WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

KIMBERLEY LIVINGSTON, *Applicant*

vs.

FOLSOM STATE PRISON; STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ12902638
Sacramento 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] We now issue our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O) issued on December 13, 2021, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part: (1) applicant, while employed during a cumulative trauma period ending February 10, 2020, as an office technician at Folsom, California, by Folsom State Prison, claims to have sustained injury arising out of and in the course of employment (AOE/COE) to her psyche/stress; and (2) applicant did not sustain an injury arising out of and in the course of her employment as alleged.

The WCJ ordered that applicant take nothing further in her claim of injury on a cumulative trauma basis ending February 10, 2020.

Applicant contends that the WCJ issued the F&O in violation of her right of due process.

We received an Answer.

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

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will rescind the F&O and substitute a finding that the issue of whether applicant sustained injury AOE/COE to her

[1] Commissioner Capurro and Deputy Commissioner Sussman have substituted in place of Commissioners Lowe and Sweeney, who no longer serve on the Appeals Board. Commissioner Razo has substituted in place of Deputy Commissioner Schmitz.

psyche is deferred; and we will return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On January 15, 2020, applicant filed an application for adjudication, alleging that on September 24, 2019, she sustained injury to the nervous system. (Application for Adjudication, January 15, 2020.)

On May 12, 2020, applicant filed an amended application for adjudication, alleging that while employed as an office technician during the period of August 1, 2015 to February 10, 2020, she sustained cumulative trauma injury to the nervous system (stress, psychiatric, and unspecified). (Application for Adjudication, May 12, 2020.)

On June 23, 2021, defendant filed a Declaration of Readiness to Proceed (DOR), requesting a Mandatory Settlement Conference (MSC) for August 24, 2021, identifying temporary disability, permanent disability, future medical treatment, and injury AOE/COE as principal issues. (DOR, June 23, 2021, p. 7.) The DOR was served upon applicant and her attorney at their addresses in California via the U.S. Postal Service. (Proof of Service, June 23, 2021.)

On July 6, 2021, applicant filed an objection to defendant's DOR, stating:

> Applicant's counsel is trying to contact the applicant to discuss the case prior to responding to defense counsel request. Once we have spoken with the applicant we will respond to defendant's counsel post haste. Therefore, Workers' Compensation Appeals Board intervention is premature at this time.

(DOR Objection, July 6, 2021.)

At the Mandatory Settlement conference of August 24, 2021, the WCJ filed a pre-trial conference statement (PTCS) signed by the parties' attorneys which noted that both counsel for applicant and defendant appeared, and the matter was set for trial. (PTCS, August 24, 2021, pp. 1,4.) It does not state that applicant also appeared. (*Id*.)

On October 11, 2021, the matter proceeded to trial on the issue of injury AOE/COE, with all other issues deferred. (Minutes of Hearing (Reporter), October 11, 2021, p. 2:16.)

At trial, applicant's attorney objected to the trial going forward on the grounds that applicant was not present to testify and requested a continuance. (*Id.*, p. 3:21-22.) The minutes of trial state that the court "denied applicant's request and the matter is hereby submitted." (*Id*.)

The WCJ admitted into evidence the Report of QME Dr. Kathleen Longwell dated May 22, 2020. It includes the following:

> …
> *Current Work Injury*
>
> The associate warden of her department, who was older than her, knew she was getting a divorce. She was warned by several coworkers that he was a "predator." For two years, this man flirted with her in "a creepy way." He asked her for naked pictures of herself. She gave him 20 pictures because he threatened to get her fired if she did not provide them. She told her ex-husband who called the lieutenant to their house. At that point, they were living separately. The lieutenant and her ex-husband thought she should get the pictures back. An action and investigation were started and the pictures were returned to her.
> . . .
> The specific events that led up to her workers' compensation claim for a date of injury of September 24, 2019, began when another officer, who she was friendly with, suddenly slapped her butt in front of other people near the entrance gate to the prison. She froze and walked away. She then told her ex-husband who told her to report it. She told her boss, who was the man with whom she eventually had problems. She was interviewed by a special agent investigator. The man who spanked her was walked off the job and fired. During the investigation, she was harassed by friends of the officer who spanked her. The officer who spanked her tried to run her over once to threaten her to drop the case. She reported it. The officer who spanked her totaled the state vehicle that he was driving by running into a wall.
>
> According to Ms. Livingston, a non-employee confronted her in the parking lot who had a shot gun in his trunk. She became very frightened; went on disability; and was treated at Kaiser in the intensive outpatient program in 2015 for six months. She went through alcohol treatment. She never had an inpatient psychiatric hospitalization. Ms. Livingston said that she feared for her life. Eventually, she felt well and safe enough to go back to Folsom State Prison with a modified program where she could stay in her office with a different schedule to avoid most personnel. She returned at the end of 2015. Things calmed down and she felt comfortable and safe.
>
> In September of 2019, she was on full duty. During the summer of 2019, the associate warden, who had taken her pictures, returned after a three-year adverse action transfer for sexual harassment. It appeared that the charges involved a number of different female employees at CDCR. He came to her work-space to let her know he was back by coming into her work area. People started talking about the incident with her. She was moved to medical records after the overfamiliarity citation. She said that she was warned that both of the men who harassed her could be retaliating and maybe getting inmates to harm her. She became highly anxious. She started having panic attacks and felt like she would pass out. She spoke to her

supervisor and returned to Kaiser for psychiatric help for anxiety. Her doctor said that she needed to just work at an administrative office away from inmates. CDCR did not offer her a transfer, saying in October that they could not accommodate her. She was off work and has not returned to work since September.

(Ex. A, Report of QME Dr. Longwell, May 22, 2020, pp. 12-13.)

V. DIAGNOSTIC IMPAIRMENTS

. . .

Alcohol Use Disorder, severe (F10.20)
Major Depressive Disorder, recurrent, mild to moderate (F33.0)
Unspecified Trauma and Stress-Related Disorder (F43.9)

. . .

VI. DISABILITY STATUS AND CAUSATION

Causation

. . .

[T]his examination is unable to state within a reasonable degree of psychological certainty that the predominant cause of Ms. Livingston's diagnosed mental disorder, impairment of psychological functioning, and her difficulties being able to maintain her job at CDCR were caused by events or employment or arose out of events of employment. She certainly believes that she her psychological impairments were the direct result of being sexually harassed on her job and being retaliated against for reporting the sexual harassment. According to her report during this examination, there were witnesses to the correctional officer slapping her on the buttocks, causing her embarrassment and pain. She may have also experienced what she described as "creepy flirting" from her supervisor that she stated was known as a "predator." Although he likely asked her for nude pictures, it is not likely that he threatened her for them. This appears to have been her exercising poor judgment which may have been caused, at least in part, by her alcohol abuse.

I think it can be said that a certain portion of her psychological impairment and disability was caused by events of her employment; however, based on the available information, I cannot say to a reasonable degree of psychological certainty that the predominant cause of her difficulties sustaining her usual and customary job at CDCR were caused by events or employment or arose out of events of employment. Ms. Livingston's abuse of alcohol and preexisting maladaptive personality disorder traits appear to have been more than 50% of the cause of her disability. Were it not for Ms. Livingston's pre-existing alcohol use disorder and maladaptive personality traits which include poor judgment and poor boundaries with interpersonal relationships, she would have likely been able to have recovered from the incidents of sexual "harassment" on the job such as she could continue to maintain her regular duties.

PSYCHE DISABILITY STATUS

This examination does not find that Ms. Livingston meets the predominant threshold as being a psychologically injured worker who should be afforded treatment for diagnosed mental disorders. She may have been unable to work for various periods of time due to her drinking problem and interpersonal relationship problems as evidenced by a number of medical leaves for treatment; however, the predominate cause was not events of employment.

VII. APPORTIONMENT OF PERMANENT DISABILITY
As this examination does not find that Ms. Livingston has a compensable psychological disability, apportionment is not warranted.

(*Id*., pp. 21-27.)

The WCJ admitted into evidence the Deposition Transcript of QME Dr. Kathleen Longwell., dated November 20, 2020. (*Id*., p. 3:15-17.) It includes the following:

Q. Specifically, the first sentence of paragraph two. I'll read it for the record. (Reading) : I think it can be said that a certain portion of her psychological impairment and disability was caused by events of her employment. However, based on the available information, I cannot say, to, a reasonable degree of psychological certainty, that the predominant cause of her difficulties sustaining her usual and customary job at CDCR were caused by events of employment.
(Reading ends)
Do you see that, Doctor, that portion?

A. I do.

Q. In that sentence I just read, you don't state specifically what portion you would attribute Ms. Livingston's psychiatric disability due to her events of employment. Therefore, can you please let me know what portion or percentage of psychiatric disability you believe Ms. Livingston's events of employment caused?
. . .
THE WITNESS: Well, as you know, it's very difficult to put a precise percentage on a psychological issue because these things all interact upon each other, but I would say, to the best of my ability at this point, specifically the event where the officer at the gate slapped her on her buttocks and caused her embarrassment -- you know, that would be very embarrassing -- I would say -- based on that, on her current psychological state when I evaluated her, I would probably attribute somewhere between 15 and 20 percent to that. And the reason I'm saying that is that she seemed to recover from that and then worked for a number of years without saying that -- she was having emotional problems but not connected to work. She told me she was functioning; things settled down; and she was fine with work. So I think that -- being generous, I would say 20 percent, maybe 15 percent.

. . .
(Ex. G, Deposition Transcript of QME Dr. Longwell, November 20, 2020, pp. 9-11.)

Q. BY MR. HANCOCK: Is that how you perceive this, or do you see it as two injuries: a specific injury and a CT?

A. So it's not how I perceive it. When I evaluated her, I was provided with a date of injury of September 24, 2019. I believe, when I did my supplemental report, there was a letter stating that the dates of injury were -- it might have been the cumulative trauma had been added that Mr. Ibarra just stated.

Q. My understanding was it wasn't added; it was amended.

A. It was amended. I'm sorry, I don' t know the difference between added and amended, so . . .

Q. Doctor, in looking up the official filing, there is only one date of injury that's been pled, which is a cumulative trauma ending February 10, 2020.

A. Okay .

Q. Is it your medical opinion that there is more than one date of injury?

A. No. It's my opinion, from the information that I have, that there was one date of injury that was -- she may have pled a cumulative trauma, but my understanding, from my examination of her, was that there was actually one date of injury on September 24, 2019 that was related to events of employment --
. . .
Q. When we reference the September 24, 2019 date of injury, are you looking at that incident as a specific and separate date of injury from the CT?

A. Yes.

(*Id*., pp. 26-27.)

In the Opinion on Decision, the WCJ states:

<u>INJURY AOE/COE</u>

Based upon the medical report of PQME Kathleen Longwell, Ph.D., dated May 22, 2020, . . . it is found that applicant did not sustain injury to her psyche/stress arising out of and occurring in the course of employment during a cumulative trauma period ending February 10, 2020. Though Dr. Longwell felt that a certain portion of applicant's psychological impairment and disability were caused by events of her employment, Dr. Longwell did not believe that the actual events of employment were the predominate cause of her diagnosed mental disorder.

(Opinion on Decision, p. 3.)

In the Report, the WCJ states:

> On September 20, 2021, the parties submitted a joint request that the October 11, 2021 trial be conducted remotely through LifeSize.
>
> On September 27, 2021, the request for a remote trial was denied, as the parties failed to establish good cause for a remote hearing.
>
> At the October 11, 2021 trial, Thomas Long, Esq. from Shatford Law appeared on behalf of applicant. Geoffrey Hancock, Esq. appeared on behalf of Folsom State Prison. That morning, the undersigned requested that Mr. Long contact the applicant as she had failed to appear for her trial. Mr. Long represented that he was unable to get a hold of his client (Minutes of Hearing, October 11, 2021, at page 2, lines 1-3). The undersigned went on the record, read the stipulations and issues into the record as well as the exhibits. The case was submitted for decision over applicant's objection (Minutes of Hearing, October 11, 2021, at page 3, lines 21-23).

(Report, p. 3.)

DISCUSSION

Applicant contends that the WCJ violated her right of due process.

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*. (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, 643 [70 Cal.Comp.Cases 312].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd*. (2001) 89 Cal.App. 4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at pp. 157–158 citing *Kaiser Co. v. Industrial Acci. Com.* (*Baskin*) (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd*. (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

As stated by the Court of Appeal:

> A denial of due process to a party ordinarily compels annulment of the Board's decision only if it is reasonably probable that, absent the procedural error, the party would have attained a more favorable result. However, if the denial of due process prevents a party from having a fair hearing, the denial of due process is reversible per se.

(*Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd*. (*Pinkney*) (1994) 26 Cal.App.4th 789, 806 [59 Cal.Comp.Cases 461], citations omitted.)

It is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd*. (1992) 4 Cal.App. 4th 1196, 1205 [57 Cal.Comp.Cases 149]; see also *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 ("when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default").) This is particularly true in workers' compensation cases, where there is a constitutional mandate "to accomplish substantial justice in all cases." (Cal. Const., art. XIV, § 4.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117, 1121–1122 [63 Cal.Comp.Cases 261].) The Appeals Board 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].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (§§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal. 3d 627 [35 Cal.Comp.Cases 16].) And any determination as to the issue of injury AOE/COE must be based upon medical evidence. (See *Insurance Company of North America v. Workers' Comp. Appeals Bd*. (*Kemp*) (1981) 122 Cal.App.3d 905 [46 Cal.Comp.Cases 913]; *Peter Kiewit Sons v. Industrial Acc. Com*. (1965) 234 Cal.App.2d 831, 838–839 [30 Cal.Comp.Cases 188]; see also *Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Here, defendant filed a DOR on June 23, 2021, and served it upon applicant and her attorney by mail. (DOR, June 23, 2021, p. 7; Proof of Service, June 23, 2021.) Applicant's attorney filed the objection thirteen days later, on July 6, 2021. (DOR Objection, July 6, 2021.) Since WCAB Rule 10744 requires that objections to DORs be filed within 10 calendar days of service and WCAB Rule 10605 extends that time for documents served by mail by five days, applicant's

objection was timely. (8 Cal. Code. Reg. §§ 10744, 10605.) Yet there is no record showing how, if at all, the WCJ ruled upon the objection.

When the matter proceeded to trial and applicant's attorney again objected to the proceedings going forward without applicant's presence, the WCJ effectively overruled the objection without making a record of the legal or factual grounds for doing so. (Minutes of Hearing (Reporter), October 11, 2021, p. 3:21-22.)

Since this record shows neither that the WCJ considered applicant's attorney's objection to the DOR nor the WCJ's reasons, if any, for effectively overruling the attorney's objection to going forward with trial without applicant present, the record fails to demonstrate that applicant was provided an opportunity to be heard in a manner consistent with due process.[2]

Accordingly, we will rescind the F&O.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

Labor Code section 3208.3(b)[3] provides:

> (1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.
>
> (2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

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[2] We also note that after applicant's attorney objected to the DOR, defendant and applicant's attorney jointly requested that trial be conducted remotely and the WCJ denied the request without a hearing for lack of good cause stated. (Report, p. 3.) But stipulations between counsel are a "substitute for proof" and binding on the parties "if within the authority of the attorneys," and on the court if "not contrary to law, court rule or policy." (*Greatorex v. Board of Administration* (1979) 91 Cal.App.3d 54, 58 [44 Cal.Comp.Cases 553].) Since the joint request was not contrary to law, it was binding on the court and it was error for the WCJ to deny it for lack of good cause and to do so without a hearing on the record. (See *Greatorex*, *supra*; *Hamilton, supra*.)

[3] Unless otherwise stated, all further statutory references are to the Labor Code.

> (3) For the purposes of this section, “substantial cause” means at least 35 to 40 percent of the causation from all sources combined.
> (§ 3208.3(b).)

"Predominant as to all causes" for purposes of section 3208.3(b)(1) has been interpreted to mean more than 50 percent of the psychiatric injury was caused by actual events of employment. (*Dept. of Corr. v. Workers' Comp. Appeals Bd*. (*Garcia*) (1999) 76 Cal. App. 4th 810, 816 [64 Cal.Comp.Cases 1356].)[4] The Labor Code does not define "actual events of employment," but the Court of Appeals has defined it as follows:

> First, the factor must be an "event"; i.e., it must be "something that takes place" (American Heritage Dict. (4th ed. 2000) p. 616) in the employment relationship. Second, the event must be "of employment"; i.e., it must arise out of an employee's working relationship with his or her employer.
>
> (*Pacific Gas & Electric Co. v. Workers' Comp. Appeals Bd.* (*Bryan*) (2004) 114 Cal. App. 4th 1174, 1181 [8 Cal. Rptr. 3d 467, 69 Cal. Comp. Cases 21]; see also *Verga v. Workers' Comp. Appeals Bd*. (2008) 159 Cal.App.4th 174, 186 [73 Cal. Comp. Cases 63] [actual events of employment "'can be interpreted' as requiring the employee to establish 'objective evidence of harassment, persecution, or other basis for the alleged psychiatric injury'."].)

In the present case, the WCJ found that applicant did not sustain cumulative trauma injury to her psyche during the period ending February 10, 2020 because QME Dr. Longwell reported that actual events of employment were not predominate as to all causes of her psychological disability. (Opinion on Decision, p. 3.)

However, Dr. Longwell’s reporting did not address the claim of cumulative injury during the period ending on February 10, 2020, but the claim of specific injury of September 24, 2019, which was superseded by the amended application for adjudication alleging cumulative injury. (Ex. G, Deposition Transcript of QME Dr. Longwell, November 20, 2020, pp. 26-27; Application for Adjudication, May 12, 2020.)

Because Dr. Longwell misunderstood that applicant’s claim was one for specific injury occurring on September 24, 2019, she failed to identify any actual events of employment that could have been contributing causative factors of applicant's stress-related disorder other than the event

[4] Applicant has not claimed that her psychiatric condition was caused by "being a victim of a violent act or from direct exposure to a significant violent act," which would decrease the causation threshold to "at least 35 to 40 percent of the causation from all sources combined." (§ 3208.3(b)(2)-(3).)

in which an officer slapped applicant. (Ex. G, Deposition Transcript of QME Dr. Longwell, November 20, 2020, pp. 9-17.) Notably, Dr. Longwell estimated that this event caused 15% to 20% of applicant's psyche permanent disability, leaving the record undeveloped as to what, if any, percentage of causation was attributable to other actual events of employment occurring during the alleged cumulative trauma period. (*Id*.)

Accordingly, we conclude that the WCJ's finding that applicant did not sustain a cumulative trauma injury to her psyche during the period ending February 10, 2020 is without support.

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (§§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389, 393–394 [62 Cal.Comp.Cases 924]; *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 752 (Appeals Board en banc); *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121–1122 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. L.A. County Metro. Transit Auth*., we stated that "[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record … the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete. (Citations.)" (*McDuffie v. L.A. County Metro. Transit Auth*. (2002) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc).)

Here, we have explained that the medical record regarding the issue of injury AOE/COE is incomplete because Dr. Longwell did not evaluate the issue of permanent disability on applicant's claim of cumulative injury. We are therefore persuaded that the issue of injury AOE/COE should be returned to the trial level for development of the record.

Accordingly, we will substitute a finding that the issue of whether applicant sustained injury AOE/COE to her psyche is deferred.

Accordingly, as our Decision After Reconsideration, we will rescind the F&O and substitute a finding that the issue of whether applicant sustained injury AOE/COE to her psyche is deferred; and we will return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued on December 13, 2021 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. The following stipulations of the parties are herein adopted as findings of fact:
    a. Kimberly Livingston, born [], while employed during a cumulative trauma period ending February 10, 2020, as an office technician at Folsom, California, by Folsom State Prison, claims to have sustained injury arising out of and in the course of employment to her psyche/stress.
    b. At the time of injury, the employer was legally uninsured and adjusted by State Compensation Insurance Fund.
    c. The employer has furnished some medical treatment. The primary treating physician is Dr. Alica Rucekova.
    d. No attorney fees have been paid and no attorney fee arrangements have been made.

2. The issue of whether applicant sustained injury arising out of and in the course of her employment to her psyche is deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 3, 2026

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

KIMBERLEY LIVINGSTON
SHATFORD LAW
STATE COMPENSATION INSURANCE FUND

SRO/kl

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