

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

JEFFREY BUCK, *Applicant*

vs.

STATE OF CALIFORNIA, Legally Uninsured, *Defendant*

**Adjudication Number: ADJ16415273
San Bernardino District Office**

**OPINION AND ORDER GRANTING
PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact of January 31, 2025, wherein it was found that while employed during a cumulative period ending January 5, 2022, applicant sustained industrial injury to the psyche. In finding industrial injury, the WCJ found, "Defendant failed to meet its burden of proof and demonstrate the psychological injury is barred by the good faith personnel action defense pursuant to Labor Code §3208.3(h)."

Defendant contends that the WCJ erred in finding industrial psychiatric injury and in finding that the claim for industrial psyche injury was not barred by the good faith personnel action defense. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration and return this matter to the trial level for further development of the medical record, analysis, and decision.

Preliminarily, we note that former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on February 20, 2025 and 60 days from the date of transmission is April 21, 2025. This decision is issued by or on April 21, 2025, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on February 20, 2025, and the case was transmitted to the Appeals Board on February 20, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 20, 2025.

Turning to the merits, applicant was evaluated by panel qualified medical evaluator psychologist Miguel Alvarez, Ph.D. on December 6, 2022. (December 6, 2022 report at p. 6.) In his report, Dr. Alvarez writes, “Mr. Buck reported that he began experiencing psychological

symptoms in approximately 2016 as a direct result of interactions that he was having with employee Philip W. Lopez, Jr., who reportedly made a number of false allegations against him with the employer.” (December 6, 2022 report at p. 6.) Applicant reported that he had frequent contact with Mr. Lopez at work, including at dangerous accident scenes, and that he “felt that it was unsafe to be in these situations while having concerns about being with an employee ... whom he did not trust.” (December 6, 2022 report at p. 7.) Applicant reported that applicant’s accusations resulted in multiple internal investigations, an investigation from the State of California Attorney General’s office, and participation in a civil lawsuit filed against Mr. Lopez against the state. Applicant told Dr. Alvarez that he had been cleared and exonerated with regard to Mr. Lopez’s accusations, but that he was unaware of the details or the outcome of Mr. Lopez’s lawsuit against the state. (December 6, 2022 report at p. 7.) Apparently, Mr. Lopez was off work for some time but was scheduled to return to work. Applicant hoped that Mr. Lopez would not return to work under his supervision, but it was decided that Mr. Lopez would be placed under applicant’s supervision again and applicant was “personally tasked to call Mr. Lopez and ask him to return to work for him.” (December 6, 2022 report at p. 8.) Applicant testified at trial that he retired in February or March of 2023, but that he would have continued to work if Mr. Lopez had not been placed under his supervision. (Minutes of Hearing and Summary of Evidence of December 19, 2023 trial at p. 5.)

Dr. Alvarez ascribed 5% of the causation for applicant’s psyche injury to each of the six internal investigations (for a total of 30%), 10% for the Attorney General office’s investigation, 20% to the “lawsuit against the department for racial and sexual discrimination” and 40% to “Mr. Lopez returning under Mr. Buck’s supervision during the lawsuit.” (December 6, 2022 report at p. 30.) The WCJ found that the six internal investigations constituted personnel actions undertaken by the employer, but the remaining categories did not and that the 30% falls short of the 35% threshold for the application of the personnel action defense. (Lab. Code § 3208.3, subd. (b)(3) & (h).)

We believe that the factual and medical record must be more fully developed regarding the causation of applicant’s psychiatric injury. We note that while the applicant appeared to ascribe stress to his day to day working relationship with Mr. Lopez and to Mr. Lopez’s accusations, none of these factors were discussed by Dr. Alvarez in ascribing the causative factors of injury. It is unclear to us whether the underlying conduct and accusations which led to the investigations were

intended by Dr. Alvarez to be a causative factor under the umbrella of each “investigation.” We note that a co-worker’s complaint or accusation is not a personnel action. (*County of Sacramento v. Workers’ Comp. Appeals Bd.* (2013) 215 Cal.App.4th 785, 788 [78 Cal.Comp.Cases 379].) In the further proceedings, a doctor must get a detailed history from the applicant and determine the exact causative factors of the industrial injury, including segregating causation caused by underlying conduct and accusations from the employer’s actual conduct of any investigations and the result of any investigations. We encourage the parties to agree to an agreed medical evaluator and, if the WCJ considers it helpful, they may appoint an evaluating physician pursuant to Labor Code section 5701. If still relevant, the WCJ should analyze the application of *Colombo v. State of California* (1991) 3 Cal.App.4th 594, 598 [57 Cal.Comp.Cases 102] and *Vann v. City and County of San Francisco* (2023) 97 Cal.App.5th 1013 [89 Cal.Comp.Cases 39] to the facts of this matter.

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. The WCAB has a constitutional mandate to ensure “substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, we will grant reconsideration, rescind the WCJ’s decision, and return this matter to the trial level for further development of the record and decision so that reporting physicians and the WCJ may do the full analysis required by *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc) on an augmented record. We express no opinion on the outcome of any issue in this case.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings of Fact of January 31, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact of January 31, 2025 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 21, 2025

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

**JEFFREY BUCK
ROWEN, GURVEY & WIN
STATE COMPENSATION INSURANCE FUND**

DW/oo

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