WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DALEN RANDA, *Applicant*

vs.

COUNTY OF ALAMEDA, permissibly self-insured, administered by AIMS, *Defendants*

Adjudication Number: ADJ11704922

San Francisco 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.

Defendant seeks reconsideration of the "Findings of Fact and Award / Opinion on Decision" (F&A) issued on August 22, 2021, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part that applicant sustained an industrial injury to his psyche through the cumulative period ending on June 25, 2018.

Defendant contends, in pertinent part, that the WCJ's determination that applicant learning of coworkers who were exposed to fentanyl was not an 'actual event of employment' as explained in *Rolda v. Pitney Bowes, Inc.* (2001), 66 Cal.Comp.Cases 241, 245-246 (Appeals Board en banc). Defendant further contends that the WCJ improperly relied upon a news article in reaching her decision. Finally, defendant contends that it was not proper to amend the application in this matter to conform with the proof and that applicant's amended application is barred by the statute of limitations.

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

We have considered the allegations of the Petition for Reconsideration 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 Findings and Award and issue a new Findings

and Award, which clarifies that applicant sustained a specific injury to his psyche, and not a cumulative injury. We otherwise agree with the WCJ that substantial medical evidence exists to find the psychological injury industrial.

FACTS

Applicant worked as a probation unit supervisor for defendant when he alleged a cumulative injury through the period ending on June 25, 2018, to his psyche. (Minutes of Hearing and Summary of Evidence, January 28, 2021, p. 2, lines 9-13, p. 3, lines 40-43.)

Applicant filed his claim on June 25, 2018. (Defendant's Exhibit O, DWC-1 Claim Form, June 25, 2018.) On the DWC-1 claim form applicant described his injury as "Stress, mental health and physical manifestations of stress." (*Ibid*.) The date of injury listed on the initial claim form was June 20, 2018. Applicant stopped working on June 25, 2018. (MOH/SOE, *supra* at p. 3, line 1.)

Applicant was seen by qualified medical evaluator (QME) Stephen Heckman, Ph.D., who authored four reports in evidence and was deposed twice. (Applicant's Exhibits 1 through 6.) It appears that applicant included an attachment to the DWC-1 form, which was not included with defendant's exhibit, but was reviewed by the QME.

> Mr. Randa had attached a list entitled "Stressors" to his claim for psychiatric injury on 6/20/18, and which consisted of 41 points. Considerable time was spent by this examiner in having the claimant elaborate on what the difficulties were that he experienced regarding these various stressors. As there was a certain amount of redundancy, the undersigned has condensed these 41 points down to 28 complaints enumerated by the claimant. It is noted by the undersigned that most, if not all of these various points had been occurring in an ongoing manner, prior to the formal Date of Injury of June 20, 2018. It appears that these stressors created the backdrop against which other, more acute stressors arose, which will be discussed below. Note that, due to condensing these items, there is not a one-to-one correspondence between his list and the discussion below.

(Applicant's Exhibit 1, Report of Stephen Heckman, Ph.D., September 17, 2018, p. 19.)

The 41-point list was not placed into evidence.

Dr. Heckman obtained a history of applicant's complaints, which includes a history of learning about two officers who were exposed to fentanyl on June 22, 2018. (*Id*. at p. 25.) Dr. Heckman took the following history:

> Upon learning of this incident almost immediately after it had occurred, as word travels quickly in the law enforcement community, Mr. Randa reported becoming immediately extremely distressed, as he had previously worked on the same team (the Alameda County Narcotics Task Force) between 2011-2015. During his involvement working on this team he had become very acutely aware that this task force had lost 4 officers, who had been shot and killed on March 21, 2009 by Lovelle Mixon, an individual who had been in violation of his probation, and was fleeing and/or hiding from law enforcement, with a warrant out for his arrest for raping 2 women as well as a girl. Mr. Randa indicated that he knew all 4 of the deceased officers. Apparently, Mr. Mixon had been stopped by 2 officers while driving then after giving a false name, ran out of the vehicle, shot and kt1led the 2 officers, and started to flee.

(*Ibid*.)

Dr. Heckman noted that applicant reported a prior diagnosis of post-traumatic stress disorder (PTSD) while serving in the Navy and being exposed to several life-threatening situations. (*Id*. at p. 46.) There were two incidents where applicant was exposed to the deaths of Navy personnel. (*Ibid*.)

Dr. Heckman noted that applicant's current symptoms initially began in 2009 after the Mixon shooting. (*Ibid*.)

> Mr. Randa indicated that these symptoms, which began with the Mixon incident, persisted for about another 4 years, then began to subside around 2013. The claimant noted that he had worked in other departments, including Internal Affairs in 2015. then several years in Juvenile Probation from 2015-2017, which were less dangerous jobs. However, once [h]e was reassigned to Adult Probation again in May 2017, these symptoms became aggravated. Then, with the recent Fentanyl incident occurring on June 22, 2018, this restimulated his PTSD symptoms, in that it presented him with another life-threatening situation which he himself could be exposed to at any time in his work as a Probation Officer/Probation Officer Supervisor.

(*Ibid*.)

Dr. Heckman diagnosed applicant with an aggravation of pre-existing PTSD. (*Id*. at p. 48.) Dr. Heckman opined that the causation of the aggravation was predominantly industrial as follows:

> After examining all of these possibilities, I hold the clinical opinion that, in all reasonable medical probability, Mr. Randa suffered a compensable psychiatric injury due to the aggravation of his Posttraumatic Stress Disorder, which had previously been in partial remission prior to the events of June 20, 2018 and June 21 2018, but which became much worse in response to current industrial factors as described. It is my clinical opinion that these industrial factors are the predominant factors, surpassing the threshold of >51 % [as well as surpassing the threshold of 35-40% for sudden, extraordinary, and/or violent events] of all possible causative factors in the causation of his psychological injury.

(*Ibid*.)

In a supplemental report, Dr. Heckman clarified that both the 2009 Mixon shooting and the 2018 fentanyl incidents independently caused aggravation to applicant's pre-existing PTSD. (Applicant's Exhibit 2, Report of Stephen Heckman, Ph.D., October 31, 2018, p. 9.)

Thereafter, Dr. Heckman was requested to provide a *Rolda* analysis. Dr. Heckman assigned 10% causation to applicant's service in the Navy, 25% causation to the 2009 Mixon shooting incident, 10% causation to applicant's underlying medical conditions, and 55% causation to the 2018 fentanyl incident. (Applicant's Exhibit 3, Report of Stephen Heckman, Ph.D., October 21, 2019, pp. 2-3.) In assigning the bulk of causation to the 2018 fentanyl incident, Dr. Heckman explained:

> Mr. Randa had been functioning reasonably effectively in his position for approximately a decade, until the "Fentanyl incident" apparently "sent him over the edge", resulting in his experiencing a full-blown panic attack on June 25, 2018, accompanied by heart palpitations, shortness of breath, hyperventilation, dizziness lightheadedness, a feeling of things "closing in" on him, feeling overwhelmed, sweating, shaking, feeling on the verge of tears, then breaking down in an episode of crying, increased tension, inability to focus mentally, intense ringing in his ears, and feeling like "fleeing." He indicated that learning of the fact that these 2 officers experienced severe threat to their lives and safety (as one officer lost consciousness in response to exposure to a cloud of fentanyl residue/dust encountered in entering a motel room suspected of housing a drug operation, while the other officer became severely ill) essentially resulted in him "freaking out"; he explained recollecting having to break down a thousand doors and entering houses and apartments of individuals who had warrants for their arrest, not knowing what awaited him on the other side of the door and if he would ever make it out alive again. The recollection of another life or death event such as this [f]entanyl incident was essentially the "straw that broke the

> camel's back", resulting in the reemergence of his PTSD symptoms, as well as depressive symptoms. It was after the Fentanyl event that these symptoms became severely aggravated.

(*Id*. at p. 3)

DISCUSSION

1. Actual Events of Employment

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. (Cal. Lab. Code, § 3208.3(h).)[1] 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.)

An 'actual event of employment' has been defined by the Court of Appeals 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].)

[1] All future references are to the Labor Code unless noted.

Clearly, the coworkers being exposed to fentanyl is an 'event', in that it took place. Furthermore, it is an event that arose out of employment as these are applicant's coworkers and the interactions and relationships with coworkers are integral to one's employment. While we do not suggest that every interaction with a coworker arises out of and is within the course of employment; here, the event was the near-death experiences of two coworkers while performing their job. This event clearly arises out of employment. Accordingly, the fentanyl event is an actual event of employment.

Defendant argues that the coworkers' exposure to fentanyl was not an actual event of employment because the coworkers were in a different department than applicant. This fact does not alter the above analysis. There is no requirement that the actual event of employment occur within the department where applicant works. The only requirement is that an event arise out of the employee's working relationship, which applicant has proven.

Defendant next argues that the WCJ improperly relied upon Exhibits 25, 26 and 27, which were news articles related to the 2018 fentanyl incident. Defendant objected to these exhibits as being irrelevant, which the WCJ overruled. Defendant appears to argue that the WCJ used these news articles to establish applicant's injury was industrial. This does not appear to be the case. However, to be clear, the finding of industrial injury in this matter is based upon applicant's testimony and the opinions of the QME.

2. Amending the Pleadings and the Statute of Limitations

Next, defendant argues that applicant's amending the pleadings to conform with the proof violates the statute of limitations. We do not agree.

The running of the statute of limitations is an affirmative defense, and therefore, the burden of proof as to whether an application for adjudication is barred by the statute of limitations rests with defendant, (§§ 5409, 5705; see *City of Fresno v. Workers' Comp. Appeals Bd.* (*Johnson*) (1985) 163 Cal. App. 3d 467, 471 [209 Cal. Rptr. 463, 50 Cal. Comp. Cases 53].) The limitations period for which a claim must be filed is the later of (1) one year from the date of injury, (2) one year from the last provision of disability payments per Labor Code sections 4650 et. seq., or (3) one year from the last provision of medical benefits. (*Ibid*.)

Labor Code section 5709 states that "No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division…" (§ 5709.) Failure to comply with the rules as to details is not jurisdictional.

(citation)" (*Rubio v. Workers' Comp. Appeals Bd,* (1985) 165 Cal. App. 3d 196, 200-201, 211 Cal. Rptr. 461 (*Rubio*).) "[I]nformality of pleading in proceedings before the Board is recognized and courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (citation)" (*Rubio*, *supra*, 165 Cal. App. 3d at p. 200; see Cal. Code Regs., tit. 8, § 10617 [an application for adjudication of claim "shall not be rejected for filing" because it "contains inaccurate information…"].).) "If a party is disadvantaged by the insufficiency of a pleading, the remedy is to grant that party a reasonable continuance to permit it to prepare its case or defense, (citations)" (*Rubio*, *supra*, 165 Cal. App. 3d at p. 200–201 2.)

Consequently, workers' compensation "[p]leadings may be amended by the Workers' Compensation Appeals Board to conform to proof." (Cal. Code Regs., tit. 8, § 10517.) An amended application that "sets forth the required detail" but is filed more than one year from an applicant's date of injury "relates back to the original timely application and preserves the jurisdiction of the Board to hear the matter." (*Rubio*, *supra*, 165 Cal. App. 3d at p. 199–200.)

> As a general principle of pleading, an amended complaint or other pleading serving a similar purpose supersedes the original. (citation) Although the amended pleading supersedes the original as a subsisting pleading, it does not wholly nullify the fact of filing the original (*Ibid*.). "The time of filing the original is still the date of commencement of the action for purposes of the statute of limitations (except where a wholly different case is pleaded by the amendment)." (citation)
>
> Applicant's amended application seeking benefits on the theory of a cumulative injury to her heart does not allege a new and different cause of action. (See *Bland v. Workmen's Comp. App. Bd*. (1970) 3 Cal. 3d 324, 330-331 [90 Cal. Rptr. 431, 475 P.2d 663]; *Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal. App. 3d 196, 200 [211 Cal. Rptr. 461]; see also § 5303; *Chavez v. Workmen's Comp. Appeals Bd.* (1973) 31 Cal. App. 3d 5, 14 [106 Cal. Rptr. 853]; *Beveridge v. Industrial Acc. Com*. (1959) 175 Cal. App. 2d 592, 598 [346 P.2d 545].) Our holding that an amendment substituting a claim for cumulative rather than specific injury does not constitute a new and different cause of action is limited to circumstances such as these in which the disability is the same and the injury arose from the same set of facts, and is consistent with the guiding principle that claims should be adjudicated on substance rather than formality of statement. (See *Beveridge v. Industrial Acc. Com*., *supra*, at p. 598.)

(*Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal. App. 3d 1102, 1116 [252 Cal. Rptr. 868, 53 Cal. Comp. Cases 502] (*Bassett-McGregor*).)

The workers' compensation statutes of limitations must be "liberally construed in favor of the employee…and such enactments should not be interpreted in a manner which will result in a loss of compensation." (*Bland v. Workers' Comp. Appeals Bd*. (1970) 3 Cal. 3d 324, 330 [90 Cal. Rptr. 431, 475 P.2d 663, 35 Cal. Comp. Cases 513); *Bassett-McGregor*, *supra*, 205 Cal. App. 3d at p. 1117.) Thus, "[i]n workers' compensation proceedings, as in civil proceedings generally, "[the] statute of limitations will not bar amendment of an application where the original application was timely and the amendment does not present a different legal theory or set of facts constituting a separate cause of action. (Citations.)" (*Rubio*, *supra*, 165 Cal. App. 3d at p. 200 (internal citations and quotations omitted).)

Here, applicant pled a cumulative injury to his psyche. Applicant is not required to list every event that occurred in the course of his occupation on a DWC-1 claim form. Our pleading requirements are not that stringent. Notwithstanding this observation, it appears that applicant included an attachment to the DWC-1 claim form listing 41 issues that he felt caused psychological injury. The fact that the QME later found that the fentanyl incident was the predominant cause of injury and not the other factors that applicant listed, does not preclude applicant, or the Appeals Board from amending the application to conform to the facts.

3. Specific vs. cumulative injury

There does appear to be one error in the F&A, in that applicant's injury is specific and not cumulative in nature.

> An injury may be either: (a) "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment.

(§ 3208.1.)

The QME's reporting establishes predominant causation to a single event, the 2018 fentanyl incident. This is an injury that occurred as a result of one incident. Thus, it is specific and not cumulative.

Accordingly, as our Decision After Reconsideration we will rescind the August 22, 2021 F&A and substitute a new F&A, which finds that applicant sustained a specific injury on June 25, 2018. All other issues are deferred to the parties to adjust.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued on August 22, 2021, is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Dalen Randa, who was 51 years old on the date of injury, while employed by the County of Alameda as a Deputy Probation Officer sustained a specific industrial injury to his psyche on June 25, 2018.

2. At the time of the injury, the employer was permissibly self-insured.

3. Applicant's primary treating physician is psychologist, Dr. Clyde Burch.

4. The PQME in this case is Dr. Stephen J. Heckman.

5. Mr. Randa is entitled to all workers' compensation benefits as a result of this workers' compensation injury to his psyche, including, but not limited to medical treatment.

AWARD

AWARD IS MADE in favor of **DALEN RANDA** and against **COUNTY OF ALAMEDA** as follows:

1. Applicant is entitled to all workers' compensation benefits to which he is entitled as a result of this workers' compensation injury to his psyche, including, but not limited to medical treatment.

2. All other issues are deferred at this time.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

JOSE RAZO, COMMISSIONER
PARTICIPATING, NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 29, 2024

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

DALEN RANDA
JONES CLIFFORD, LLP
FINNEGAN, MARKS, DESMOND & JONES

EDL/mc

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