

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

**AMBER WEBBER, *Applicant***

**vs.**

**SIERRA PACIFIC INDUSTRIES, permissibly self-insured, administered by  
SIERRA PACIFIC, *Defendants***

**Adjudication Number: ADJ13016610  
Redding District Office**

**OPINION AND DECISION  
AFTER  
RECONSIDERATION**

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

Applicant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on February 16, 2023, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her neck, right shoulder, and in the form of cervicogenic headaches and pain-related insomnia; that applicant did not sustain injury AOE/COE to her psyche or nervous system in the form depression and/or fainting nor in the form of sexual dysfunction; and that "the harassment allegations of Applicant were not credible." (F&A, p. 2.)

Applicant contends that she sustained a compensable psychiatric injury as a result of falling downstairs at work; or in the alternative, the report from psychiatric qualified medical examiner (QME) Deepak Rajpoot, M.D., is substantial evidence that the actual events of applicant's employment were the predominant cause of her psychiatric injury.

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

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 affirm the F&A except that we will amend the F&A to defer the issues of whether applicant sustained a compensable psychiatric injury (Findings of Fact 1, 2, and 7), and the issue of attorney fees for

applicant's counsel (Finding of Fact 6)<sup>1</sup>. Based thereon, the Award will be amended, and we will return the matter to the WCJ for further proceedings consistent with this opinion.

### **BACKGROUND**

Applicant claimed injury to her neck, and right shoulder, to her psyche in the form of depression, and to her nervous system resulting in fainting, while employed by defendant as a paper wrap crew member on April 5, 2019; she also claimed injury in the form of cervicogenic headaches, pain-related insomnia, and sexual dysfunction.

On August 21, 2021, QME Dr. Rajpoot evaluated applicant. Dr. Rajpoot took a history, reviewed the medical record, and conducted a mental status examination. He explained that:

With regards to the predominant cause of the applicant's identified Adjustment Disorder with mixed anxiety and depression, I believe that reasonable medical evidence in this case suggests that this psychiatric condition is a result of the harassment experienced at Sierra Pacific Industries and likely the ongoing pain issues related to the claimed industrial event. ¶ In terms of medical determinations, I am putting forth my clear opinion that both the substantial cause and the predominant cause of the applicant's current psychiatric condition is resulting from injuries sustained from other body parts and appear to be at least partly related to pain.

(Joint Exh. 2, Dr. Rajpoot, August 21, 2021, p. 24.)

Later in his report, Dr. Rajpoot stated:

Within reasonable medical probability, I have determined that the applicant's psychiatric injury is predominantly the result of the hostile work environment in which she endured harassment. From the information provided in the interview (which would be helpful to corroborate with HR records) it appears as though the applicant suffers from Adjustment Disorder with mixed anxiety and depression. These personnel actions were a substantial cause (i.e. 40% or more) of the psychiatric injury and need for treatment. Therefore, Labor Code section 3208.3(h) should be considered.

(Joint Exh. 2, p. 27.)

Dr. Rajpoot then did a *Rolda* analysis<sup>2</sup> that included the following:

The Court, in *Rolda vs. Pitney Bowes* (2001), laid out the four-step "good faith personnel action defense" ... There must be competent medical evidence establishing that the actual events of employment were the predominant cause - - i.e., greater than 50% -- of the injury to the psyche. I do find that actual events of employment were the predominant cause (>50%) of the psychiatric injury. ... Finally, a determination must be made as to whether the lawful, non-

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<sup>1</sup> It appears that due to a clerical error, Findings of Fact 4, 5, 6, and 7 were incorrectly numbered, and are corrected herein.

<sup>2</sup> *Rolda v. Pitney Bowes* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc)

discriminatory, good faith personnel actions were a "substantial cause" -- i.e., 35 to 40% -- of the psychiatric injury. I find that personnel actions were a substantial cause of her psychiatric injury. ... it is left to the Trier-of-Fact to determine whether or not these personnel actions were lawful, non-discriminatory and in good faith.  
(Joint Exh. 2, p. 27.)

The parties proceeded to trial on January 4, 2023, and the matter was submitted for decision as of January 20, 2023. (Minutes of Hearing and Summary of Evidence (MOH/SOE), January 4, 2023.)

### DISCUSSION

A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, ... 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.  
(Lab. Code, § 3208.3(a), (b)(1).)

A psychiatric injury may be either directly caused by events of employment or as a compensable consequence of an industrial injury. (*Wilson v. State of CA Cal Fire* (2019) 84 Cal.Comp.Cases 393, 403 (Appeals Board en banc); see also (*Lockheed Martin Corp. v. Workers' Comp. Appeals Bd. (McCullough)* (2002) 96 Cal. App. 4th 1237, 1249 [67 Cal.Comp.Cases 245] [the precipitating physical injury constitutes an event of employment for purposes of a compensable consequence psychiatric injury].) "Predominant as to all causes" 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].)

Here, as noted above, QME Dr. Rajpoot stated that applicant's "psychiatric condition is a result of the harassment experienced at Sierra Pacific Industries" but he then said, "both the substantial cause and the predominant cause of the applicant's current psychiatric condition is resulting from injuries sustained from other body parts and appear to be at least partly related to pain." (Joint Exh. 2, p. 24.) He later said the actual events of applicant's "employment were the predominant cause (>50%) of the psychiatric injury" and "I find that personnel actions were a substantial cause of her psychiatric injury." (Joint Exh. 2, p. 27.) Although Dr. Rajpoot stated that "harassment"/"personnel actions" and applicant's orthopedic injury were causal factors of

applicant's psychiatric condition, it is not clear what his opinions are in regard to the percentage of applicant's psychiatric symptoms caused by each factor.

Further, the WCJ discussed at length her opinion that applicant's trial testimony was not credible, and she gave a detailed explanation for her finding that applicant's "harassment allegations" were not credible. (F&A, Opinion on Decision, p. 5; Report, pp. 6 – 10.) However, the F&A does not address the issue of whether applicant's psychiatric condition is a compensable consequence of her orthopedic injury, Thus, the matter will be returned to the WCJ to address that issue. Also, we note that it is not at all clear how applicant's lack of credibility would affect Dr. Rajpoot's opinion as to the compensable consequence psychiatric injury claim. Again, under these circumstances, it is necessary that we return the matter to the WCJ for further development of the record, and additional proceedings if appropriate.

Accordingly, we affirm the F&A except that we amend the F&A to defer the issues of whether applicant sustained a compensable psychiatric injury (Findings of Fact 1, 2, and 6), the permanent disability caused by applicant's injury (Finding of Fact 3), and the issue of attorney fees for applicant's counsel (Finding of Fact 5). Based thereon, the Award is amended, and the matter is returned to the WCJ for further proceedings consistent with this opinion, and to issue a decision.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 16, 2023 Findings and Award is **AFFIRMED**, except that it is **AMENDED** as follows:

#### **FINDINGS OF FACT**

1. Amber Webber, while employed on April 5, 2019, as a bander at Quincy, California, by Sierra Pacific Industries, who was and continues to be permissibly self-insured, with workers' compensation insurance issues administered by Sierra Pacific, sustained injury arising out of and occurring in the course of employment to her neck, right shoulder, and in the form of cervicogenic headaches and pain-related insomnia based on the opinions and findings of Panel Qualified Medical Evaluator, Andrew K. Burt, M.D; the issue of whether applicant sustained a compensable psychiatric injury is deferred.
2. It is found there was no evidence submitted to indicate injury or disability to applicant's nervous system, nor in the form of sexual dysfunction, or fainting. No injury or disability is thus found for applicant's nervous system, sexual dysfunction, or fainting.

\* \* \*

4. The issue of permanent disability caused by applicant's injury is deferred.  
\* \* \*
6. The issue of attorney fees for applicant's counsel is deferred.
7. Although it is found the harassment allegations of Applicant were not credible, the issue whether applicant sustained a psychiatric injury as result of harassment is deferred.

**AWARD**

\* \* \*

- a. The AWARD of permanent disability indemnity and attorney fees is deferred, pending development of the record consistent with this opinion, and a decision issued by the WCJ.

**IT IS FURTHER ORDERED** that the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion, and to issue a new decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**May 19, 2023**

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

**AMBER WEBBER  
SHATFORD LAW  
HANNA, BROPHY, MacLEAN, McALEER & JENSEN**

**TLH/mc**

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