WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

GUADALUPE RODRIGUEZ, *Applicant*

vs.

COUNTY OF RIVERSIDE, permissibly self-insured, *Defendants*

Adjudication Number: ADJ8984436
Riverside District Office

OPINION AND DECISION
AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.[1] Having completed our review, we now issue our Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on July 20, 2021, wherein the WCJ found in pertinent part that applicant did not sustain injury arising out of and in the course of her employment (AOE/COE) to her psyche and internal system; and that applicant's claim of injury was barred by Labor Code section 3208.3(h).[2]

Applicant contends that she sustained injury AOE/COE to her psyche and that defendant did not meet its burden under section 3208.2(h) to show that compensation should be barred; and that the injury to her internal system was not barred pursuant to *County of San Bernardino v. Workers' Comp. Appeals Bd.* (*McCoy*) (2012) 203 Cal.App.4th 1469, 1471 [77 Cal.Comp.Cases 219].

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

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[1] Commissioner Sweeney, who was on the panel that granted reconsideration, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

[2] All statutory references are to the Labor Code unless otherwise stated.

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record, and as discussed below, we will rescind the WCJ's Findings and Order issued on July 20, 2021, and substitute new Findings that applicant sustained injury in the form of psyche and internal and that compensation is not barred by section 3208.5(h).

BACKGROUND

In our August 30, 2019 "Opinion on Decision and Decision after Reconsideration" (Opinion), which we adopt and incorporate, we granted applicant's Petition for Reconsideration and rescinded the June 17, 2019 Findings and Order. We concluded that the *Rolda* analysis performed by Dr. Desai and the WCJ respectively were deficient.

On December 3, 2019, the parties deposed Dr. Desai yet again. (Joint Exhibit 12, Deposition of Dr. Desai, December 3, 2019.) Due to what appears to be a lack of clarity in the testimony, the parties agreed that Dr. Desai would prepare a supplemental report.

On October 20, 2020, Dr. Desai issued a supplemental report, stating in pertinent part:

> The first incident in January 2012, the applicant was given a special project and she declined that project due to childcare issues. I would apportion 40% of the impairment to the January 2012 incident.
>
> The second incident or continuation of the incident from October 2012 to November 2012 the applicant was put on a special evaluation position and she was supposed to meet the supervisor on an almost daily basis and during that time frame there was an ongoing change in behavior as well as some harassment which was reported by the applicant because of everyday evaluation. I would apportion 35% of the whole person impairment to the incident between October 2012 and November 2012.
>
> The third incident happened in January 2013 and the applicant was told that the evaluations were not meeting the standards and she was not given her records and she was very stressed out because of that. 25% of the whole person impairment will be assigned to the incident of January 2013.

(Joint Exhibit 11, Report of Dr. Desai, dated October 20, 2020, pp. 1-2.)

On April 19, 2021, the matter proceeded to trial. Dr. Desai's December 3, 2019 deposition transcript was admitted as Joint Exhibit 12 and Dr. Desai's supplemental report, dated October 20, 2020, was admitted as Joint Exhibit 11. (MOH/SOE, April 19, 2021, p. 2.) The matter was continued.

On June 28, 2021, trial recommenced. Defendant brought no witnesses to testify. Applicant testified as follows:

> Dr. Desai reported that she had stress from performance meetings. She recalls such stressful meetings. Prior to these meetings, she had had such performance meetings, but this one was different.
>
> The difference was that she was not humiliated or harassed by Robin. There was no clear direction. Prior to this, she had clear evaluations, and they were not humiliating or condescending. This was a continuous pattern with Robin.
>
> In prior meetings, they were constructive. In her previous employment history, she never got a "below standard" or "meeting standards" until the project that Robin wanted her to do. The attitude was absolutely different and was more of a "humiliating nature." She was being berated by her peers. Her desk was being ransacked.
>
> The prior meetings were constructive. She was encouraged to help her peers, to help with other projects, and training was available. This was a "360" type of communication; it was done then and there.
>
> She had problems with her evaluations as noted by Dr. Desai. She felt these evaluations were unfair. She was being held to a standard that was not yet in effect, and her peers were not being held to these standards. In response to that evaluation, she did a rebuttal.
>
> CROSS-EXAMINATION BY MS. MOON:
> At some point her meetings with Ms. (Robin) Rabenstock changed. This occurred after she declined the special project, which happened in July 2012. It was after this point with Ms. Rabenstock that it changed.
>
> She also had a performance evaluation that she found stressful sometime in 2013. This was an overall "satisfactory" evaluation. She had informed the union about this, but she was told by the union nothing could be done, that it was overall satisfactory. She felt there were inaccuracies in the evaluation.
>
> She found the approach for the special project very offensive and aggressive and that she could not do this due to childcare issues. She could not, however, go to the main office. Pat (Patrick Pudelek) told her she could leave home at 5:30 A.M., when she was already leaving at 6:00 A.M. Pat was pretty much breathing in her face during this meeting, which included Robin. Pat told her his aspirations for her within the department had changed. At one point, Pat apologized for Robin's conduct during this meeting.

> After this, the performance meetings became more frequent, and she found this offensive due to Robin's condescending language and that no other peers were subject to the frequency of these meetings.
>
> As a senior investigative technician, she was there to gather information regarding potential defendants for welfare fraud.
>
> Robin had told her to disregard training guidelines. The instructions would change daily. She was told to disregard the training guidelines given by Ben Carrillo (welfare fraud investigator).
>
> REDIRECT EXAMINATION BY MR. SINGER:
> With respect to her satisfactory evaluation, she was written up for the rebuttal which included a case number. It did not subject her to discipline. This did not impact her monetarily.

(MOH/SOE, June 28, 2021, pp. 2-3.)

On July 20, 2021, the WCJ issued the Findings and Order, and applicant sought reconsideration.

DISCUSSION

I.

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.) The Appeals Board must conduct de novo review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under section 5950, but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

Former section 5909 provided that a petition was denied by operation of law if the Appeals Board did not "act on" the petition within 60 days of the petition's filing. However, the Appeals Board cannot "act on" the petition if it has not received it, and if it has not received the case file. Transmission of the case to the Appeals Board 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." When the Appeals Board does not receive the case file and does not review the petition within 60 days due to irregularities outside the petitioner's control, and the 60-day period lapses

through no fault of the petitioner, the Appeals Board must then consider whether circumstances exist to allow an equitable remedy, such as equitable tolling.

It is well-settled that the Appeals Board has broad equitable powers. (*Kaiser Foundation Hospitals v. Workers' Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co.* v. *Indus. Acc. Com*. (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers' Comp. Appeals Bd.* (*Kwok*) (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd.* (*Lutz*) (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) It is an issue of fact whether an equitable doctrine such as laches applies. (*Kwok*, *supra* 2 Cal.App.5th at p. 402.) The doctrine of equitable tolling applies to workers' compensation cases, and the analysis turns on the factual determination of whether an opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases 624].) As explained above, only the Appeals Board is empowered to make this factual determination.[3]

In *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was tolled during the period that the file was misplaced. (*Id.* at p. 1108.) Pursuant to the holding in *Shipley* allowing equitable tolling of the 60-day time period in section 5909, the Appeals Board acts to grant, dismiss, or deny such petitions for reconsideration within 60 days of receipt of the petition, and thereafter issues a decision on the merits.

"[I]t is a fundamental principle of due process that a party may not be deprived of a substantial right without notice…." (*Shipley*, *supra*, 7 Cal.App.4th at p. 1108.) All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.*

[3] Section 5952 sets forth the scope of appellate review, and states that: "Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence." (Lab. Code, § 5952; see Lab. Code, § 5953.)

(2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 635, fn. 22 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd*. (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].)

If a timely filed petition is never acted upon and considered by the Appeals Board because it is "deemed denied" due to an administrative irregularity and not through the fault of the parties, the petitioning party is deprived of their right to a decision on the merits of the petition. (Lab. Code, §5908.5; see *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754-755 [33 Cal.Comp.Cases 350]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) Just as significantly, the parties' ability to seek meaningful appellate review is compromised, raising issues of due process. (Lab. Code, §§ 5901, 5950, 5952; see *Evans*, *supra*, 68 Cal.2d 753; see also *Rea*, *supra*, 127 Cal.App.4th at p. 643.)

On December 11, 2024, the California Supreme Court granted review in *Mayor v. Workers' Compensation Appeals Bd.* (2024) 104 Cal.App.5th 713 [2024 Cal.App. LEXIS 531] ("*Mayor*"). One issue granted for review is the same issue present in this case, i.e., whether section 5909 is subject to equitable tolling. The Supreme Court noted the conflict present in the published decisions of the Courts of Appeal, and in its order granting review of *Mayor*, stated as follows:

> Pending review, the opinion of the Court of Appeal, which is currently published at 104 Cal.App.5th 1297, may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under *Auto Equity Sales*, *Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, to choose between sides of any such conflict. (See *Standing Order Exercising Authority Under California Rules of Court*, *Rule 8.1115* (*e*)(*3*), *Upon Grant of Review or Transfer of a Matter with an Underlying Published Court of Appeal Opinion*, Administrative Order 2021-04-21; Cal. Rules of Court, rule 8.1115(e)(3) and corresponding Comment, par. 2.)

(Order Granting Petition for Review, S287261, December 11, 2024.)

Like the Court in *Shipley*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Shipley*, *supra*, 7 Cal.App.4th at p. 1108.) The touchstone of the workers' compensation system is our constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) "Substantial justice" is not a euphemism for inadequate justice. Instead, it

is an exhortation that the workers' compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 4709 ["No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division."].) When a litigant is deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control, substantial justice cannot be compatible with such a draconian result.

In keeping with the WCAB's constitutional and statutory mandate, all litigants before the WCAB must be able to rely on precedential authority, and all litigants must have the expectation that they will be treated equitably on issues of procedure and be accorded same or similar access to the WCAB. The Appeals Board has relied on the *Shipley* precedent for over thirty years, by continuing to consider all timely filed petitions for reconsideration on the merits, consistent with due process. Treating all petitions for reconsideration in the same or similar way procedurally promotes judicial stability, consistency, and predictability and safeguards due process for all litigants. We also observe that a decision on the merits of the petition protects every litigant's right to seek meaningful appellate review after receiving a final decision from the Appeals Board.

Consequently, as discussed below, we apply the doctrine of equitable tolling pursuant to *Shipley* to this case. Here, the WCJ issued the Findings and Order on July 20, 2021. Applicant timely filed her Petition at the district office on August 16, 2021.

As required by Rule 10205.4 (Cal. Code Regs., tit. 8, § 10205.4), applicant's paper Petition was thereafter scanned into the Electronic Adjudication Management System (EAMS) by the district office. (See Cal. Code Regs., tit. 8, §10206 [electronic document filing rules], § 10205.11 [manner of filing of documents].) However, for reasons that are not entirely clear from the record, the district office did not transmit the case to the Appeals Board. Thus, the Appeals Board did not actually receive notice of and review the petition until October 20, 2021. Accordingly, the Appeals Board failed to act on the petition within 60 days, through no fault of the parties. Moreover, according to Events in EAMS, the case was not transmitted to the Appeals Board until October 20, 2021.

On November 9, 2021, we granted reconsideration. Here, our action in granting a petition for reconsideration sent a clear signal to the parties of our intention to exercise jurisdiction and issue a final decision after reconsideration on the merits of the petition. Moreover, here, the Court

of Appeal has specifically indicated that the parties may seek appellate review once a final decision issues.

We note that neither party expressed any opposition to this course of action, and it appears clear from the fact that neither party sought judicial review of our grant of reconsideration that both parties have acted in reliance on our grant.

Under the circumstances, the requirements for equitable tolling have been satisfied in this case. Accordingly, our time to act on defendant's petition was equitably tolled until 60 days after October 20, 2021. Because we granted the petition on November 9, 2021, our grant of reconsideration was timely, and we may issue a decision after reconsideration addressing the merits of the petition.

Accordingly, having timely granted reconsideration to further study the legal and factual issues presented herein, we now issue our Decision After Reconsideration.

II.

In order to establish that a psychological injury is compensable, an injured worker must show 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(b)(1).)

The phrase "predominant as to all causes combined" means that work-related cause(s) must have a greater than a 50 percent share of the entire set of causal factors. (*Department of Corrections v. Workers' Comp. Appeals Bd.* (*Garcia*) (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356].) In order for the WCJ to make this determination, the medical evaluator must conduct the following analysis: 1) identify all of the factors causing the psychological injury; 2) identify the percentage of causation that each factor contributes to psychological injury; and 3) identify whether each factor is industrial or non-industrial. This medical evidence provides an essential foundation for the WCJ's analysis. We note that the issue of whether actual events of employment caused the injury is separate from the issue of whether personnel actions caused the injury. These two issues must be assessed separately.

Once the issue of industrial psychiatric injury has been established, an employer may seek to have the claim barred from compensation, i.e., may avoid liability, by proving that it was substantially caused by lawful, nondiscriminatory, good faith personnel actions. (Lab. Code, § 3208.3(h).) The term "substantial cause" is defined in section 3208.3(b)(3) as "at least 35 to 40 percent of the causation from all sources combined."

Thus, when a psychiatric injury is alleged and the "good faith personnel action" defense has been raised, the WCJ must evaluate the defense according to a multilevel analysis. (See *San Francisco Unified School Dist. v. Workers' Comp. Appeals Bd*. (*Cardozo*) (2013) 190 Cal.App.4th 1, 9 [75 Cal.Comp.Cases 1251] (writ den.).) After considering all the medical evidence and the other documentary and testimonial evidence of record, pursuant to *Rolda v. Pitney Bowes*, *Inc*. (2001) 66 Cal.Comp.Cases 241 (Appeals Bd. en banc), the WCJ must make the following determinations:

> (1) whether any of the causal factors identified by the med-legal evaluator were actual events of employment, a factual/legal determination for the WCJ; and
>
> (2) if so, whether the actual events of employment were predominant as to all causes combined of the psychiatric injury. While this determination requires competent medical evidence to identify the causal factors, the WCJ is the final arbiter or what constitutes an employment event.

Here, Dr. Desai, the psychiatric QME, has consistently opined that applicant's psychological injury was solely caused actual events of employment. Thus, applicant has met her burden to show that employment events were greater than a 50 percent share of the entire set of causal factors, and applicant has met her burden to show that she sustained an injury to her psyche.

Because the good faith personnel action defense was raised, again pursuant to *Rolda*, the burden shifts to defendant to establish the following elements in order to avoid liability.

> (3) if actual events of employment were the predominant cause of the psychiatric injury, whether any of those events of employment were also personnel actions. This a factual/legal determination for the WCJ;
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> (4) if so, were any of the personnel actions lawful, nondiscriminatory, and in good faith, also a factual/legal determination for the WCJ;
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> (5) if so, whether the lawful, nondiscriminatory, good faith personnel actions were a "substantial cause" of the psychiatric injury. This a factual determination for the WCJ, but a determination that requires competent medical evidence.

In other words, the WCJ must tally the percentage of causal factors that were good faith personnel actions and determine whether they were a "substantial cause" of the psychiatric injury.

As we explained previously in our Opinion, not all employment events constitute personnel actions pursuant to section 3208.3. In *Larch* (*Fleming*) *v. Contra Costa County* (1998) 63 Cal.Comp.Cases 831, 833, the Appeals Board defined personnel action as conduct either by or

attributable to management, which includes actions taken by someone who has the authority to review, criticize, demote, or discipline an employee. However, "the term personnel action was not intended to cover all actions by any level of personnel in the employment situation or all happenings in the workplace done in good faith. ... This would be too broad an interpretation ...." (*Id*. at pp. 833-834; *Chevron Corporation v. Workers' Comp. Appeals Bd.* (*Gao*) (2024) 89 Cal.Comp.Cases 965, 968 (writ den.).) Additionally, not every action by management constitutes a personnel action. Such a construction would be overly broad and would result in the denial of compensation for injuries caused by management's criticism of an employee's conduct. (*County of Butte v. Workers' Comp. Appeals Bd.* (*Purcell*) (2000) 65 Cal.Comp.Cases 1053, 1058 (writ den.).)

We note that the determination of whether an event is a personnel action in the context of a *Rolda* analysis is a determination reserved to the trier of fact, that is, the WCJ and the Appeals Board. (*County of Sacramento v. Workers' Comp. Appeals Bd.* (*Brooks*) (2013) 215 Cal.App.4th 785 [78 Cal.Comp.Cases 379]; *Rolda*, *supra*, 66 Cal.Comp.Cases 241, *Cardozo*, *supra*, 190 Cal.App.4th 1.) Moreover, the determination of whether a personnel action is lawful, nondiscriminatory, and made in good faith is also reserved to the trier of fact.

In our August 30, 2019 (Opinion), we outlined the deficiencies in the record, the necessary evidence that the WCJ must consider, the legal standard that applies, and the further evidence that was required.

In our previous Opinion, we stated that:

> In this matter, the *Rolda* analyses performed by the WCJ and Dr. Desai are deficient. Dr. Desai opined that 40% of the injury was caused by applicant's refusal of a special project, that 25% of the injury was jointly caused by Ms. Rabenstock's change in behavior and applicant's placement in a "special evaluation position," that 25% was caused by a confrontation with Ms. Rabenstock regarding an evaluation, and that the remaining ten percent was caused by harassment. (Joint Exhibit 9, supra, p. 2.) The WCJ found that except for the harassment, all of these employment events were good faith, lawful, and nondiscriminatory personnel actions. (Opinion on Decision, *supra*, p. 5.) We agree with the WCJ that harassment is not a personnel action. However, applicant's refusal of a project is not "conduct attributable to management," and thus, it is not a personnel action. (*Larch*, *supra*, 63 Cal.Comp.Cases at pp. 834-835.) The current evidentiary record does not allow us to determine whether the remaining two factors are good faith, lawful, and nondiscriminatory personnel actions. At trial, Mr. Pudelek testified that, "Ms. Rabenstock never requested that a special performance evaluation be undertaken or that such an evaluation

> took place," and applicant testified that there was a special performance evaluation, but the WCJ did not determine whether this event occurred. (MOH/SOE, February 1, 2018, p. 3; MOH/SOE, July 31, 2018, p. 8.) If the event occurred, the WCJ not only must determine whether these were "personnel actions" but whether they were lawful, non-discriminatory, and performed in good faith. Likewise, Dr. Desai should explain how Ms. Rabenstock's claimed change in behavior is distinct from her harassment of applicant. Further, the confrontation between Ms. Rabenstock and applicant may constitute a personnel action, but the WCJ must determine whether it was lawful, non-discriminatory, and performed in good faith.

Thus, the only two events that required clarification following our review were: (1) the 25% of the injury that was jointly caused by Ms. Rabenstock's change in behavior and applicant's placement in a "special evaluation position"; and (2) the 25% of the injury that was caused by a confrontation with Ms. Rabenstock regarding an evaluation.

Previously, defendant presented the testimony of Patrick Pudelek on February 1, 2018. Mr. Pudelek testified in pertinent part as follows:

> His job involved managing the investigative branch for welfare fraud. Approximately 20 people directly answered to him, consisting primarily of Welfare Fraud Supervisors, Investigative Technician Supervisors, an analyst, and various other supervisors. One of these people was Robin Rabenstock. Her title was Supervising Welfare Fraud Investigator. She reported directly to him. She reported for approximately five years. She supervised approximately eight persons. . . .
>
> He was aware that Ms. Rabenstock supervised the applicant through the normal course of business. He was aware of issues that Ms. Rabenstock was having with the applicant. These included performance issues such as following directions. He could not recall other problems. *Ms. Rabenstock never requested that a special performance evaluation be undertaken*, *or that such evaluation took place. He recalls the applicant disputing an evaluation and she did not agree with the description of her performance. He does not recall any specifics about this evaluation.* While he was aware of the dispute and that the applicant had written a rebuttal. The applicant was given a corrective memo about breaching confidentiality to include revealing the names of clients. There were a couple of meetings and the applicant was involved. When these meetings were conducted with the applicant, they were conducted to discuss her performance. This had to be processed through Human Resources, as he had no authority to issue corrective action. During these meetings, the applicant was open to discussing the issue, although from his standpoint, he felt that she did not see a reason to change. He believes but was not certain that after five years such corrective action was undertaken.

> He is not aware that her performance evaluation was changed. *The corrective performance plan would have been before Robin and the applicant and would not involve him.* He is aware that such a plan was reached, but this did not involve them meeting on a regular basis. There were a couple of meetings to include himself, Robin and the applicant, to allow him to view their interaction. Those two meetings alone had issues with their interaction. There was an ongoing issue about the applicant's performance and her direction from Ms. Rabenstock.
>
> ***
>
> The applicant was transferred from Ms. Rabenstock's department to allow her to better succeed. This had nothing to do with her refusal to accept the special project.

(MOH/SOE, February 1, 2018, pp. 2-3, emphasis added.)

In sum, Mr. Pudelak could not credibly testify about the two events because he denied that there was a special evaluation position and testified that he was not involved in the performance plan and did not recall the specifics about the evaluation. Defendant did not present the testimony of Ms. Rabenstock, and defendant did not submit a personnel file or any other documentation regarding applicant's employment. ***Nonetheless, despite the opportunity afforded to defendant when we returned the matter to the trial level, defendant declined to offer any additional evidence with respect to the two issues that we raised in our decision.***

With respect to the *Rolda* analyses performed by the WCJ[4] and Dr. Desai, we note the following.

In his report of October 20, 2020, Dr. Desai concluded that: 40% was attributed to the special project that applicant declined due to childcare issues; 35% was attributed to the October 2012 to November 2012 special evaluation position and the harassment; and 25% was attributed to January 2013 statement that applicant's evaluations were not meeting the standard and she was not given her records.

In his Opinion, the WCJ again concluded that the event in November 2012 was not a good faith personnel action because "applicant in a credible fashion described what she felt was

[4] Citing to an unpublished opinion of the Court of Appeal is a violation of California Rules of Court Rule 8.1115. In our Opinion and Decision after Reconsideration, dated August 3, 2019, footnote 6 states: "In his Opinion on Decision and his Report, the WCJ referenced an unpublished opinion of the Court of Appeal in violation of California Rules of Court 8.1115. (Cal Rules of Court, Rule 8.1115.) We do not endorse that citation or incorporate it into our review of this matter." Here, the WCJ cites the same unpublished Court of Appeal case and we will again disregard the analysis related to *Metropolitan Water District v. Workers' Compensation Appeals Bd.* (2004) 69 Cal.Comp.Cases 1242.

harassment and humiliation by her supervisor; as to this event Dr. Desai assigned only 10%. [*sic*]" The WCJ then stated that:

> The court remains of the opinion that, among the other factor [*sic*], the offering of the special project in July 2012 to which applicant declined due to child care concerns. [*sic*] The court remains of the opinion that this action alone represents a "personnel action" pursuant to Larch representing what the court considers to be a transfer (even if only temporary) from her regular duties to this special project.
>
> Further, based on the earlier testimony of Patrick Pudelek, which the court found credible, this action standing alone would appear to be both lawful and non-discriminatory, with the defendant having met it [*sic*] burden of proof on that issue. The same would be true of the applicant's placement into the "special evaluation positon [*sic*] from October 2012 through November 2012, to which Dr. Desai refers. [*sic*] As to the first incident standing alone, Dr. Desai finds 40% causation, which is within the "substantial cause" threshold set forth in 3208.3(h).

(Opinion, p. 15; Report, p. 11.)

In sum, the WCJ made no attempt whatsoever to address our concerns. Instead, he continued to cling to his conclusion that when applicant refused the position in July 2012, it constituted a good faith personnel action despite our clear statement that it did not.

The entirety of the WCJ's Opinion with respect to the two issues we raised is: **"The same would be true of the applicant's placement into the 'special evaluation positon [*sic*] from October 2012 through November 2012, to which Dr. Desai refers. [*sic*]"** Then, in his Report, the WCJ copied the identical analysis complete with the typographical errors and again failed to address the issues. Even if we were to accept this statement as a factual determination as to the 25% attributed to the events of October 2012 through November 2012, ***there is simply no evidence submitted by defendant and no analysis by the WCJ that the events of January 2013 constituted good faith personnel actions***.

Thus, based on the record before us, we conclude that actual events of employment were predominant as to all causes combined of the psychiatric injury as no non-industrial causes were identified. We further conclude that defendant did not meet its burden to show that applicant's claimed psyche injury was substantially caused by lawful, non-discriminatory, good faith personnel actions.

Turning to applicant's claimed internal injuries, *McCoy* is factually distinguishable from this case. In *McCoy*, applicant pled an underlying psychiatric injury and pled headaches as a compensable consequence of the psychiatric injury. The court held: "[T]hat section 3208.3, subdivision (h), precludes recovery for physical manifestations that are directly and **solely** resulting from the psychological injury suffered as a result of good faith personnel actions." (*McCoy*, *supra*, 203 Cal.App.4th at p. 1474, emphasis in original.) Here, even if we had agreed with the WCJ's analysis as to the 90% attributable to good faith personnel actions, *McCoy* does not apply because applicant's psyche injury was not *solely* caused by good faith personnel actions.

We reiterate that, as explained above, when we returned the matter to the trial level, our expectation was that defendant would seize the opportunity to obtain further evidence to explain what personnel actions occurred and evidence that they were lawful, nondiscriminatory, and in good faith, in order to meet its burden that it was not liable for compensation. However, the record was again insufficient for the WCJ to find that defendant met its burden with respect to the "good faith personnel action" defense. (Lab. Code, § 3208.5(h).) We can only assume that defendant either disregarded our direction and/or was unable to muster sufficient evidence.

In circumstances such as these, where a party has already been allowed to submit further relevant evidence and has not done so, and the WCJ's errors in applying the legal standard have already been explained and have been ignored, it would be futile to return the matter for further proceedings and would only result in further delays and a wasting of the scarce resources of the WCAB.

Accordingly, we rescind the Findings and Order issued by the WCJ on July 20, 2021, and substitute new Findings that applicant sustained injury in the form of psyche and internal and that compensation is not barred by section 3208.5(h).

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued by the WCJ on July 20, 2021 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Guadalupe Rodriguez, age 31 at the time of injury, while employed during the period from November 5, 2005 through April 9, 2013, as a senior investigative technician, occupation group number in dispute, at Riverside, California, by the County of Riverside, permissibly self-insured and self-administered, sustained injury arising out of and in the course of employment to her psyche and internal system.

2. Defendant did not meet its burden to show that compensation for applicant's injury is barred by Labor Code section 3208.3(h).

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 30, 2026

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

GUADALUPE RODRIGUEZ
LAW OFFICES OF EDWARD J. SINGER
MICHAEL SULLIVAN & ASSOCIATES LLP
GILSON DAUB, LLP
DEL CARMEN MEDICAL CENTER

JB/*pm*

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