

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

**DONNA PUGA, *Applicant***

**vs.**

**SEDGWICK CLAIMS MANAGEMENT SERVICES and PROPERTY &  
CASUALTY INSURANCE COMPANY OF HARTFORD, administered by  
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ11641128 ADJ11641129**

**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 Joint Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on October 31, 2022, wherein the WCJ found in pertinent part that applicant sustained a psychiatric injury arising out of and occurring in the course of employment (AOE/COE), that the injury did not cause any temporary disability or permanent disability; and the WCJ awarded further medical treatment to cure or relieve from the effects of the injury (ADJ11641129). The WCJ also found that applicant sustained injury AOE/COE, to her cervical spine, and bilateral elbows, and in the form of bilateral carpal tunnel syndrome (ADJ11641128).

Defendant contends that as to case number ADJ11641129, the requirements of Labor Code section 3208.3 for a finding of psychiatric injury were not met, and that if properly considered, the application of the section 3208.3(h) "good faith personnel action" defense, results in 55% non-industrial causation of the claimed psychiatric injury.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We did not receive an Answer from applicant.

We have considered the allegations in the Petition, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will affirm the F&A.

## BACKGROUND

Applicant claims to have sustained a psychiatric injury while employed by defendant as a Claims Adjustor during the period from October 25, 2017, through October 25, 2018 (ADJ11641129). Applicant also claims injury to her cervical spine and bilateral elbows while employed by defendant during the period from February 20, 2017, through February 20, 2018 (ADJ11641128). The Findings and Award regarding case number ADJ11641128 are not disputed and will not be addressed herein.

On March 22, 2019, applicant was evaluated by psychiatric qualified medical examiner (QME) Yatin Patel, M.D. Dr. Patel interviewed applicant, took a history, reviewed the medical record, and conducted psychiatric testing. The diagnoses included: adjustment disorder with Mixed Anxiety and Depressed Mood, in partial remission; Panic Disorder Without Agoraphobia, in partial remission; and a GAF (Global Assessment of Function) score of 78 [0% whole person impairment]. (Def. Exh. F, Yatin Patel, M.D., March 22, 2019, p. 30.)

Dr. Patel discussed a “4 steps *Rolda* analysis” (*Rolda v. Pitney Bowes* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc) (*Rolda*)) and then stated:

Based on records, face to face evaluation findings, my analysis of the case I have reached an opinion with a reasonable degree of medical probability that the actual events of employment were the predominant cause from all other sources combined contributing to the psychiatric injury pursuant to labor code section 3208.3. ¶ ... In my opinion 45% out of 100% of psychiatric injury was due to severe stress that was allegedly brought upon by applicant's supervisor, from ongoing alleged harassment, humiliation and hostile work environment ... ¶ In my opinion 30% out of 100% of her psychiatric injury was caused by a combination of personnel actions... ¶ In my opinion 25% out of 100% of her psychiatric injury was caused from outside factors (mood fluctuation during periods, preexisting anxiety/panic disorders). (Def. Exh. F, pp. 39 - 40.)

Regarding the issue of medical treatment, Dr. Patel stated “...if she [applicant] develops worsening of the adjustment disorder then [sic] I will recommend referring her to a psychiatrist on industrial basis ...” (Def. Exh. F, p. 41.)

The parties proceeded to trial on August 4, 2022. The issues submitted for decision regarding the psychiatric injury claim (case number ADJ11641129) included injury AOE/COE, temporary disability, and permanent disability/apportionment. (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 4, 2022, pp. 3 – 4.)

## DISCUSSION

Pursuant to Labor Code section 3208.3:

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

(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. ...

(h) No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.

(Lab. Code, § 3208.3.)

The Appeals Board has previously held that:

The WCJ, after considering all the medical evidence, and the other documentary and testimonial evidence of record, 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. Of course, 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.

(*Rolda v. Pitney Bowes* (2001) 66 Cal.Comp.Cases 241, 247 (Appeals Board en banc) (*Rolda*).)

Defendant argues that the WCJ did not perform an appropriate *Rolda* analysis regarding the good faith personnel defense. However, if a decision does not comply with the requirements of Labor Code section 5313, the WCJ's report may cure the deficiency or defect. (Lab. Code, § 5813; *City of Maywood v. Workers' Comp. Appeals Bd. (Smith)* (1991-W/D) 56 Cal.Comp.Cases 704; *City of San Diego v. Workers' Comp. Appeals Bd. (Rutherford)* (1989-W/D) 54 Cal.Comp.Cases 57; *Smales v. Workers' Comp. Appeals Bd.* (1980-W/D) 45 Cal.Comp.Cases 1026.) Our review of the record indicates that in his Opinion on Decision, the WCJ explained that defendant did not meet its burden of proof as to the Labor Code section 3208.3(h) "good faith personnel action" defense. More importantly, in his Report the WCJ provides a detailed

explanation of his *Rolda* analysis. (Report, pp. 4 – 6.) We also note that Dr. Patel’s report, referred to by the WCJ, included a *Rolda* analysis. (See Def. Exh. F, pp. 39 - 40.) Thus, any deficiency in the F&A, has been addressed and resolved by the WCJ’s Report.

Defendant also argues that Dr. Patel did not state that the actual events of applicant’s employment with defendant was the predominant cause of her psychiatric injury. As noted above, Dr. Patel determined that 45% of applicant’s psychiatric injury was due to severe stress brought upon by applicant’s supervisor, from ongoing alleged harassment, humiliation and hostile work environment and that 30% of her psychiatric injury was caused by a combination of personnel actions. (Def. Exh. F, pp. 39 - 40.)

We agree with the WCJ that:

Looking in particular at *Kem v. Workers' Comp. Appeals Bd. (Johnson)* (1998) 63 Cal.Comp.Cases 1068 (writ denied), cited in the *Rolda* en banc opinion, it is clear that "harassment, humiliation and a hostile work environment," to which Dr. Patel attributed 45% of causation of injury, are not "lawful, nondiscriminatory, good faith personnel actions" for purposes of Labor Code §3208.3(h).  
(Report, p. 5.)

Defendant does not cite or refer to any evidence in the record that indicates the “combination of personnel actions” were lawful, nondiscriminatory, good faith personnel actions. Based thereon, defendant’s argument that the 30% of applicant’s psychiatric injury which Dr. Patel said was caused by a combination of personnel actions, should be added to the 25% of the psychiatric injury that Dr. Patel said was “caused from outside factors” (Def. Exh. F, p. 40) is not supported by evidence in the trial record; and in turn, is without merit. It also appears that defendant is arguing that the 30% of applicant’s psychiatric injury caused by personnel actions is non-industrial. Defendant does not explain any basis for its argument that an employer’s personnel actions are not industrial and in fact, the argument is inconsistent with the applicable statutory and case law. (Lab. Code, § 3208.3; *Rolda, supra.*)

Accordingly, we affirm the F&A.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 31, 2022, Joint Findings and Award is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

I CONCUR,

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**January 27, 2023**

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

**DONNA PUGA  
IGLOW & BACHRACH  
LLARENA, MURDOCK, LOPEZ & AZIZAD, APC**

**TLH/mc**

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

**JOINT REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

I

INTRODUCTION

Defendant Property & Casualty Insurance Company, administered by Sedgwick Claims Management Services (Sedgwick CMS), has filed through its counsel of record a timely, verified petition for reconsideration of the October 28, 2022 Joint Findings and Award herein. The petition states that it seeks reconsideration, or in the alternative, removal, but it raises no contentions that pertain to anything other than a threshold determination of injury arising out of and in the course of employment to the psyche, so it must be regarded as seeking reconsideration, and not removal.

The petition contends that the Joint Findings and Award were in excess of the Board's powers, the evidence does not justify the findings of fact, and that the findings do not support the decision or award, insofar as a compensable injury to the psyche was found and awarded in case number ADJ! 1641129, based on the unrebutted expert opinion of psychiatric QME Yatin Patel, M.D. that applicant Donna Puga, while employed during the period from October 25, 2017 through October 25, 2018, as a claims adjuster, Occupational Group Number 111, at Long Beach, California, by Sedgwick CMS, whose workers' compensation insurance carrier was Property & Casualty Insurance Company, administered by Sedgwick CMS, sustained injury arising out of and occurring in the course of employment to her psyche, and that this injury did not cause temporary or permanent disability, but may require further medical treatment to cure or relieve from its effects. Ms. Puga was 31 years of age at the end of the cumulative trauma exposure period,

Specifically, the petition contends that the threshold requirements of Labor Code §3208.3 were not met, and that the "good faith personnel action" (*sic*) defense set forth in that section was not properly considered in Case Number ADJ11641129. The petition raises no issue with the finding in Case Number ADJ11641128 (the Master File) of injury to the cervical spine, bilateral carpal tunnel syndrome, and bilateral elbows during the period from February 20, 2017 through February 20, 2018, nor does defendant contest in any way the award of temporary and permanent disability and further medical treatment for orthopedic injury in that case.

## II

### FACTS

The October 28, 2022 Joint Findings and Award includes separate provisions with respect to each of the two cases that were consolidated for purposes of trial. Defendant's petition does not challenge in any way the portion of the Joint Findings and Award pertaining to Case Number ADJ11641128, designated as the Master File for purposes of trial, that applicant Donna Puga, while employed during the period from February 20, 2017 through February 20, 2018, as a claims adjuster, Occupational Group Number 111, at Long Beach, California, by Sedgwick CMS, whose workers' compensation insurance carrier was Property & Casualty Insurance Company, administered by Sedgwick CMS, sustained injury arising out of and occurring in the course of employment to her cervical spine, bilateral carpal tunnel syndrome, and bilateral elbows, causing temporary and permanent disability, as well as the need for further medical treatment.

Defendant's timely, verified petition for reconsideration, or in the alternative, removal takes issue solely with the finding in Case Number ADJ11641129, based on the unrebutted psychiatric QME report of Yatin Patel, M.D. dated March 22, 2019, admitted as Defendant's F, that applicant Donna Puga, while employed during the period from October 25, 2017 through October 25, 2018, as a claims adjuster, Occupational Group Number 111, at Long Beach, California, by Sedgwick CMS, whose workers' compensation insurance carrier was Property & Casualty Insurance Company, administered by Sedgwick CMS, sustained injury arising out of and occurring in the course of employment to her psyche, and that this injury did not cause temporary or permanent disability, but may require further medical treatment to cure or relieve from its effects. The portion of the Joint Opinion on Decision explaining this finding of injury to the psyche in Case Number ADJ11641129 reads as follows:

Dr. Patel's expert opinion was clearly that actual events of employment constituted the predominant cause of applicant's injury to the psyche, provided that the trier of fact finds that those events actually occurred. The undersigned does believe those events cited by Dr. Patel as causes of applicant's injury actually occurred. Additionally, Dr. Patel finds that "personnel actions" constituted only 30% of the causation of injury to the psyche, and accordingly the threshold under Labor Code section 3208.3(b)(3) for "substantial" causation was not met in a way that would bar applicant's claim under section 3208.3(h). The undersigned agrees with

Dr. Patel's assessment of what constituted personnel actions, and believes it is unnecessary to determine whether those actions were non-discriminatory and in good faith, because the percentage of causation attributed to them was insufficient to bar the claim under section 3208.3(h), and also because injury cannot be apportioned, with no permanent disability of the psyche that might raise this issue as a matter of apportionment. (Joint Opinion on Decision dated October 28, 2022, pp. 6-7.)

### III

#### DISCUSSION

The portion of the Joint Findings and Award challenged by defendant's petition is the finding of injury arising out of and in the course of employment to the psyche in Case Number ADJ11641129. A finding of compensable injury is a threshold issue, which is regarded as a "final" decision subject to a petition for reconsideration. It is not an interlocutory order subject to removal, and accordingly defendant's petition should be treated as one seeking only reconsideration, and not removal. (See *Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (Appeals Board en banc 2006) 71 Cal.Comp.Cases 783, 784, fn. 2, citing Lab. Code, §§ 5900(a), 5902, 5903, *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661].)

Pursuant to Labor Code §5904, "[t]he petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration." Accordingly, the portion of the Joint Findings and Award pertaining to Case Number ADJ11641128, the Master File, is not discussed here, as defendant's petition does not raise any issues with respect to that case number or related findings of orthopedic injury, disability, and need for care.



Based on the unrebutted expert opinion of psychiatric QME Yatin Patel, M.D., a compensable injury to the psyche was found in Case Number ADJ11641129, without temporary or permanent disability, but with an award providing that applicant may require further medical treatment, which follows Dr. Patel's recommendation that applicant be referred to a psychiatrist "if she develops worsening of the adjustment disorder" (QME Report of Dr. Patel dated March 22, 2019, p. 41, second paragraph).

It is curious that defendant challenges Dr. Patel's analysis of the requirements of Labor Code §3208.3 and his analysis of the good-faith personnel action defense as explained in the en banc opinion in the case of *Rolda v. Pitney Bowes* (2001) 66 Cal.Comp.Cases 241, because Dr. Patel expressly and unambiguously considers each of the required steps set forth in the *Rolda* case.

The first step in such a "Rolda" analysis is a factual one, determining whether actual events of employment are involved. As defendants' petition points out, this was not for Dr. Patel to determine, but for the workers' compensation judge to find. However, in this case, the opinion on decision did expressly indicate that "[t]he undersigned does believe those events cited by Dr. Patel as causes of applicant's injury actually occurred" (Joint Opinion on Decision dated October 28, 2022, p. 6, last two lines). Accordingly, it is clear from the opinion on decision that the undersigned found that all of the actual or alleged events of employment to which Dr. Patel attributed predominant causation of an adjustment disorder with mixed anxiety and depressed mood and panic disorder without agoraphobia actually did occur, as required under a *Rolda* analysis. Although it may not have been expressly stated in the opinion, this finding that the actual events of employment discussed by Dr. Patel actually happened was based upon consideration of applicant's credible and compelling testimony, which the testimony of defense witnesses was insufficient to rebut, with applicant's testimony corroborating the history provided to Dr. Patel.

The next step of a *Rolda* analysis is a medical determination of what caused injury to the psyche, and if there is more than one cause, the percentage of causation attributed to each cause, to determine whether "actual events of employment were predominant as to all causes combined of the psychiatric injury" as required by Labor Code §3208.3(b)(1). Dr. Patel provided this determination. Dr. Patel found two categories of actual events of employment, which, as the opinion on decision indicated, were found by the undersigned to have actually occurred. The first

category, to which Dr. Patel attributed 45% of causation of psychiatric injury, was ongoing "harassment, humiliation and a hostile work environment" (QME Report of Dr. Patel dated March 22, 2019, p. 40, first full paragraph). The second category, to which Dr. Patel attributed 30% of causation of psychiatric injury, was "a combination of personnel actions: performance evaluation in July and October 2018, management allegedly failed to stop the ongoing harassment, humiliation and work stress and supervise the applicant, not transferring the applicant to a different account despite having made a request for transfer and assigning another employee to be moved to account" (QME Report of Dr. Patel dated March 22, 2019, p. 40, second full paragraph). An additional 25% of causation of injury was attributed by Dr. Patel to "outside factors (mood fluctuation during periods, preexisting anxiety/panic disorders)" (QME Report of Dr. Patel dated March 22, 2019, p. 40, third full paragraph). Because the actual events of employment indicated by Dr. Patel and accepted by the possible definition of a personnel action, by assuming that Dr. Patel's understanding of personnel actions was entirely correct, the substantial cause threshold is still not met to bar compensation under §3208.J(h), because Dr. Patel only attributes 30% of causation of injury to personnel actions. For this reason, it is ultimately of no consequence whether those actions considered to be personnel actions were or were not lawful, nondiscriminatory, and in good faith, because the causation threshold for the Labor Code §3208.3(h) defense is not met, as indicated in the opinion on decision at page 7, lines 3-8.

After careful review, it appears that a full Rolda analysis was in fact provided by both Dr. Patel in his report of March 22, 2019 admitted as Defendant's F and in the undersigned's Joint Opinion on Decision, even if the Rolda case was not cited by name. Accordingly, there appears to be no basis to grant defendant's petition for reconsideration or removal of the portion of the October 28, 2022 Joint Findings and Award finding and awarding injury to the psyche in Case Number ADJ! 1641129.

**IV**

**RECOMMENDATION**

It is respectfully recommended that the petition be denied.

DATE: 11/29/2022

**Clint Feddersen**

WORKERS' COMPENSATION

ADMINISTRATIVE LAW JUDGE