

**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**CANDY MOORE, *Applicant***

**vs.**

**STATE OF CALIFORNIA, CALIFORNIA STATE PRISON  
KINGS COUNTY AT CORCORAN, *Legally Uninsured*;  
STATE COMPENSATION INSURANCE FUND, *Adjusting Agency, Defendants***

**Adjudication Number: ADJ17893407  
Fresno District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on May 21, 2024, wherein the WCJ found in relevant part that applicant sustained an industrial psychiatric injury and that the defense of good faith personnel action pursuant to the Labor Code section<sup>1</sup> 3208.3(h) does not apply.

Defendant contends that the WCJ did not comply with section 5313 in their analysis of the section 3208.3(h) good faith personnel action (GFPA) defense, specifically whether the alleged personnel actions were lawful, nondiscriminatory, and made in good faith.

We have not received an Answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

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 for the reasons discussed below, we will grant the Petition, rescind the May 21, 2024 Findings and Award, substitute new findings, and return the matter to the WCJ for further proceedings consistent with this decision.

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<sup>1</sup> All statutory references are to the Labor Code unless otherwise stated.

## BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to various body parts, including her wrist, hand, fingers, abdomen, and psyche while employed by defendant as a licensed vocational nurse on May 6, 2022.

On June 30, 2023, applicant filed an Application for Adjudication (Application), claiming that she sustained injury on May 6, 2022 to various body parts. She stated that the injury occurred as follows: “Applicant was assaulted by an inmate and sustained injuries to her right hand wrist fingers abdomen and psych.”

With respect to the claimed psychiatric injury, applicant was evaluated by Qualified Medical Evaluator (QME) in psychology Darin Stowell, PsyD, on November 3, 2022. Dr. Stowell issued a report on November 7, 2022 (Exhibit 1) and issued supplemental reports on January 20, 2023 (Exhibit 3) and October 16, 2023 (Exhibit A).

In his initial report, Dr. Stowell opines about causation in pertinent part as follows:

[I]t is within reasonable medical probability that actual events of employment were predominant as to all other causes of the psychiatric injury (>50%) as interview and medical/psychiatric records indicate no history of psychiatric symptoms prior to difficulties with co-workers and supervisors at work beginning in approximately May of 2021, and no familial, relational, social or medical stressors outside of her occupational stressors were expressed or documented. . . .

Based on all of the information available at the time of report completion I opine with reasonable medical probability that actual events of employment were predominant as to all other causes, of the psychiatric injury and that 35% of the applicant’s psychological diagnosis of PTSD and Other Problems Related to Employment and its accompanying symptomology is related to is related to personnel actions (Adverse Action) associated with the alleged harassment and discrimination by multiple supervisors. The remainder is due to the assault that occurred on May 6, 2022. . . .

I find that Ms. Moore’s psychiatric injury was predominantly caused by the traumatic accident itself of being assaulted by an inmate-patient during the course of her work and not as sequela of the physical injuries sustained. As such her psychiatric injury is considered a primary injury and not a derivative or secondary injury of her physical injury.

(Exhibit 1, November 7, 2022 QME report, pp. 12-14.)

On January 20, 2023, Dr. Stowell issued a supplemental report following a review of additional records. He made no changes to his previous opinion as to causation. (Exhibit 3, January 20, 2023 QME report, p. 2.)

On October 16, 2023, Dr. Stowell issued a further supplemental report following a review of additional records. The additional records do not change his opinions with respect to applicant's claimed injuries. (Exhibit A, October 16, 2023 QME report, p. 5.)

On October 18, 2023, the matter proceeded to trial on the following issues:

1. Injury AOE/COE to psyche.
2. Whether the good faith personnel defense applies pursuant to Labor Code Section 3208.3(h).

(Minutes of Hearing and Summary of Evidence (MOH/SOE), October 18, 2023 trial, p. 2.)

Defense witness Monica Griem testified at trial on October 18, 2023. No other witnesses testified at trial. As relevant herein, Ms. Griem testified in pertinent part as follows:

Q. All right, so are you aware of the events that happened to Ms. Moore on May 6, 2022?

...

THE WITNESS: I was not her supervisor at that time any longer. I had just heard of the incident through word of mouth. I was no longer her supervisor.

(Reporter's Transcript, October 18, 2023 trial, at 10:20-11:2.)

On March 28, 2024, the parties returned to trial, and Ms. Griem continued her testimony. As relevant herein, Ms. Griem's testimony was on other issues, and she did not testify further about applicant's injury of May 6, 2023.

## **DISCUSSION**

We begin with the issue of causation of applicant's injury. We first observe that any determinations regarding liability for disability benefits or apportionment of disability are only with respect to the injury arising out of the events in that case. Here, applicant filed an Application claiming a specific injury to various body parts when she was assaulted by an inmate on May 6, 2022. It follows then that on the issue of whether liability is barred by section 3208.3(h), the WCJ's analysis of the GFPA defense will necessarily focus on actions related to the claimed specific injury of May 6, 2022. Causation of disability is distinct from causation of injury, and we recognize

that defendant's confusion herein may be a result of conflating the issue of causation of injury with the issue of causation of disability.

Section 3208.3(b) states that:

(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.

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

(Lab. Code, § 3208.3(b), emphasis added.)

Section 5303 states in relevant part that: "There is but one cause of action for each injury. . . . no injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury. . . ."

Section 4663 states in relevant part that:

(a) Apportionment of permanent disability shall be based on causation.

(b) A physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall address in that report the issue of causation of the permanent disability.

(Lab. Code, § 4663(a), (b).)

As set forth in our en banc decision in *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 607 (Appeals Bd. en banc), emphasis added.):

Section 4663(a)'s statement that the apportionment of permanent disability shall be based on 'causation' refers to the causation of the permanent disability, not causation of the injury, and the analysis of the causal factors of permanent disability for purposes of apportionment may be different from the analysis of the causal factors of the injury itself.

Section 3208.2 states that:

When disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury,

including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit.

(Lab. Code, § 3208.2.)

We are mindful that the issues in the matter before us are complex, but the WCJ's findings must be consistent with both the anti-merger provisions in sections 3208.2 and 5303 and the apportionment provisions in section 4663.

Here, QME Dr. Stowell determined that applicant's specific injury of May 6, 2022 was "predominantly caused by the traumatic accident itself of being assaulted by an inmate-patient during the course of her work." Thus, based on the reporting of Dr. Stowell, applicant met her burden to show that she sustained injury to her psyche on May 6, 2022.

Once the issue of industrial psychiatric injury has been established, an employer may seek to bar its liability for compensation pursuant to section 3208.3(h), which provides that:

No compensation under this division shall be paid by an employer for a psychiatric injury if **the injury was substantially caused** by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.

(Lab. Code, § 3208.3(h), emphasis added.)

It is true that the determination of whether a defendant can successfully prevail on its asserted GFPA defense rests on the issue of causation. However, here, the QME already concluded that the predominant cause of applicant's claimed injury was the assault of May 6, 2022. Moreover, we note further reporting may clarify whether the events of May 6, 2022 were a violent act. If the assault on applicant is considered to be a violent act, then applicant need only show that the actual event was a substantial cause of her injury.

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 referred to as a *Rolda* analysis, based on *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241. The *Cardozo* and *Rolda* cases provide a roadmap for this analysis. After considering all the medical evidence and the other documentary and testimonial evidence of record, the WCJ must make the following determinations:

(1) whether the alleged psychiatric injury involves actual events of employment, **a factual/legal determination for the WCJ;**

(2) if so, whether such actual events were the predominant cause of the psychiatric injury, **a determination that requires competent medical evidence;**

(3) if actual events of employment were the predominant cause of the psychiatric injury, whether any of the events of employment were personnel actions, **a factual/legal determination for the WCJ;**

(4) if so, were any of the personnel actions lawful, nondiscriminatory and in good faith, **a factual/legal determination for the WCJ;**

(5) if so, whether the lawful, nondiscriminatory, good faith personnel actions were a “substantial cause” of the psychiatric injury, **a determination that requires competent medical evidence.**

(*Cardozo, supra*, at 9; *Rolda, supra*, at 245-247, emphasis added.)

Here, it is undisputed that applicant sustained injury to her right wrist, hand, and thumb when she was assaulted by an inmate/patient on May 6, 2022. In other words, although defendant disputes that applicant sustained an injury to her psyche as a result of the assault, defendant does not dispute that applicant was assaulted on May 6, 2022.

Next the WCJ must determine “whether competent medical evidence establishes the required percentage of industrial causation.” (*Cardozo, supra*, at 9; *Rolda, supra*, at 245-247.) 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, supra*, at 621.) Conversely, “[m]edical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board’s findings if it is based on surmise, speculation, conjecture or guess.” (*Heggin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93]; *Zemke v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358] (distinguished on other grounds); *Place v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

Here, applicant was evaluated by QME Dr. Stowell on November 3, 2022. Dr. Stowell examined applicant, took a detailed history, reviewed records, performed diagnostic testing, and issued a report on November 7, 2022. (Exhibit 1, pp. 1-9.) Dr. Stowell was provided additional records and issued supplemental reports on January 20, 2023 (Exhibit 3) and October 16, 2023 (Exhibit A). Although his November 7, 2022 report is somewhat circuitous, Dr. Stowell opined, with reasonable medical probability, that actual events of employment were the predominant cause of applicant's psychiatric injury and that he found no non-occupational causes. (Exhibit 1, pp. 12-13.) He opined that 65% of applicant's psychiatric injury was caused by the assault on May 6, 2022, and he attributed the remaining 35% to unrelated events of employment, including difficulties with co-workers and supervisors leading to a process of progressive discipline beginning in approximately May of 2021. (Exhibit 1, p. 13; Exhibit A, p. 5.)

With respect to steps three, four and five of the *Rolda* analysis, the medical evidence demonstrates that the actual event of employment that caused applicant's injury was the assault. Defendant called applicant's supervisor Monica Griem, who was questioned at trial about disciplinary events in 2021 and 2022. With respect to the actual event at issue, however, Ms. Griem testified that she was no longer applicant's supervisor on May 6, 2022 and, although she heard about the assault, she was not present when it occurred. (Reporter's transcript, October 18, 2023 trial, at 10:20-11:2; MOH/SOE, March 28, 2024 trial, p. 3.) Thus, defendant presented no evidence that the actual event on May 6, 2022, was caused by a GFPA.

Dr. Stowell assigns 35% of applicant's psychological injury to: "Other Problems Related to Employment and its accompanying symptomology is related to personnel actions (Adverse Action) associated with the alleged harassment and discrimination by multiple supervisors." (Exhibit 1, p. 13, emphasis added.) The QME has no authority to decide what is or is not a personnel action in the context of a *Rolda* analysis, this is a determination reserved to the WCJ. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Brooks)* (2013) 215 Cal.App.4th 785 [78 Cal.Comp.Cases 379]; *Rolda, supra, Cardozo, supra.*) Here, the medical reporting discusses events of employment that were not related to the assault of May 6, 2022, but since the claimed injury is the assault, and the QME has concluded that it was the predominant cause of applicant's injury, the question of personnel actions is moot. These other events of employment may well be related to cumulative trauma, but no cumulative injury has been alleged. (See *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234 [58

Cal.Comp.Cases 323]; see *Aetna Cas. & Surety Co. v. Workmen's Comp. Appeals Bd. (Coltharp)* (1973) 35 Cal.App.3d 329, 341 [38 Cal.Comp.Cases 720] [number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB].) Thus, these other events of employment should be considered in the context of apportionment, that is, causation of disability.

The WCJ has the authority to order additional medical evidence when required for substantial evidence. (Lab. Code, §§ 5701, 5906; *Old Republic Ins. Co. v. Workers' Comp. Appeals Bd. (Cortes)* (2020) 85 Cal.Comp.Cases 504, 508 (writ den.); *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924].) Upon return, we recommend that further reporting by Dr. Stowell may be appropriate.

Accordingly, we grant defendant's Petition, rescind the Findings and Award issued by the WCJ on May 21, 2024, substitute new Findings of Fact, and return the matter to the WCJ for further proceedings.



For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued by the WCJ on May 21, 2024 is **RESCINDED** and the following **SUBSTITUTED** in its place:

**FINDINGS OF FACT**

1. Applicant sustained injury arising out of and occurring in the course of employment to her psyche.
2. Applicant's claim is not barred by Labor Code section 3208.3(h).
3. All other body parts are deferred.
4. All other issues are deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**JOSÉ H. RAZO, COMMISSIONER**  
**PARTICIPATING NOT SIGNING**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**AUGUST 13, 2024**

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

**CANDY MOORE  
LAW OFFICES OF BERRY SMITH  
STATE COMPENSATION INSURANCE FUND**

**JB/pm**

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