WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DEBRA THOMAS, ***Applicant***

vs.

CHUCKAWALLA VALLEY STATE/CDCR,
legally uninsured; ;
STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ14800698
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the July 1, 2024 Findings and Award wherein the workers' compensation administrative law judge (WCJ) found that applicant did not sustain industrial psychiatric injury while employed as an academic teacher during the period from December 1, 2017 through April 7, 2021. Based on this finding, the WCJ ordered that applicant take nothing by way of her claim.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons stated below, we will grant reconsideration, rescind the July 1, 2024 Findings and Award, and return this matter to the Presiding Judge for reassignment to a new WCJ for a trial de novo. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the new WCJ's decision.

Preliminarily, we note that former Labor Code[1] section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

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[1] All further statutory references are to the Labor Code, unless otherwise noted.

> (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.
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> (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 5, 2024, and 60 days from the date of transmission is October 4, 2024. This decision is issued by or on October 4, 2024, so that we have timely acted on the petition as required by Labor Code 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 and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on August 5, 2024, and the case was transmitted to the Appeals Board on August 5, 2024. 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 Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 5, 2024.

We now turn to the merits.

The Opinion on Decision states:

> Debra Thomas, born [], while employed during the period of December 1, 2017, through April 7, 2021, as an Academic Teacher, Occupational Group No. 212, at Blythe, California, by Chuckawalla Valley State, an academic institution at CDCR, claims to have sustained injury arising out of and in the course of employment to her psyche. After review of the qme reporting and trial testimony I do not find any psychiatric injury as a result of her employment with CDCR.
>
> The applicant's testimony regarding the incident with the prison security guard while entering work on May 14th or 15th of 2019, she relates she left her car in the parking lot and proceeded to the picnic table to sign in for work. As she walked to the picnic table where the sign in sheet was, an unknown man[2] began yelling at her to get back in her car. She described him as "rabid", yelling at her. Her supervisor was standing at the picnic table and said nothing. She eventually did sign in.
>
> What the applicant failed to inform the court was that the sign-in procedures and the entry to the facility had changed in the weeks before this event. Since it relates to prison security, I believe this is a "good faith" action on the part of the employer precipitated by the applicant's failure to observe the new protocols in place for signing onto the facility.
>
> The balance of her complaints and majority of her upset, appear in a power struggle taking place in her head for the most part, with a Mr. Fisher who is no longer at the same place of employment. The QME attributes 85% of her alleged psychiatric injury and emotional stress level due to fear of termination due to the actions of Mr. Fisher."[3]
>
> She imagined he was on a campaign to undermine her at the facility. There was no action taken against her by this man and despite her protests of physical fear, there was never any manifest act. The testimony given by the applicant is void of any complaints of Mr. Fisher and what was learned came from the QME reporting and testing which helped explain the applicant's perceptions.
> The other event she testified to was the training session with the instructor named Mr. Briones. She had no personal interactions with him and she does not know him. During the training, she described him as having a very agitated demeanor. The only assessment made was observational of the trainer's interaction with another student, Ms. Lee. I cannot see why the applicant is so invested in the interactions between other staff that did not affect her.
>
> The staff that testified at her trial had no recollection of the applicant in the described situations.

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[2] The front gate security guard.

[3] Page 3

Ultimately, the applicant is diagnosed with an adjustment disorder and not any actual psychiatric disability. I did not find her to be credible regarding psychiatric injury and I do not find she sustained any psychiatric injury during her employment that was not related to or the result of a good faith personnel action. I do not reach Rolda in this determination.

(Opinion on Decision, at pp. 1-2.)

The WCJ's Report states as follow:

FACTS

The facts and arguments in applicant's Petition for Reconsideration did not come from the applicant's trial testimony. I also distrust most things spoken of with such hyperbole.

The applicant has been employed in the correctional system since 1997 and at her current location since 2016 and continuing.

At trial the applicant testified that she has the same symptoms today as she did after the events she alleges to have injured her. She does not take medication nor was she attending therapy.

Moreover and of significant importance is that the QME's mutliaxial disagnosis [sic] was Adjustment Disorder, not a psychiatric category.

An adjustment disorder is characterized by "distress that is out of proportion to the severity or intensity of the stressor, taking into account the external context and the cultural factors that might influence symptom severity and presentation."[4] Here we have a black female employed as a teacher at a medium security prison who expressed concern over confederate flags on some correctional officer's cars. This is an unfortunate expression of efforts to have an identity, like a political party or whatever people advertise on a bumper sticker to claim an identity.

The event with the security guard yelling at her during her disembarking from her car upon arriving at the prison was due to her violation of new security protocols. This would be a good faith personnel action implementeed [sic] for the safety and security of prison personnel.

The event with the instructor yelling at the woman seted [sic] next to her is curious as she is claiming injury due to an event between another person and the instructor. This event was not memorable to the instructor, Mr. Briones, and it

[4] DSM V

did not involve the applicant. I do not believe she sustqined [sic] any injury as a result of this event.

The applicant's interaction with a coworker, Mr. Fisher, were not testified to at trial. There is no other evidence to support any threatening behavior by this coworker apart from what she related to the examining physician.

The balance of her complaints and majority of her upset appears in a power struggle taking place in her head for the most part, with a Mr. Fisher who is no longer at the same place of employment. The QME discussed her fear of termination due to the alleged actions of Mr. Fisher.

She imagined he was on a campaign to undermine her at the facility. There was no action taken against her by this man and despite her protests of physical fear, there was never any manifest act. The testimony given by the applicant is void of any complaints about Mr. Fisher.

(Report, at pp. 1-3.)

DISCUSSION

The decisions of the Workers' Compensation Appeals Board must be supported by substantial evidence. (Lab. Code, § 5903; *LeVesque v. Worker's Comp. Appeals Bd*. (1970) 1 Cal.3d. 627, 635-637 [35 Cal.Comp.Cases 16].) Furthermore, while we accord great weight to WCJs' findings on the credibility of witnesses, if they are supported by "ample, credible evidence" or "substantial evidence," we exercise independent judgment as to whether the evidence satisfies the required elements of the applicable law and may reject findings of the WCJ upon our review of the record. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500].)

The Labor Code provides that "all judicial powers" and original jurisdiction in workers' compensation matters are vested with the Appeals Board itself, (Lab. Code, §§ 111(a), 5300, 5301.) The WCJs conduct trials and make initial determinations pursuant to a delegation by the Appeals Board. (Lab. Code, §§ 5309, 5310; Cal. Code Regs., tit. 8, § 10348.) A decision of a WCJ only becomes the decision of the Appeals Board if reconsideration is not granted. (Lab. Code, § 5900 et seq.; Cal. Code Regs., tit. 8, § 10348.)

Moreover, section 5906 provides that "[u]pon the filing of a petition for reconsideration ... the appeals board may, with or without further proceedings and with or without notice affirm, rescind, alter, or amend the order, decision,

> or award made and filed by the appeals board or the workers' compensation judge ..." (Lab. Code, § 5906.) Similarly, section 5908 provides that "[a]fter ... a consideration of all the facts the appeals board may affirm, rescind, alter, or amend the original order, decision, or award." (Lab. Code, § 5908.)
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> Based on these statutes, it is settled law that 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. (*Ibid*.; e.g., also, *Tate v. Industrial Acc. Com*. (1953) 120 Cal.App.2d 657, 663 [18 Cal.Comp.Cases 246]; *Pacific Employers Ins. Co. v. Industrial Acc. Com. (Sowell)* (1943) 58 Cal.App.2d 262, 266-267 [8 Cal.Comp.Cases 79].)
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> (*Pasquotto v. Hayward Lumber* (2006) 71 Cal.Comp.Cases 223, 229 (Appeals Board en banc.)

Based on our review of the record in this matter, we do not agree with the WCJ's analysis and reject her credibility determination. A psychiatric injury may become compensable when it causes either disability or a need for medical treatment and it is diagnosed "using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine." (Lab. Code, §§ 3208.3(a); 139.2.) In order to establish the compensability of a psychiatric injury under section 3208.3, an injured worker has the burden of establishing "by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury." (Lab. Code, § 3208.3(b)(1).) "Predominant as to all causes" means that "the work-related cause has greater than a 50 percent share of the entire set of causal factors." (*Dept. of Corrections v. Workers' Comp. Appeals Bd. (Garcia)* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356, 1360]; *Watts v. Workers' Comp. Appeals Bd.*

(2004) 69 Cal.Comp.Cases 684, 688 (writ den.); *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 246 (Appeals Board en banc).)

In this case, psychiatric panel qualified medical evaluator (PQME) Sanjay Agarwal, M.D., appears to find an Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic, predominantly caused by events of applicant's employment, 100% attributable to the behavior of her supervisor, Mr. Fisher, which Dr. Agarwal appears to divide 85% to "emotional stress level due to fear of termination due to the actions of Mr. Fisher" and 15% to "emotional stress level due to fear of termination due to the actions of Mr. Fisher." (Joint Exhibit A, Dr. Ararwal's 12/20/21 report, at pp. 2-3.) In a subsequent report, Dr. Agarwal stated that "Following two careful psychiatric evaluations, I have determined that the events of Ms. Thomas's employment were the predominant cause of the mental disorder and need for treatment." (Joint Exhibit C, Dr. Agarwal's 6/12/23 report, at p. 41.) He further appears to find permanent disability and need for future medical treatment. (*Id*., at p. 2.) Dr. Agarwal then appears to engage in a *Rolda*[5] analysis. However, the affirmative defense of good faith personnel action was not raised by defendant at trial and is therefore not at issue in this case.

The WCJ does not provide any analysis regarding the substantiality of Dr. Agarwal's opinion but rather appears to substitute the doctor's opinion with her own stating, "The balance of [applicant's] complaints and majority of her upset appears in a power struggle taking place in her head for the most part, with a Mr. Fisher who is no longer at the same place of employment." The WCJ also fails to provide sufficient explanation for her finding that a diagnosis of Adjustment Disorder is "not a psychiatric category" which appears to be inconsistent with the definition of psychiatric injury in section 3208.3(a). A WCJ may not substitute her own opinion on matters medical diagnosis. "Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a commission finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. [Citation.] Expert testimony

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[5] Referring to *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 246 (Appeals Board en banc).

is necessary 'where the truth is occult and can be found only by resorting to the sciences.' [Citation.]" (*Peter Kiewit Sons v. Ind. Acc. Comm. (McLaughlin)* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].)

In addition, given that the good faith personnel action defense was not raised or litigated at trial, the WCJ's seeming reliance on it is inappropriate and a violation of due process. Lastly, we express concern that the WCJ's Report would include reference to the applicant's race and gender in connection with the applicant's purported reaction to the display of confederate flags, where this information was not part of the QME's analysis nor part of the trial testimony.

We acknowledge the WCJ's reservations regarding applicant's credibility. And while we accord great weight to WCJs' findings on the credibility of witnesses, if they are supported by "ample, credible evidence" or "substantial evidence," we exercise independent judgment as to whether the evidence satisfies the required elements of the applicable law and may reject findings of the WCJ upon our review of the record. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500].) The Appeals Board is empowered on reconsideration to resolve conflicts in the evidence, to make its own credibility determinations, and to reject the findings of the WCJ and enter its own findings on the basis of its review of the record. (*Rubalcava v. Workers' Comp. Appeals Bd.* (1990) 220 Cal.App.3d 901, 908.)) However, while we reject the WCJ's credibility determination for the reasons stated above, we do not make our own credibility determination here but instead will send this back to the presiding judge for reassignment to a new WCJ for a trial de novo pursuant to our authority under section 5310[6].

[6] Section 5310 states: "The appeals board may appoint one or more workers' compensation administrative law judge in any proceeding, as it may deem necessary or advisable, and may refer, remove to itself, or transfer to a workers' compensation administrative law judge the proceeding on any claim…."

For the foregoing reasons,

IT IS ORDERED that reconsideration of the July 1, 2024 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the July 1, 2024 Findings and Award is **RESCINDED** and that the matter is **RETURNED** to the presiding judge for reassignment to a new WCJ for further proceedings and decision by the new WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

JOSEPH V. CAPURRO, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 4, 2024

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

DEBRA THOMAS
KOSZDIN, FIELDS & SHERRY
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*