

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

LOAN KIM PHAN, *Applicant*

vs.

**STATE OF CALIFORNIA, EMPLOYMENT DEVELOPMENT DEPARTMENT,
legally uninsured, administered by STATE COMPENSATION INSURANCE FUND,
*Defendants***

**Adjudication Number: ADJ19474979
Sacramento District Office**

**OPINION AND ORDER
CORRECTING CLERICAL ERROR**

It has come to the Appeals Board's attention that its decision served October 16, 2026 contains a clerical error consisting of the omission of the date of service. The decision served contains a blank space where the date of service should appear.

We correct this clerical error by virtue of this decision without granting reconsideration, as such errors may be corrected without further proceedings at any time. (See 2 *Cal. Workers' Comp. Practice* (Cont. Ed. Bar, March 2019 Update) Supplemental Proceedings, § 23.74, p. 23-76.)

For the foregoing reasons,

IT IS ORDERED that the clerical error consisting of the omission of the date of service set forth in the Board's Opinion and Order Denying Petition for Reconsideration to reflect the following date of service: October 16, 2026.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 22, 2026

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

**LOAN KIM PHAN
CENTRAL VALLEY INURED WORKER LEGAL CLINIC, INC.
STATE COMPENSATION INSURANCE FUND**

PAG/abs

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

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**Adjudication Number: ADJ19474979
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**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on July 15, 2026, wherein the WCJ found in part that applicant did not meet her burden to prove that her injury was a compensable psychiatric industrially related injury.¹

Applicant contends she sustained a compensable psychiatric injury arising out of and in the course of her employment (AOE/COE) because the reporting of Agreed Medical Evaluator (AME), Luigi Piciuccio, Ph.D., is not substantial medical evidence, and defendant's actions went beyond lawful, non-discriminatory, good-faith personnel actions as described in Labor Code section² 3208.3(h).

We received an Answer from defendant.

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

¹ The Petition for Reconsideration contains documents attached in violation of WCAB Rule 10945(c). (Cal. Code Regs., tit. 8, § 10945(c).) These documents have not been considered, and applicant is admonished that she is required to follow the WCAB's Rules.

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

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

Based on our review of the record, and based upon the WCJ's analysis of the merits of the petitioner's arguments in the Report, and as discussed below, we will deny the applicant's Petition for Reconsideration.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to psyche while employed by defendant as a customer service representative, during the period from June 18, 2009 to March 1, 2024.

On July 9, 2025, Dr. Piciucco reevaluated applicant. (Joint Exhibit Y.) On Axis I, applicant was diagnosed with 1) Rule out delusional disorder, persecutory type; 2) Depressive disorder, unspecified; and 3) Anxiety disorder, unspecified. (*Id.* at p. 2.) On Axis II, applicant was diagnosed with paranoid personality disorder. (*Id.*)

Concerning causation, Dr. Piciucco opined:

It is my opinion with reasonable medical probability that the applicant's psychiatric disturbances, as outlined, are not predominantly caused by the consequences of alleged suffered employment distress as detailed within the description of injury sections. It is my opinion with reasonable medical probability that the applicant's psychiatric disturbances are predominantly caused by her pre-existing nonindustrial paranoid personality disorder which has led to her perception of having been chronically maltreated, retaliated against, harmed, and exploited during the course of several years of employment.

(*Id.* at p. 3.)

Dr. Piciucco further determined that:

Based on all combined data associated with the eleven (11) stress claims, it is my opinion with reasonable medical probability that sixty percent (60%) of the applicant's current Axis I clinical psychiatric conditions are predominantly caused by the consequences of her nonindustrial paranoid personality disorder which has fueled her symptoms of chronic anxiety and depression.

It is also my opinion with reasonable medical probability that forty percent (40%) of the applicant's Axis I clinical psychiatric conditions is caused by the consequences of alleged various employment events which the applicant perceived as stressful over the course of several years as outlined in detail within the description of injury section of this report. Nevertheless, I defer to the trier of facts

to determine whether or not actual employment events as related by the applicant are consistent with actual events of employment.

(*Id.* at pp. 3-4.)

Dr. Piciuccio stated that with reasonable medical probability that personnel actions constituted a substantial cause of the psychiatric injury as defined by subsection 3208.3(h)(35-40%), but he deferred to the trier of fact to determine whether or not personnel actions were performed legally, nondiscriminatory, and in good faith as related by the applicant. (*Id.* at p. 4.) On July 9, 2025, applicant was permanent and stationary, and consequently ratable, but as applicant had not suffered a predominantly caused industrially injury apportionment was not indicated. (*Id.* at pp. 6, 8.)

On August 28, 2025, Dr. Piciuccio issued a supplemental report confirming applicant's non-industrial diagnosis of paranoid personality disorder, and that sixty 60% of her current Axis I clinical psychiatric conditions are predominantly caused by said non-industrial paranoid personality disorder. (Joint Exhibit X, at pp. 1-3.)

On June 16, 2026, the matter proceeded to trial on the issue of AOE/COE.

It is from the corresponding decision that applicant seeks reconsideration.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, which states 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 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 August 17, 2026, and 60 days from the date of transmission is October 16, 2026. This decision is issued by or on October 16, 2026, so that we have timely acted on the Petition as required by section 5909(a).

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. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 17, 2026, and the case was transmitted to the Appeals Board on August 17, 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 were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 17, 2026.

II.

In her Opinion on Decision, the WCJ offered the following:

Applicant alleges a psychiatric injury occurring during the period of 6/18/2009 through 3/1/2024 while working as a customer service representative for Employment Development Department. In order for a psychiatric injury to be compensable the injury must arise out [of] employment, occur during the course of employment and Labor Code Section 3208.3 mandates that it be at least 51% industrially related. Generally speaking, applicant testified to issues with retaliation from coworkers and problems with management.

Dr. Piciucco served as the agreed medical examiner. He authored two reports, both of which are substantial medical evidence. As noted in his 7/9/2025 report he ultimately concluded that 60% of applicant’s psychiatric injury was due to her *nonindustrial* paranoid personality disorder. In his 8/28/2025 report Dr. Piciucco thoroughly explained what factors were considered to opine causation. He states that he relied upon applicant’s personality disorder diagnosis, the reasons described

by that applicant as to why she filed her claim(s) as well as the results from the psychological testing administered.

Applicant submitted reporting from Dr. Ferguson who opined that injury met the AOE/COE standards however Dr. Ferguson did not review any medical records. [Applicant's Exhibit 9.] The reporting was not substantial medical evidence and Dr. Piciuccio's reporting was more persuasive. Although applicant did submit medical reporting which showed evidence of some industrial stressors, there was no substantial medical evidence that her psychiatric injury was predominantly caused by her employment. Applicant's psychiatric injury is therefore found to be nonindustrial in nature.

(Opinion on Decision, July 15, 2026, at pp. 2-3.)

In her Report, the WCJ offered the following:

Applicant argues that Dr. Piciuccio's reporting is not substantial medical evidence because during the evaluation he primarily focused on the March 21, 2021 suspension. (Petition for Reconsideration p. 7) Dr Piciuccio's 7/9/2025 report (Exhibit Y) gives an extensive history related by the applicant involving alleged harassment from coworkers and issues with various supervisors since 2012, an allegation of sexual harassment, fear of retaliation, etc. as applicant originally claimed a multitude of separate events as separate injuries. (Ex. Y pp. 9-14). He opined that "that forty percent (40%) of the applicant's Axis 1 clinical psychiatric conditions is caused by the consequences of alleged various employment events which the applicant perceived as stressful over the course of several years as outlined in detail within the description of the injury section of the report." (Ex. Y p.62). There is no evidence that Dr. Piciuccio primarily focused on any one event.

Applicant also argues that the report is not substantial medical evidence because the parties did not provide records subsequent to March 1, 2024, including a fit for duty examination. (Petition for Reconsideration p. 8). Applicant's claimed period of cumulative trauma ends on 3/1/2024; hence any industrial events that occurred after 3/1/2024 would not be part of the claimed cumulative trauma and thus would not be relevant to a causation analysis. Nonetheless, applicant did provide a history of these events to Dr. Piciuccio, noting that she retired on June 3, 2024 after being found "unfit for duty." (Ex. Y p.17)

Dr. Piciuccio's reporting is substantial medical evidence. He opined that applicant's psychiatric injury was not predominantly caused by work events, opining that only 40% of her injury was due to industrially related reasons. He relied upon applicant's personality disorder diagnosis, the results of the psychological testing administered, the history given by the applicant and the records reviewed.

(Report, at pp. 2-3.)

In addition to the analyses offered by the WCJ, we offer the following.

To constitute substantial evidence “... a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.” (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Dr. Piciuccio’s reporting is framed in terms of reasonable medical probability, is not speculative, is based on pertinent facts and on an adequate examination and history, and sets forth reasoning in support of its conclusions. As the WCJ observed, applicant presented no alternative, substantial medical evidence finding industrial psychiatric injury.

Furthermore, the parties presumably choose an AME because of the AME’s expertise and neutrality. (*Power v. Workers’ Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) The Appeals Board will follow the opinions of the AME unless good cause exists to find the opinion unpersuasive. (*Id.*) We find no good cause to find the opinion of Dr. Piciuccio unpersuasive.

Next, 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 predominantly caused the psychological injury.³ (Lab. Code, § 3208.3(b)(1).)

Once the issue of industrial psychiatric injury has been established, an employer may seek to have the claim barred from compensation by proving that it was substantially caused by lawful, nondiscriminatory, good faith personnel actions. (Lab. Code, § 3208.3(h).) Again, the burden of proof rests with the party holding the affirmative of the issue. (*Id.*) Thus, defendant holds the burden of proving the good faith personnel action defense.

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. (*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.)) This is often referred to as a *Rolda* analysis, based on *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241. After considering all the medical evidence

³ “[T]he phrase ‘predominant as to all causes’ is intended to require that the work-related cause has 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.)

and the other documentary and testimonial evidence of record, the WCJ must make the following determinations:

First, the [WCJ] must determine whether the alleged psychiatric injury involves actual events of employment and, if so, whether competent medical evidence establishes the required percentage of industrial causation. If these first two conditions are met, the [WCJ] must then decide whether any of the actual employment events were personnel actions. If so, the [WCJ] must next determine whether the personnel action or actions were lawful, nondiscriminatory, and made in good faith. Finally, if all these criteria are met, competent medical evidence is necessary as to causation; that is, whether or not the personnel action or actions are a substantial cause, accounting for at least 35 to 40 percent of the psychiatric injury as defined by section 3208.3(b)(3).

(*Cardozo, supra*, at 9; *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 245-247; see also *County of Sacramento v. Workers' Comp. Appeals Bd. (Brooks)* (2013) 215 Cal.App.4th 785.)

Here, based on the competent medical evidence provided by Dr. Piciucco, the WCJ determined that applicant's psychiatric injury involved actual events of employment, however, the actual events were not the predominant cause of the psychiatric injury. Specifically, Dr. Piciucco opined that only 40% of the applicant's Axis I clinical psychiatric conditions is caused by the consequences of alleged various employment events which does not meet the predominant causation standard. Accordingly, with the lack of predominant causation, the *Rolda* analysis ended. Defendant did not have to raise the good faith personnel action affirmative defense and the WCJ was not required to complete an analysis in compliance *Rolda* pursuant to section 3208.3(h) as contended by applicant.

Accordingly, we deny applicant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

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