

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

JULIO PINEDA, *Applicant*

vs.

**CITY OF RANCHO CUCAMONGA, permissibly self-insured, administered by
LWP CLAIMS SOLUTIONS, INC., *Defendants***

Adjudication Number: ADJ13303390

Van Nuys District Office

**OPINION AND DECISION
AFTER
RECONSIDERATION**

We previously granted defendant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the Second Amended Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on November 22, 2022, wherein the WCJ found in pertinent part that applicant sustained a compensable psychiatric injury arising out of and occurring in the course of employment (AOE/COE).

Defendant contends that the opinions stated by psychiatric qualified medical examiner (QME) Mark McDonald, M.D., are based on an inaccurate history given by applicant, and are not substantial evidence; and that its exhibits and the testimony of applicant's supervisor, Jana Cook are evidence that support its "good faith personnel action" defense.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from applicant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will rescind the F&A and return the matter to the WCJ to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

Applicant claimed to have sustained a psychiatric injury while employed by defendant as a Community Improvement Officer, during the period from August 20, 2018, through May 30, 2020.

Applicant was evaluated by QME Dr. McDonald on September 18, 2020. Dr. McDonald took a history, reviewed the medical record, and performed various psychiatric tests. He diagnosed applicant as having an adjustment disorder with mixed anxiety and depressed mood, and he assigned a Global Assessment of Function (GAF) score of 56, resulting in 21% whole person impairment. (See App. Exh. 2, Mark McDonald, M.D., October 14, 2020, p. 32.) Dr. McDonald subsequently reviewed additional records and stated that his review of those records did not change his opinions as stated in his first report. (See App. Exh. 1, Mark McDonald, M.D., January 12, 2021, p. 15.)

The parties proceeded to trial on April 8, 2021. The matter was continued and at the February 16, 2022, trial it was again continued. At the May 11, 2022, trial the matter was continued to June 28, 2022, and at that trial it was submitted for decision. (Minutes of Hearing and Summary of Evidence (MOH/SOE), June 28, 2022.) The issues submitted for decision included injury AOE/COE and the good faith personnel action defense. (MOH/SOE, April 8, 2021, p. 2.)

DISCUSSION

The Appeals Board has laid out the four-step “good faith personnel action defense” analysis that a WCJ must perform when that defense is an issue submitted for decision. (*Rolda v. Pitney Bowes* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc) (*Rolda*); see also *San Francisco Unified School District v. Workers' Comp. Appeals Bd. (Cardozo)* (2010) 190 Cal.App.4th 1 [75 Cal.Comp.Cases 1251].)

After considering all the medical evidence, and the other documentary and testimonial evidence of record, the WCJ must determine: (1) whether the alleged psychiatric injury involves actual events of employment, a factual/legal determination; (2) if so, whether such actual events were the predominant cause of the psychiatric injury, a determination which requires medical evidence; (3) if so, whether any of the actual employment events were personnel actions that were lawful, nondiscriminatory and in good faith, a factual/legal determination; and (4) if so, whether

the lawful, nondiscriminatory, good faith personnel actions were a "substantial cause" of the psychiatric injury, a determination which requires medical evidence. The WCJ must then articulate the basis for his or her findings in a decision which addresses all the relevant issues raised by the criteria set forth in Labor Code section 3208.3, including specific references to the trial record to support the findings. (*Rolda, supra*, at p. 247.)

Our review of the record indicates that although the good faith personnel action defense was an issue submitted for decision neither the Opinion on Decision nor the Report, includes a detailed *Rolda* analysis. Thus, it is appropriate that we rescind the F&A and upon return of the matter to the WCJ, we recommend that he issue a new decision that includes the detailed *Rolda* analysis as discussed above. It is also important to note that the evidence submitted by the parties regarding the issues raised by applicant's psychiatric injury claim be considered in the context of the Labor Code section 3202.5 preponderance of evidence standard. (Lab. Code, § 3202.5.)

Accordingly, we rescind the F&A and return the matter to the WCJ to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 22, 2022, Findings and Award is **RESCINDED**, and the matter is **RETURNED** to the WCJ to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 15, 2023

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

**JULIO PINEDA
ROWEN, GURVEY & WIN
LAW OFFICES OF C. ROBERT BAKKE**

TLH/mc

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