WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JOYCE SIMON, ***Applicant***

vs.

COUNTY OF ORANGE, ***Defendant***

Adjudication Number: ADJ4648071 (AHM 0111251)
Anaheim District Office

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

Applicant, who is representing herself, and who has been declared a vexatious litigant pursuant to Rule 10430 (Cal. Code Regs., tit. 8, § 10430) by the Appeals Board in an Order of April 16, 2015, seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Finding and Order of August 19, 2025, wherein it was found that defendant did not violate Labor Code section 132a. In this matter, in a Findings, Award and Order of August 2, 2013, it was found that while employed on May 20, 2003 as a financial counselor, applicant sustained industrial injury to her lumbar spine, right wrist, and in the form of fibromyalgia causing permanent disability of 75% after apportionment.

Applicant contends that the WCJ erred in finding that defendant employer did not violate Labor Code section 132a, which prohibits discrimination or retaliation against employees who have alleged or sustained industrial injury. We have not received an answer from defendant, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report). Applicant has also filed a Supplemental Petition in response to the WCJ's Report but did not seek leave to file this supplemental petition under either Appeals Board Rule 10430(d) applicable to vexatious litigants (Cal. Code Regs., tit. 8, § 10430, subd. (d)) or under Appeals Board Rule 10964 applicable generally (Cal. Code Regs., tit. 8, § 10964). Accordingly, we do not accept this document for filing, and we have not considered this document.

We will deny applicant's Petition for the reasons stated below and for the reasons stated by the WCJ in her Report, which we quote below.

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.
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> (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 September 26, 2025 and 60 days from the date of transmission is Tuesday, November 25, 2025. This decision is issued by or on November 25, 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 September 26, 2025, and the case was transmitted to the Appeals Board on September 26, 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 September 26, 2025.

Turning to the merits, applicant was found to have sustained 75% permanent disability in a Findings, Award and Order of August 2, 2013. The work preclusions underlying the 2013 Award, which appear to have been based on the 1997 Schedule for Rating Permanent Disabilities, were that applicant was precluded from very heavy work as to the low back, precluded from forceful gripping and grasping and prolonged computer input as to the right wrist, but both of these preclusions were overlapped with applicant's fibromyalgia disability which by itself caused applicant to be unable to work in the open labor market. (Formal Rating Instructions and Recommended Disability Rating of June 26, 2013.) The applicant was therefore found to be completely precluded from the labor market, but since 25% of her permanent total disability was apportioned to non-industrial factors, she was found to have compensable permanent disability of 75%.

In addition to being awarded a 75% permanent disability award as a result of her inability to work, applicant states in her Labor Code section 132a Petition that she was forced to take a disability retirement pursuant to Gov. Code section 31720 et seq. However, although it is unclear how the process was initiated, it appears that applicant and the employer discussed the possibility of reinstatement pursuant to Gov. Code section 31725.65. Curiously, the letter from the employer attached to applicant's Labor Code section 132a Petition states that applicant's husband, who was apparently acting as an agent for applicant during the process, stated that applicant "cannot work at all, but if [she] were to return to work, [she] could work for only up to 15 minutes per hour, if that, and then must lie down and not work for the remaining 45 minutes of each hour. He also said that you may at any point fall asleep beyond the 45-minute period when you are lying down, and that you cannot be held accountable for oversleeping." However, the letter also states that applicant's husband stated that applicant was "eager to return to work."

Government Code section 31725.65 states, in pertinent part, "When the [county retirement] board finds, **based on medical advice**, that a member in county service is incapacitated for the performance of the member's duties, the board shall determine, **based upon that medical advice**, whether the member may be capable of performing other duties." (Gov. Code, § 31725.65, subd.

(a) [emphasis added).) The reemployment plan appears to be voluntary as it needs to be approved by the member. (Gov. Code, § 31725.65, subd. (c).) Until the member is actually reemployed and starts working, they continue to be paid their normal disability retirement allowance. (Gov. Code, § 31725.65, subd. (e).) However, if they accept reemployment, they are paid the difference in pay between their previous classification and their new classification, up to the amount of their retirement allowance. (Gov. Code, § 31725.65, subd. (d).)

It appears that applicant contends that employer discriminated against her by not offering her reemployment under what she contends are her correct work restrictions. We note that Gov. Code section 31725.65 only contemplates reemployment when the member is capable of performing other duties. The Appeals Board has no jurisdiction over the Government Code section 31725.65 process.

Section 132a, provides, in pertinent part, that:

> It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.
>
> (1) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee's compensation shall be increased by one-half, but in no event more than ten thousand dollars ($ 10,000), together with costs and expenses not in excess of two hundred fifty dollars ($ 250). Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

It is unclear whether 132a applies to the applicant, because at the time of the alleged discrimination, it is uncertain if applicant and defendant were still in an employer-employee relationship, as she had been placed on disability retirement for an unspecified amount of time. (*City of Anaheim v. Workers' Comp. Appeals Bd. (Brazz)* (1981) 124 Cal.App.3d 609, 614-615 [46 Cal.Comp.Cases 1264].) In any case, even if the requisite employment relationship existed, applicant did not present a prima facie case of section 132a discrimination.

Both the Supreme Court and the First District Court of Appeal have lamented that "neither the Legislature nor the courts have fashioned a clear rule for distinguishing those forms of discrimination which are actionable under section 132a and those forms which are not."

(*Department of Rehabilitation v. Workers' Comp. Appeals Bd. (Lauher)* (2003) 30 Cal.4th 1281, 1299 [68 Cal.Comp.Cases 831] quoting *Smith v. Workers' Comp. Appeals Bd.* (1984) 152 Cal.App.3d 1104, 1108 [49 Cal.Comp.Cases 212]). However, the judiciary has given us some guidance in adjudicating Section 132a claims. The Supreme Court has held that workers' compensation laws, including Section 132a, are to be interpreted "liberally … with the purpose of extending their benefits for the protection of persons injured in the course of their employment." (*Judson Steel Corp. v. Workers' Comp. Appeals Bd. (Maese)* (1978) 22 Cal.App.3d 658, 668 [43 Cal.Comp.Cases 1205]). In addition to this overarching rule of construction, the Supreme Court has stated that the prefatory language at the beginning of Section 132a evinces a legislative intent that the statute be applied broadly. (*Judson Steel*, 22 Cal.App.3d at pp. 666-667.) The *Judson Steel* court, for instance, held that Section 132a not only protected a worker engaging in the acts expressly enumerated in Section 132a(1), but also from discrimination on account of time lost from work because of an industrial injury.

However, more recent decisions from both the California Court of Appeal and Supreme Court make clear that the Legislature's mandate of liberal construction is not boundless, and court decisions have clarified that, in order to make out a prima facie case of discrimination under Labor Code § 132a, an applicant must show more than mere detriment on account of his industrial injury. As the California Court of Appeal, Second Appellate District stated:

> Prior to 2003, an employee could establish a prima facie case of discrimination merely by showing that, as the result of an industrial injury, the employer engaged in conduct detrimental to him. (*Barns v. Workers' Comp. Appeals Bd.* (1989) 216 Cal.App.3d 524, 531 [54 Cal.Comp.Cases 433].) If the employee made this showing, the burden shifted to the employer to show that its conduct was necessitated by the realities of doing business. (Ibid.)
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> However, an employee's burden of showing a prima facie case of discrimination was made heavier by the Supreme Court in *Department of Rehabilitation v. Workers' Comp. Appeals Bd.* (2003) 30 Cal.4th 1281, 1298 [68 Cal.Comp.Cases 831] *(Lauher)*. "[F]or [an employee] merely to show he suffered an industrial injury and that he suffered some detrimental consequences as a result is insufficient to establish a prima facie case of discrimination within the meaning of section 132a." [Citation.] Lauher requires an employee not only to show detriment but also show that he was singled out for disadvantageous treatment because of his injury. [Citation.]

(*County of San Luis Obispo v. Workers' Comp. Appeals Bd. (Martinez)* (2005) 133 Cal.App.4th 641, 648 [70 Cal.Comp.Cases 1247].)

In *Lauher*, the applicant claimed he suffered discrimination within the meaning of section 132a as a result of a company policy requiring him to use accrued sick leave while seeking treatment for his industrial injury. The Supreme Court held that such a claim, in and of itself, does not constitute discrimination pursuant to section 132a:

> [F]or Lauher merely to show he suffered an industrial injury and that he suffered some detrimental consequences as a result is insufficient to establish a prima facie case of discrimination within the meaning of section 132a.
>
> ***
>
> An employer thus does not necessarily engage in "discrimination" prohibited by section 132a merely because it requires an employee to shoulder some of the disadvantages of his industrial injury. By prohibiting "discrimination" in section 132a, we assume the Legislature meant to prohibit treating injured employees differently, making them suffer disadvantages not visited on other employees because the employee was injured or had made a claim.
>
> Lauher claims he was subjected to discrimination within the meaning of section 132a because he "was treated differently than other employees who had not sustained a work-related injury and were not under the mandates of the Labor Code." He claims "[t]he employer's actions were directly related to the work injury and the resultant time the injured employee had to miss from work because of the medical appointments to cure or relieve the effects of the work injury." Lauher's argument fails to appreciate that, although his injury was industrial, nothing suggests his employer singled him out for disadvantageous treatment because of the industrial nature of his injury. We assume that employees with nonindustrial injuries must follow the same rule and use their sick leave when away from the office attending medical treatment. Certainly nothing Lauher alleges suggests otherwise. For example, he does not allege he alone is being singled out for the requirement that he use his sick leave, or that other employees are permitted to leave the office for medical appointments related to nonindustrial injuries and are not required to use their sick leave.
>
> Because Lauher does not allege that other employees are permitted to be away from their workplace for medical care yet need not use their sick leave if they wish to be paid their full salaries, we conclude Lauher fails to demonstrate he was the victim of discrimination within the meaning of section 132a.

(*Department of Rehabilitation v. Workers' Comp. Appeals Bd. (Lauher)* (2003) 30 Cal.App.4th 1281, 1300-1301 [68 Cal.Comp.Cases 831].)

In this matter, the applicant did not make the requisite showing that she was singled out for disadvantageous treatment because of the industrial nature of her injury or disability. Employer is clearly entitled by the common-sense language of Government Code section 31725.65 to verify the applicant's current medical condition in order to offer her an appropriate appropriate position, and applicant is apparently entitled to continue receiving a service disability retirement, in addition to her workers' compensation benefits, if she finds any offer of modified work unsatisfactory. We therefore deny the applicant's Petition.

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION

I.
INTRODUCTION

Applicant filed a timely and verified Petition for Reconsideration under *Labor Code* §5903 following the court's Finding and Order dated 8/19/25 finding Defendant did not violate *Labor Code* §132a. Applicant contends the court misapplied *Labor Code* §132a, defendant did not submit any substantive authority, the court failed to address FEHA/ADA overlap, the court improperly relied on unauthorized medical reports, and the court was bias and misplaced the burden of proof. At the time of this report, defendant had not filed an answer to the Petition for Reconsideration.

II.
STATEMENT OF FACTS

Applicant sustained injury arising out of and occurring in the course of employment on 5/20/2003 to the lumbar spine, right wrist and in the form of fibromyalgia. Judge Christine Nelson issued a Findings, Award, and Order on 8/2/2013 awarding the Applicant permanent disability of 75%, after apportionment, and further medical treatment. **Opinion on Decision and FA&O, EAMS Doc ID 49288346.** On 4/16/2015, Applicant was declared a vexatious litigant by the WCAB. **Opinion and Decision After Removal, EAMS Doc ID 56117061.**

On or around 8/13/2024, Applicant attempted to file a Petition for Benefits pursuant to *Labor Code* §132a. Because Applicant was declared a vexatious litiga[nt] and pursuant to WCAB Rule 10430, the Presiding Judge must approve Applicant's filings. On 8/26/24, Presiding Judge DeWeese rejected Applicant's filing of the Petition for Benefits pursuant to *Labor Code* §132a because the petition was filed after the statute of limitations and because Applicant sought relief under California Code of Regulations, Title 2, which is not within the jurisdiction of this court. **Vexatious Litigant Pre-Filing Review, EAMS Doc**

ID 78301390. Applicant resubmitted the Petition for Benefits pursuant to *Labor Code* §132a along with supplemental petition explaining the timeliness of the petition. **EAMS Doc ID 78579288.** Presiding Judge DeWeese accepted the filings as of 10/10/2024. **Vexatious Litigant Pre-Filing Review, EAMS Doc ID 78583735.**

On or around 10/10/24, Applicant filed a Declaration of Readiness to address the Petition for *Labor Code* 132a Benefits. **DOR, EAMS Doc ID 78579304.** A status conference was held on 1/16/25 and the matter was continued to allow Applicant to clarify the Petition and serve all documents necessary on defendant. **MOH, EAMS Doc ID 78775775.** The following status conference took place on 3/13/25, however, defendant was still unclear on what violations had taken place which would place the matter within the court's jurisdiction. **MOH, EAMS Doc ID 78961591.** The matter was continued to a Mandatory Settlement Conference, which took place on 5/15/25. Parties set the matter for trial. At trial, Applicant submitted her case based upon the trial brief and the petition and defendant called one witness. Parties submitted the matter on 6/30/25. After reviewing the evidence submitted, the court found defendant had not violated *Labor Code* §132a.

It is from this Finding and Order that Applicant petitions for Reconsideration under *Labor Code* §5903.

III.
DISCUSSION

As to Applicant's assertion that the court's findings were not supported by evidence, the court offers the following:

Applicant asserts the court ignored proof of disadvantageous treatment referring to a "Memo of Expectations" from the County of Orange. Applicant did not submit a "Memo of Expectations" as an exhibit therefore, the court did not review the Memo.

Applicant also argues that the County unlawfully relied on unauthorized PR-2 reports. Defendant's witness, Nicole Drace, testified at trial. Applicant cross-examined Ms. Drace regarding the medical reports she received involving Applicant's work restrictions. She received the reports from Sedgwick and from the employee. **MOH/SOE pg. 3, lines 22-23.** Applicant reached out to the witness to discuss work restrictions and return to work. In order to participate in the interactive process, the Applicant is required to provide updated work restrictions. **Ibid at lines 8-11 and lines 16-17.** Ms. Drace received the most recent work restrictions from Applicant's treating physician from Sedgwick. **Ibid pg. 4, lines 5-6.**

Applicant further states that Ms. Drace "admitted she treated industrial and non-

industrial disabilities 'the same,' violating Government Code §31725.6." Ms. Drace testified at trial "…there is no difference between an industrial and a nonindustrial process through IAP, and Mrs. Simon was not treated any differently." **MOH/SOE pg. 4, lines 16-18.** This clearly shows Applicant was not singled out for disadvantageous treatment because of an injury or that she suffered some adverse consequence as a result of some action by the defendant.

[FN1: The court explained to the Applicant on numerous occasions that it does not have jurisdiction over alleged *Cal. Code of Reg.* Title 2/OCERS issues. Applicant's claims of Government Code §31725 violations were addressed in *Simon v. County of Orange* 2022 WL17984873.]

As to Applicant's assertion the court misapplied Labor Code §132a, the court offers the following:

Applicant asserts the court ignored the following cases: *Judson Steel Corp v. WCAB (Maese)* (1978) 43 CCC 1205, *City of Moorpark v. Superior Court of Ventura County (Dillon)* (1998) 63 CCC 944, and *Barns v. WCAB* (1989) 54 CCC 433. In *Judson Steel Corp. v. WCAB (Maese)*, the California Supreme Court held that the rule of liberal construction under *Labor Code* §3202 applied to claims under *Labor Code* §132a. The court did in fact consider this when issuing its decision.

In *City of Moorpark v. Superior Court of Ventura County*, the California Supreme Court held that an employee may pursue a civil claim under FEHA even for discrimination incurred as a result of his or her industrial injury, notwithstanding the fact that the claims are already covered by *Labor Cod*e §132a. The undersigned judge did not make any findings prohibiting Applicant from filing a claim under FEHA, however, the undersigned judge explained to Applicant numerous times it did not have jurisdiction regarding FEHA claims.

Lastly, in *Barns* the court held that an employer violated *Labor Code* §132a when it refused to place the applicant on light duty based on a supposed policy precluding an injured worker from seeking a new position until he or she was able to return to the position held before the injury. The court first noted that there was no attempt to show that the policy was necessitated by the realities of doing business. Furthermore, the court noted that the policy was inconsistently applied because the applicant was returned to light duty after an earlier injury, and the evidence established that other injured workers were permitted to return to light duty. In this case, Applicant was offered her position based on her most recent work restrictions from her primary treating physician. It was Applicant who refused to go back to her position because she was relying on work restrictions from over 10 years ago.

As to Applicant's assertion the defense did not submit substantive authority, the court offers the following:

Pursuant to *Labor Code* §132a, the employee bears the burden of establishing discrimination by a preponderance of the evidence. Generally, the employee must prove: (1) the employer knew of a claim or injury; (2) he or she suffered some adverse consequences as a result of some action or inaction by the employer that was triggered by the industrial injury; and (3) he or she was subject to disadvantages not visited on other employees because he or she was injured or had made a claim. In this matter, Applicant was not able meet her burden of proof. Applicant made arguments and misapplied the law under FEHA but, once again, this court does not have jurisdiction over FEHA claims.

As to Applicant's claim that the court failed to address FEHA/ADA overlap, the court offers the following:

As stated previously, this court does not have jurisdiction over FEHA and/or ADA claims and Applicant misinterpreted the case law cited.

As to Applicant's assertion that there was improper reliance on unauthorized medical reports, the court offers the following:

Applicant did not provide any evidence that defendant obtained Applicant's primary treating physician reports unlawfully. Again, Applicant cited to laws and statutes which this court does not have jurisdiction over. Furthermore, these additional issues are outside the scope of the only issue for trial which was Applicant's Petition for 132a Benefits. As stated previously, defendant's witness testified at trial that she received the work restrictions given by Dr. Amador from Sedgwick. **MOH/SOE pg. 4, lines 7-8.** In order to proceed with the interactive process, parties had to provide the most recent medical records.

As to Applicant's claim that there was retaliation by defendant for protected activity, the court offers the following:

Applicant did not provide an explanation or reasoning for her belief that defendant disciplined the Applicant after she asserted FEHA and WCAB rights.

As to Applicant's assertion that there was judicial bias and the court misplaced the burden of proof, the court offers the following:

Applicant asserts the court "excused" defendant's noncompliance with Government Code §31725.6. As mentioned, the court does not have jurisdiction regarding this issue and Applicant has argued this issue in Superior Court, *Simon v. County of Orange*, 2022 WL17984873.

IV.
RECOMMENDATION

It is the undersigned's recommendation that Applicant's Petition for Reconsideration be denied and the WCAB uphold and affirm the Findings and Order of the undersigned judge dated 2/5/24.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Finding and Order of August 19, 2025 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 25, 2025

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

JOYCE SIMON
THOMAS KINSEY

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