

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

AUDREA BROWN, *Applicant*

vs.

**SPACE EXPLORATION TECHNOLOGIES,
permissibly self-insured, administered by CORVEL, *Defendants***

**Adjudication Number: ADJ10985531
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.¹

Applicant seeks reconsideration of the “Findings of Fact and Order” (F&O) issued on November 4, 2022, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part that applicant did not sustain industrial injury to her psyche, chest, stomach, and in the form of sleep disturbance. The WCJ ordered that applicant take nothing on her claim.

Applicant contends, in pertinent part, that the WCJ failed to provide a proper analysis per *Rolda v. Pitney Bowes, Inc.* (2001), 66 Cal.Comp.Cases 241, 245-246 (Appeals Board en banc) in finding that applicant’s injury to the psyche was non-industrial. Applicant further contends that defendant failed is burden of proving that applicant’s injury to the psyche was substantially caused by lawful, nondiscriminatory, good faith personnel actions. (Lab. Code², § 3208.3(h).)

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

¹ Commissioner Dodd was on the panel that issued the order granting reconsideration. Commissioner Dodd became unavailable to participate in this decision and a new panel member has been appointed in her place.

² All future references are to the Labor Code unless noted.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration we will rescind the November 4, 2022, Findings and Order and return this matter to the trial level for further proceedings consistent with this opinion.

FACTS

Applicant worked as an accounts payable specialist for defendant when she alleged a cumulative injury through the period ending on July 20, 2017, to her psyche, chest, and stomach, and in the form of sleep disturbance. (Minutes of Hearing and Summary of Evidence, February 13, 2020, p. 2, lines 3-6.)

Applicant was seen by a qualified medical evaluator in psychiatry, Marc Charles, M.D., who authored one report in evidence. (Joint Exhibit I, Report of Marc Charles, M.D., September 5, 2018.) Dr. Charles took the following history of injury as reported by applicant:

Ms. Brown states she had been working there since June 23, 2010 and had been doing well. She believed her work was done well. She states she had no problems up until the time she got a new supervisor. She states that this new supervisor came in after she had been working there for about 6 years. His name was Brian. She states at the time he came in there was a change in the system of how information was going to be processed. She states that from now on they were informed that the new computer system would make the necessary changes and necessary checks and corrections and that they would not have to do it and that another department would be responsible for that at certain parts of the work. From April to July of 2017, she noticed that Brian began to speak rather abusively to her in front of others. She states that she had noticed that he had done it to another coworker before that but he had never done it to her. However, when that coworker left, he then turned to her and he began to act this same abusive way with verbal, putting her down in front of others, raising his voice, making comments such as 'I can get people off the street to work better than you'. He began to make comments like "no one in the office wants to work with you." She admits that over the course of working there, there had been change in the personnel and the team. Some of the people she had been familiar with and had been working there for (sic) had moved on to other positions or to other jobs and new people coming in were younger, people who she felt that did not accept her. She states that she began to feel like an outsider. It also started to affect her. She began to have sleep difficulties, nightmares and weight loss due to a decrease in her appetite, losing approximately 20 pounds. She began to experience anxiety attacks. She states that some of the putdown that he made towards her may have had racial undertones. She also felt the age discrimination as she was one of the older persons in the office.

She states [on] July 20th, she was feeling so overwhelmed she decided to go out on stress leave. She saw a Dr. Gilani, her primary care who evaluated her and sent her to a hospital in Culver City to get some laboratory work done. She states she was given the diagnosis of a major depression and on 07 /21/2017, she was sent to a Dr. Michael Tolwin, a psychiatrist who ordered intensive outpatient IOP. She went there 3 times a week, 4 hours a day and she saw a therapist by the name of Jan 3 times a week. She states that continued until October 20, 2017 when she began to feel better. She states she was given a release to return to work but she felt that it was better for her to move on from that job as she did not feel it was healthy for her mind. She states during the period of treatment, she had been given multiple medications she is not sure of the name. She does remember Prozac, Ambien, Abilify. She stated the Ambien was too strong and gave her nightmares. She eventually got on the Internet and started looking at and got a job that she has now with K Force although the income is much decreased.

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

Dr. Charles diagnosed applicant with depressive disorder with anxiety. (*Id.* at p. 44.) Her Global Assessment of Functioning score was 61. (*Ibid.*) Dr. Charles commented upon causation of applicant's injury as follows:

If Ms. Brown's account of work-related stress from mistreatment and workplace harassment is accurate or somewhat accurate, her Depressive Disorder with Anxiety would be predominantly caused by stressors at her employment. These allegations are left to a trier of fact determination.

(*Id.* at p. 60.)

Based on the existing database, all I can conclude is the events at Ms. Brown's workplace were the predominant (more than 50 percent) cause of her temporary psychiatric disability. The applicant provides events both of a physical and psychologically stressful nature that within a reasonable medical probability could cause depression and anxiety, as well as cause stress-related physical complaints.

(*Id.* at p. 61.)

Dr. Charles concluded that there is a basis for apportionment of applicant's disability, but provide no opinion on apportionment. (See generally, *Id.* at pp. 61-62.)

DISCUSSION

Labor Code section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 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].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

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).) “When the foundation of an expert’s testimony is determined to be inadequate as a matter of law, we are not bound by an apparent conflict in the evidence created by his bare conclusions.” (*People v. Bassett* (1968) 69 Cal.2d 122, 139.)

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. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), 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, supra*, 67 Cal.Comp.Cases at 141.)

In *Rolda v. Pitney Bowes, Inc.* (2001), 66 Cal.Comp.Cases 241, 245-246 (Appeals Board en banc), we addressed the factors that a psychological evaluator must consider in opining on causation of psychological injury and disability under section 3208.3. Per *Rolda*, the evaluator is required to list all factors causing psychological injury, address the percentage of causation that each factor contributes to psychological injury, list all factors causing psychological permanent disability, and address the percentage of causation that each factor contributes to permanent disability.

Once the evaluator issues a *Rolda* compliant report, the WCJ should then determine whether the alleged injury involved actual events of employment, and whether each actual event of employment constituted a lawful, non-discriminatory, good faith personnel action. (§ 3208.3(h).) If the psychological injury is predominantly caused (51% or more) by actual events of employment (or 35% or more in cases of injury caused by violent act or exposure to a violent act), the psychological injury is compensable, unless the injury is substantially caused by lawful, nondiscriminatory, good faith personnel actions, in which case the injury is not compensable. (§ 3208.3.)

Here, the QME did not complete a *Rolda* analysis. The QME simply stated that predominant industrial causation existed. That is not sufficient to determine whether applicant’s psychological injury is industrial and whether defendant met its burden of proof to establish substantial causation from lawful, nondiscriminatory, good faith personnel actions. The QME must discuss each category of stress. For example, here, it appears that applicant was stressed with the changes in her workload, interactions with her supervisor, and being placed on a performance improvement plan.³ We do not suggest these are the only categories. That is a determination the QME must make and the QME must assign causation to each category of stress, which caused applicant’s psychological injury.

³ “Stress is not a diagnosis, disease, or syndrome. It is a nonspecific set of emotions or physical symptoms that may or may not be associated with a disease or syndrome. Whether or not stress contributes to a disease or syndrome depends on the vulnerability of the individual, the intensity, duration, and meaning of the stress; and the nature and availability of modifying resources.” (American College of Occupational and Environmental Medicine (ACOEM) Practice Guidelines, 2nd Edition at p. 1055.)

Without any breakdown of the categories of stress by the QME, the WCJ had no basis to find applicant's injury non-industrial. We cannot analyze any of defendant's testimony at this time as we have no medical evidence to guide such an analysis.

Accordingly, as our Decision After Reconsideration we will rescind the Findings and Order and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order issued on November 4, 2022, is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 4, 2024

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

**AUDREA BROWN
EQUITABLE LAW FIRM
FELLMAN & ASSOCIATES**

EDL/mc

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