece. Applicant's call sign was 236. Applicant might say something like, 236, Courtroom 4 with one.

Deputy Lawrence testified at trial. During his testimony, he admitted to mimicking Applicant's accent over the years; he thought it was funny. He testified as cops they like to make fun of things. He testified that guys would mimic her accent when they heard her voice on the radio.

Applicant testified at trial that Sergeant Wade was her training officer, took her to the American River and asked questions about her daughter and relationship status that made her feel very uncomfortable. She testified that she would not answer his questions and would get out of the car. She testified that after a couple times his attitude changed and he was angry and impatient. She testified that Sergeant Wade wanted an intimate relationship with her. Sergeant Wade testified at trial that he trained Applicant he took trainees to the American River almost daily and he asked trainees personal questions. He testified that Applicant never said she did not want to go to the river, he would have remembered that as he would have had a big issue if a trainee disobeyed a direct order.

CONCLUSION

Deputies Brooks and Lawrence mocked Applicant's accent and were familiar with her voice. Applicant had a call sign for the radio that identified herself and her location. It is unconvincing that Deputy Brooks did not know Applicant was behind the door in the cage. Furthermore, Deputy Brooks did not recall the incident happening until going to internal affairs and then was able to provide a fairly detailed recollection of the incident at trial. Finally, the testimony of Applicant, Deputy Brooks, and Lieutenant Petrinovich reveal there was a delay in opening the door to the cage.

Defendant called various witnesses who are still employed or affiliated with the County of Sacramento. Due consideration was given to the credibility of all witness testimony including observations of the demeanor and expressions of the witnesses. Applicant's testimony was credible

and more persuasive. The record supports a finding that the incident on July 1, 2020 involving Deputy Brooks and the holding tank is an actual event of employment.

Dr. Belfor attributed 60% causation to this employment event, which exceeds the threshold for predominant cause.

The QME report of Dr. Belfor and the testimony of Applicant, Deputy Brooks, and Lieutenant Petrinovich support a finding that Applicant sustained injury to her psyche arising out of and occurring in the course of employment during the period through July 10, 2020.

IV RECOMMENDATION

For the reasons stated above, it is respectfully recommended that Defendant's Petition for Reconsideration be denied.

DATE: July 6, 2022

Ariel Aldrich
Workers' Compensation
Administrative Law Judge