

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

DANIELLE HOLLY KAPLAN, *Applicant*

vs.

CITY OF ANAHEIM, *Permissibly Self-Insured, Defendant*

**Adjudication Number: ADJ17306191
Marina Del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact & Order of February 18, 2026 wherein it was found that while employed during a cumulative period ending December 16, 2022, applicant sustained industrial injury to the psyche. In so finding, the WCJ found that defendant failed in its burden of showing that applicant's psychiatric injury was substantially caused by a lawful, nondiscriminatory, good faith personnel actions. (Lab. Code, § 3208.3, subd. (h).) Although the WCJ found that defendant proved that 25 percent of applicant's injury was caused by lawful, nondiscriminatory, good faith personnel actions, this fell short of the statutory minimum of 35%. (Lab. Code, § 3208.3, subd. (b)(3).)

Defendant contends that the WCJ erred in finding compensable psychiatric injury, arguing that the WCJ should have sustained its Labor Code section 3208.3(h) defense. We have not received an answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

We will deny reconsideration for the reasons stated by the WCJ in the Report, which we adopt, incorporate, and 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.

(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 March 18, 2026 and 60 days from the date of transmission is Sunday, May 17, 2026. The next business day that is 60 days from the date of transmission is Monday, May 18, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on May 18, 2026, 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 March 18, 2026, and the case was transmitted to the Appeals Board on March 18, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties

¹ WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 March 18, 2026.

Turning to the merits, we will deny reconsideration for the reasons stated by the WCJ in the Report, which we adopt, incorporate, and quote below. The petitioner argues at length that applicant’s return to her previous position, whether it be classified as a demotion or a transfer, was a personnel action. However, the WCJ acknowledges that the transfer/demotion was clearly a personnel action within the meaning of section 3208.3(h). However, as made clear by the WCJ, in addition to proving that personnel actions were a substantial cause of a psychiatric injury, the defendant has the added burden of showing that these personnel actions were lawful, nondiscriminatory and done in good faith. (*City of Oakland v. Workers’ Comp. Appeals Bd. (Gullet)* (2002) 99 Cal.App.4th 261, 267 [67 Cal.Comp.Cases 705].) While a defendant has wide latitude in making these decisions and need only show subjective good faith and objective reasonableness, as noted in the Report, defendant offered no evidence at all regarding applicant’s transfer/demotion. Applicant testified repeatedly that she did not know why she was removed from her probationary position and defense witness Craig James Paker testified that “He does not know why she was put back into the Laboratory Technician position; the memo simply stated that she was being returned to that position.” (Minutes of Hearing and Summary of Evidence of December 8, 2025 trial at p. 21.) Since evidence that the transfer/demotion was lawful, nondiscriminatory and done in good faith was necessary to find that lawful, nondiscriminatory, good faith personnel actions were a “substantial cause” of the psychiatric injury, the WCJ correctly found on the evidentiary record that defendant failed its burden of proof.

We quote the WCJ’s Report:

**REPORT AND RECOMMENDATION ON PETITION
FOR RECONSIDERATION;
NOTICE OF TRANSMITTAL TO THE WCAB**

**I.
INTRODUCTION**

- | | |
|-----------------------------------|-----------------------|
| 1. <u>Applicant’s Occupation:</u> | Laboratory Technician |
| <u>Age:</u> | 37 |
| <u>Parts of Body Alleged:</u> | Psyche |

2. Identity of Petitioner: Defendant
Timeliness: The Petition was timely filed.
Verified: The Petition was verified.
3. Date of Issuance of Findings & Order: February 18, 2026
4. The Petitioner contends:
- a) That this WCJ erred in not finding that the July 22, 2022 “alleged demotion” as a personnel action;
- b) That this WCJ erred in not finding that the July 22, 2022 personnel action was lawful, nondiscriminatory and good faith; and
- c) That this WCJ erred in not finding defendant having rebut injury AOE/COE to applicant’s psyche pursuant to Labor Code §3208.3(h).

II.
SUMMARY OF FACTS

Applicant filed an Application, dated February 13, 2023, wherein she alleged injury from work related stress. Said Application packet was served on the City of Anaheim at Walnut Canyon Road, Anaheim, CA 92708. Defendant denied the claim via Denial Notice, dated March 26, 2024, raising Labor Code §3208.3 and post-termination defenses (Exhibit A). Defendant also filed an Answer, dated April 2, 2024 denying injury. In said Answer, defendant’s address is 201 S. Anaheim Blvd., Suite 503, Anaheim, CA 92805.

On May 21, 2024, defendant filed Declaration of Readiness to Proceed (DOR) requesting a Mandatory Settlement Conference (MSC) on the issues of AOE/COE, employment, and posttermination defense. On June 5, 2024, applicant’s attorney objected to said DOR. At the July 23, 2024 MSC, both parties jointly requested to take the matter off calendar, which was granted.

The parties procured a Panel QME report from Linda Wang, M.D., dated December 20, 2024 (Joint Exhibit Z). On February 27, 2025, defendant filed a DOR requesting a Priority Conference to address AOE/COE. At the May 13, 2025 Priority Conference, WCJ Jones set the matter for Trial. The parties went on the record at the June 16, 2025 Trial. Testimony continued on August 6, 2025 and December 8, 2025. At the January 14, 2026 Trial, applicant’s attorney waived further cross-examination of defense witness, Craig James Parker, and the Trial concluded. The parties timely submitted Post-trial Briefs on or before February 4, 2026 and the case was submitted on that date.

Findings of Fact & Order, and Opinions on Decision were issued and served on February 18, 2026. On March 13, 2026, defendant filed a Petition for Reconsideration.

III. DISCUSSION

This WCJ made seven (7) Findings of Fact in the Findings of Fact & Order, dated February 18, 2026. Defendant's Petition for Reconsideration only challenges Findings #2, 6 and 7.

Defendant asserts the affirmative defense of lawful, nondiscriminatory, good faith personnel actions with respect to applicant's psychiatric injury.

Labor Code §3208.3(b)(3) states as follows:

(b)(3) For the purpose of this section, "substantial cause" means at least 35 to 40 percent of the causation from all sources combined.

Labor Code §3208.3(h) states as follows:

(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. [Emphasis added.]

The controlling case in this matter is Rolda v. Pitney Bowes, Inc., 66 Cal. Comp. Cases 241 (2001), which laid out the step-by-step analysis commonly known as the Rolda Analysis as follows:

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. *Id.* at 247.

This WCJ analyzed the above affirmative defense in the Opinions on Decision, dated February 18, 2026, as follows:

Both parties offered and relied on Dr. Wang's report because her opinions are substantial medical evidence (Joint Exhibit Z). As indicated above, Dr. Wang found injury AOE/COE to psyche and opined that actual events of employment being the predominant causation of all causes herein. She then apportioned 70% arising from personnel actions and broke it down that 40% out of the 70% industrial causation to the demotion from Operator-in-Training and 30% out of the 70% industrial causation to the termination. Dr. Wang further broke down the 30% apportionment to termination to include 5% due to probationary release on September 8, 2021, 5% due to paid administrative leave on October 6, 2022, 10% due to the Notice of Intent to Dismiss dated December 1, 2022 and 10% due to the Notice of Dismissal dated December 16, 2022 (Joint Exhibit Z). This WCJ agrees that based on applicant's testimony at Trial and Dr. Wang's report, applicant's psychiatric injury involved actual events of employment. As such, the above prongs (1) and (2) under Rolda have been met.

Defendants made an argument that the probationary release from the position of Water Operator-in-Training with higher pay back to applicant's former classification of Laboratory Technician 1 at Step 9 at lower pay on July 22, 2022 was not a demotion. Whether it is a demotion or not, said action was still personnel action as admitted by defendants (Defendants' Post Trial Brief, dated February 4, 2025, Page 7, Line 24½-Page 8, Line 1), except the part about "good-faith," which this WCJ shall analyze and determine below.

Based on testimony by applicant and Craig James Parker during Trial, as well as being pointed out in the Trial Brief Of Applicant, dated February 4, 2026, it is found that the personnel actions from the paid administrative leave from October 6, 2022 (Exhibit H) through applicant's termination on December 16, 2022 (Exhibits F and G) to Mr. Parkers' Grievance Responses, dated January 10, 2023 and January 18, 2023 (Exhibits C and D) are all lawful, nondiscriminatory, good faith personnel actions. This constituted 25% of all causes.

Defendants provided absolutely no information about the probationary release on September 8, 2021, which Dr. Wang apportioned 5% to. There was no summary in Dr. Wang's report about said Notification of Probationary Release/Return to Former Classification, dated September 8, 2021 (Joint Exhibit Z, Page 4). There was no testimony taken from applicant or Mr. Parker about said event. Defendants did not submit said Notification or any other document relating to this event as an exhibit at

Trial. If said event is anything like the one on July 22, 2022 (Exhibit E), it would mean that applicant was on probation for a certain position and was returned to her original position, which constituted personnel action. Without any information from defendants about this personnel action, who, by the way, have the burden of proof, this WCJ is unable to determine if said personnel action was lawful, nondiscriminatory and/or good faith at all. It is found that defendants failed to sustain their burden of proving that the September 8, 2021 probationary release was lawful, nondiscriminatory and good faith personnel action. This constituted 5% of all causes.

As to the personnel action effective July 22, 2022, which Dr. Wang apportioned 40% to, the Notice of Probationary Release/Return to Former Classification, dated July 21, 2022 and Action Taken Place Authorization Form with effective date July 22, 2022 (Exhibits B and E) gave no reason/basis for said personnel action. Contrary to defendants' claim, applicant did not have union representation regarding this personnel action (Defendants' Post Trial Brief, Page 3, Footnote 1, Lines 22½-23, Lines 25-25½). The Notice referenced Article 25 of the Memorandum of Understanding between IBEW, Local 47 and the City of Anaheim. No union representative was even copied on this Notice (Exhibit B). Indeed, applicant could have contacted her union representative to find out the reason/basis for said personnel action as suggested by defendants (Defendants' Post Trial Brief, Page 3, Footnote 1, Lines 25½-26), however, at Trial, it is defendants' burden to prove to this WCJ that the reason/basis for said personnel action was in fact lawful, nondiscriminatory and good faith.

Applicant appeared to believe that she was returned to her former position as a result of the trainee who was supposed to replace her was being terminated. But defendants did not provide any information to this WCJ whether or not this was true, why they had to put applicant back in her former position v. hiring a new trainee to fill the position of Laboratory Technician 1, etc. This personnel action certainly predates defendants' awareness and investigation in October 2022 of applicant's falsification of data. Without any information from defendants about this July 22, 2022 personnel action, this WCJ is unable to determine if said personnel action was lawful, nondiscriminatory and/or good faith at all. It is found that defendants failed to sustain their burden of proving that the July 22, 2022 personnel action was lawful, nondiscriminatory and good faith personnel action. This constituted 40% of all causes.

Based on the foregoing analysis, defendants only sustained their burden of proving that 25% of all causes constituted lawful, nondiscriminatory, good faith personnel actions, which did not rise to the level of substantial cause of all causes. Thus, it is found that defendants failed to rebut injury

AOE/COE to applicant's psyche. It is found that applicant sustained injury AOE/COE to her psyche.

As clearly indicated in the above excerpt from this WCJ's Opinions on Decision, this WCJ did consider the July 22, 2022 alleged demotion or probationary release personnel action. This WCJ simply did not find that defendant sustained its burden of proving that it was lawful, nondiscriminatory and good faith.

In Defendant's Petition for Reconsideration, defendant appeared to forget that it has the burden of proving that the July 22, 2022 personnel action, which constituted 40% of all causes, was lawful, nondiscriminatory and good faith. It is not applicant's burden to tell the Court what she suspected, especially when this WCJ pointed out in the Opinions on Decision that there are inconsistencies between her testimony and the record. Defendant at no time provided any documentary and/or testimonial proof from management to explain said "probationary release" or "alleged demotion." It might have been lawful, nondiscriminatory and done in good faith due to "managerial decision for reorganization" (Defendant's Petition for Reconsideration, dated March 13, 2026, Page 2, Line 25 ½-Page 3, line 1) but this WCJ was not provided any information at all from defendant to make that finding.

Defendant also argued that applicant had a history of insubordination and overt creation of a hostile work environment for her colleagues. It might all be true but based on Dr. Wang's causation/apportionment opinions, these events are not part of the Rolda Analysis.

IV. RECOMMENDATION

Based on the foregoing, it is respectfully recommended that defendant's Petition for Reconsideration be denied for the reasons stated above.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings of Fact & Order of February 18, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

LISA A. SUSSMAN, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 18, 2026

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

**DANIELLE HOLLY KAPLAN
NITKA FIRM
SORIANO LAW GROUP**

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