

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

**STEVEN SANCHEZ, *Applicant*,**

**vs.**

**THE ALLIANCE FOR COMMUNITY WELLNESS  
dba LA FAMILIA COUNSELING SERVICE, and GUIDEONE INSURANCE, *Defendants***

**Adjudication Number: ADJ19820146  
Oakland District Office**

**OPINION AND ORDER  
DENYING PETITION FOR REMOVAL**

We have considered the allegations of the Petition for Removal following the January 14, 2025 Minute Order taking the above matter off calendar, as well as the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated below, as well as the reasons stated in the WCJ's Report, which we adopt and incorporate, we will deny reconsideration.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal. App. 4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) As noted in the Report, the Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

Defendant's Petition may therefore only be granted upon showing that not bifurcating and setting for trial the issue of the post-termination defense set forth in Labor Code<sup>1</sup> section 3208.3, subdivision (e) will cause substantial prejudice and irreparable harm, and that reconsideration will not provide an adequate remedy in the future.

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

While the Petition does set forth reasons why judicial economy could be served by bifurcating the issue of the post-termination defense set forth in section 3208.3, subdivision (e), in the instant case it cannot serve the interest of judicial economy, because the record requires the development of medical evidence on that issue. Accordingly, the WCJ's decision not to proceed on that issue cannot cause any prejudice or harm

Section 3208.3 lists a number of provisions pertaining to the compensability of an injury to the psyche. First, in subdivision (a), it provides that a psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, 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. The application of such diagnostic criteria clearly requires the substantial opinion of an expert in psychology or psychiatry.

Next, subdivision (b) states that in order to establish that a psychiatric injury is compensable, an employee must demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury. This, too, clearly requires an expert medical opinion.

Subdivision (c) of section 3208.3 makes clear the intent of the legislature "to establish a new and higher threshold of compensability for psychiatric injury under this division." This explains why subdivision (a) requires a diagnosable mental disorder causing disability or need for medical treatment, and why subdivision (b) imposes the additional requirement of predominant industrial causation, or substantial (35 percent or greater) industrial causation for the victim of a violent act. Subdivision (d) adds yet another new and higher threshold by requiring that the employee has been employed by the defendant employer for at least six months, unless the psychiatric injury was caused by a sudden and extraordinary employment condition.

Section 3208.3, subdivision (e) contains a fourth element of the new and higher threshold for injuries to the psyche, in the form of a post-termination defense.<sup>2</sup> It is the applicability of this subdivision that defendant believes it is entitled to bifurcate and try separately from all other issues. Subdivision (e) provides as follows:

Where the claim for compensation is filed after notice of termination of employment or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury and one or more of the following conditions exist:

(1) Sudden and extraordinary events of employment were the cause of the injury.

(2) The employer has notice of the psychiatric injury under Chapter 2 (commencing with Section 5400) prior to the notice of termination or layoff.

(3) The employee's medical records existing prior to notice of termination or layoff contain evidence of treatment of the psychiatric injury.

(4) Upon a finding of sexual or racial harassment by any trier of fact, whether contractual, administrative, regulatory, or judicial.

(5) Evidence that the date of injury, as specified in Section 5411 or 5412, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

This subdivision is clearly not intended to apply where actual events of employment were predominant as to all causes of injury to the psyche, *and* one of the other five numbered conditions exists. While some of the numbered paragraphs under subdivision (e) could be addressed by non-medical evidence, the issue of predominant industrial causation of psychiatric injury must be addressed by a substantial expert opinion.

Furthermore, subdivision (h) of section 3208.3 imposes yet another threshold of compensability by providing that an injury to the psyche is not compensable if it was substantially caused by a lawful, nondiscriminatory, good faith personnel action. This defense is also asserted in the Petition, at page 2, lines 2-3. Application of this threshold requires medical expert opinion,

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<sup>2</sup> The post-termination defense set forth in section 3600, subdivision (a), paragraph (10), which is referenced at page 2, line 4 of the Petition, expressly does not apply to "psychiatric injuries governed by subdivision (e) of Section 3208.3."

as well as factual determinations, following a multilevel analysis set forth in *Rolda v. Pitney Bowes* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc).

The burden of proof by a preponderance of the evidence shall rest with the party asserting the issue. (Lab. Code, § 3202.5.) While this does place the burden upon the employee to prove an industrial injury to the psyche, it is the defendant who is asserting the issue of whether section 3208.3, subdivision (e) bars applicant from receiving benefits, an affirmative defense, which likewise necessitates reliance on substantial medical evidence.

Furthermore, the claimant's burden of proof does not excuse the claims administrator's duty to investigate the claim. (Cal. Code Regs., tit. 8, § 10109, subdivisions (a) and (b).) Under Administrative Director Rule 10109, the claims administrator must conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or claim for a workers' compensation benefit, and may not restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather the pertinent information. The only way to determine whether the applicant in this case is entitled to workers' compensation benefits is to obtain a substantial expert opinion from a psychologist or psychiatrist, whose causation analysis can be used to apply section 3208.3.

Accordingly, the parties will need to obtain a medical opinion before any issue or issues under section 3208.3 can be tried, regardless of whether those issues are bifurcated.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**MAY 12, 2025**

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

**STEVEN SANCHEZ  
ABRAMSON LABOR GROUP  
GUIDEONE INSURANCE LITIGATION COUNSEL**

**CWF/cs**

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

**REPORT AND RECOMMENDATION ON  
PETITION FOR REMOVAL  
NOTICE OF TRANSMISSION OF CASE TO THE RECONSIDERATION  
UNIT OF THE APPEALS BOARD**

By timely, verified petition filed on January 21, 2025, defendant seeks removal to the appeals board of the decision to take the matter off calendar for further discovery, and to deny defendants request for a bifurcated trial on the issue of post-termination defense. The case was heard at a Mandatory Settlement Conference and Minutes of Hearing were served on January 14, 2025. Petitioner, hereinafter defendant, contends that the decision to take the matter off calendar to develop the record and to deny a bifurcated trial was not proper and filed a petition for removal.

Under Title 8 rule 10955, defendants must show in their petition for removal significant prejudice or irreparable harm. In this matter defendants have not demonstrated that they suffer any significant prejudice or irreparable harm.

This matter was set for a mandatory settlement conference on January 14, 2025 based on the declaration of readiness to proceed filed by defendants on December 12, 2024. The date of injury for this matter is a cumulative trauma through September 12, 2024 with an injury to the nervous system, stress and psychiatric, head injury, and teeth. The specific issues raised in the declaration of readiness to proceed were compensation rate, temporary disability, permanent disability, AOE/COE, rehabilitation, self-procured medical treatment, future medical treatment, discovery and post- termination defense.

The applicant's attorney filed a timely objection to the declaration of readiness to proceed on the grounds that crucial discovery was still ongoing and closure of discovery was premature, that the applicant was in the process of selecting and setting an evaluation with a Panel QME evaluator and that evaluation should be completed prior to the matter being set for trial and that the matter was not ripe for settlement.

In this case, with exception to the issue of employment, the defendants filed all issues, including the post termination as the principal issues in their declaration of readiness to proceed. As indicated above, one -of the issues raised was discovery. Applicants attorney filed a timely objection to the declaration of readiness to proceed, indicating their basis for their objection which included that they were in the process of setting a panel qualified medical evaluation.

Title 8 Rule 10787(a) states that:

The party shall submit for decision all matters properly and issue at a single trial and produce at the trial all necessary evidence, including witnesses, documents, medical reports, payroll statements, and all other matters considered essential in the proof of a parties claim or defense. However, a Worker's Compensation judge may order that the issues in a case be bifurcated and tried separately upon showing of good cause.

Based on the above, an order was issued for the matter to go off calendar to complete discovery and for the matter to proceed to trial on all issues when appropriate discovery was done. As indicated in Title 8 Rule 10787(a), the party shall submit for a decision, all matters properly an issue at a single trial, and a Worker's Compensation judge can order that the matter be bifurcated based on their discretion. Based on applicant's timely objection, the matter was taken off calendar to complete the imminent medical legal evaluation and complete the medical discovery. Therefore, it is a more efficient utilization of judicial resources to finish the medical discovery, which was imminently around the corner, and set all issues at that time which defendants raised in their declaration of readiness to proceed.

Under Title 8 rule 10955, defendants failed to meet the requirements for a petition removal as there is no demonstration of significant prejudice or irreparable harm. They will have their case heard at trial to address the issues listed in their declaration of readiness to proceed and therefore, do not suffer any significant prejudice or irreparable harm.

Further by bifurcating the case, should the applicant prevail, a second trial would need to be held, which could be significantly delayed should the appeals process have to run on the first underlying trial. Since the case is denied, defendants are not currently having to pay any benefits in the case, and any delay in that process would only delay the case further.

**RECOMMENDATION:**

For the above reasons, I recommend denying the petition in its entirety.

Date: 2/5/25

Sarah B. Carr  
Workers' Compensation Judge