WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

TARRIEL HOPPER, *Applicant*

vs.

CITY OF LOS ANGELES, permissibly self-insured, administered by INTERCARE HOLDINGS INSURANCE SERVICES, INC., *Defendants*

Adjudication Numbers: ADJ6620180
Los Angeles District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Amended Findings of Fact and Order/Award (F&O) issued on January 27, 2025, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as a police officer by defendant during the period January 1, 2004 through February 2, 2008, applicant sustained injury arising out of and in the course of employment to his psyche; (2) an award was issued based on the parties' Stipulations with Request for Award dated April 3, 2012 for 17% permanent disability; (3) applicant was employed from March 1997 until his termination on July 14, 2009, based on a three day Board of Rights hearing; (4) applicant established a prima facie claim of Labor Code section 132a[1] discrimination; (5) defendant did not have a legitimate business reason for the discrimination; and (6) defendant discriminated against applicant for having a work-related injury pursuant to section 132a.

The WCJ ordered that the petition for section 132a benefits be granted and awarded benefits to applicant in an amount to be adjusted by the parties, with jurisdiction reserved to the WCJ in the event of a dispute.

Defendant contends that applicant failed to establish his prima facie section 132a claim, and, in the alternative, that it established its business necessity defense.

We received an Answer from applicant.

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report.[2] Based on our review of the record, and for the reasons stated below, we will deny the Petition.

FACTUAL BACKGROUND

On September 20, 2019, we ordered that the record be further developed regarding the issues of whether applicant could establish his prima facie section 132a claim, and, if so, whether defendant disciplined and terminated applicant for a legitimate business reason. (Opinion and Decision After Reconsideration, September 20, 2019, p 12:19-21.) In our decision, we provided the following factual background:

> While employed as a police officer by defendant during the period from January 1, 2004 through February 2, 2008, applicant sustained injury to his psyche.
>
> On April 3, 2012, the parties resolved the case in chief by Stipulations with Request for Award, stipulating that applicant is entitled to temporary total disability benefits for the periods February 3, 2008 through February 10, 2008, March 4, 2008 through March 14, 2008, March 17, 2008 through November 3, 2008, and January 6, 2009 through March 7, 2011. (Ex. 2, Stipulations with Request for Award, October 8, 2014, p. 7.)
>
> On October 8, 2014, the matter proceeded to trial, and the WCJ deferred the issue of applicant's section 132a petition for trial at a later date. (Minutes of Hearing and Summary of Evidence, October 8, 2014, p. 2:23-24.)
>
> The parties stipulated that applicant was employed from March 17, 1997 until he was terminated on July 14, 2009. (*Id*., p. 2:7-10.)
>
> The WCJ admitted applicant's exhibits entitled Management Rules & Procedure, Stipulations with Request for Award, LAPD Complaint No CF No 08-001039 dated March 6, 2008, All Medical Reports, Downgrade & Administrative Transfer dated February 21, 2008, Emails from October 17, 2008 through November 21, 2008, and Termination Notice dated June 30, 2009, into evidence. (*Id*., p. 5:5-6; Ex. 1, Management Rules & Procedure; Ex. 2, , Stipulations with Request for Award; Ex. 3, LAPD Complaint No CF No 08-001039 dated March 6, 2008; Ex. 4, All Medical Reports; Ex. 5, Downgrade & Administrative Transfer dated February 21, 2008;

[2] Commissioner Sweeney, who was on the panel that issued a prior decision in this matter is no longer serving at the Appeals Board. Another panelist was assigned in her place.

Ex. 8, Emails from October 17, 2008 through November 21, 2008; Ex. 18, Termination Notice dated June 30, 2009.)

The LAPD Complaint states as follows:

On March 4, 2008, at 0615 hours, Sergeant Hopper did not report to duty as scheduled. His immediate supervisor (Lieutenant I Stephanie Moten Serial No. 26896, Hollywood Patrol Division), left a voice message on Hopper[']s cellular telephone inquiring about his status. Hopper returned the telephone call at 0715 hours, and advised Lt. Moten that he had an Injury on Duty (IOD) appointment at 0730 hours. He further advised that if he did not return to work that he should be carried on sick status. Lt. Moten directed Hopper to notify her at the conclusion of his doctor[']s appointment with an update of his status. After not being notified as of 1510 hours, Lt. Moten left a voice message on Hopper[']s cellular telephone directing that he contact her with an update of his status. The telephone call was never returned.

The following day on March 5, 2008, at 0615 hours, Lt. Moten located a doctor[']s note from Hopper in her in box. On that same date, Lt. Moten checked her email that indicated Hopper sent an electronic message at 2033 hours regarding his status for March 4, 2008 (See Addenda) . . .

The Department alleges that Sergeant Hopper failed to report for work as scheduled on March 4, 2008.

The Department alleges that Sergeant Hopper failed to notify his immediate supervisor after being directed to do so in a timely manner with an update of his current status.
(Ex. 3, LAPD Complaint No CF No 08-001039 dated March 6, 2008, p. 2.)

The Management Rules and Procedure states as follows:

Supervisors shall follow the below procedures regarding occupational injury or illness:

Upon becoming aware of a reported injury or illness, supervisors shall immediately complete the Employer's Report of Occupational Injury or Illness form and shall forward a rough draft of the form via their GroupWise e-mail account to MedicalLiaison@lapd.lacity.org.
(Ex. 1, Management Rules and Procedure, p. 2.)

The exhibit entitled All Medical Reports includes the following: (1) documentation of applicant's appointments with his medical provider on various dates, including three separate appointments on February 4, 2008; (2) a Kaiser Visit Verification Form, advising that applicant was seen on February 6, 2008, and unable to attend work from February 3, 2008 through February 10, 2008; (3) a copy of the

physician's note entitled Documentation of Medical Impairment, dated March 4, 2008, restricting applicant from work for four calendar days; and (4) an email from applicant to his supervisor, Lieutenant Stephanie Moten dated March 4, 2008, at 8:33 p.m., notifying her that his physician had restricted him from duty, and that he had deposited a copy of the physician's note in her box. (Ex. 4, All Medical Reports, pp. 1-6.)

The Termination Notice states that defendant removed applicant from his employment with a total loss of pay because he had committed five disciplinary offenses (discussed below). (Ex. 18, Termination Notice, June 30, 2009, p. 1.)

The WCJ also admitted defendant's exhibit entitled Board of Rights Transcript dated June 29, 2009, into evidence. (Minutes of Hearing and Summary of Evidence, October 8, 2014, p. 6:3-4; Ex. H, Board of Rights Transcript.) The transcript refers to six allegations of misconduct on the part of applicant, including count 1, failing to follow a direct order on February 11, 2008; count 2, making a false statement to a commanding officer on February 14, 2008; count 5, failing to timely notify defendant of an absence from work on March 4, 2008, and count 6, failing to notify a supervisor in a timely manner regarding work status on March 4, 2008. (Ex. H, Board of Rights Transcript, June 29, 2009, pp. 4:7-5:2.) Defendant found applicant guilty on all of these counts, except count 6. (*Id*., pp. 7:20-14:13.) The transcript also memorializes statements made by applicant, alleging that defendant brought disciplinary complaints against him simply because he used sick time and "us[ed] the discipline system to come after me." (*Id.*, pp. 40:1-41:8.)

On December 28, 2015, the matter proceeded to continued trial of the section 132a petition. (Further Minutes of Hearing and Summary of Evidence, December 28, 2015.)

The WCJ admitted into evidence an email chain between defendant's claims adjuster and defendant's payroll department entitled E-Mail from Sandra Brito to Paul Chambers, evidencing that as of September 10, 2009, defendant's claims adjuster understood that applicant was off work as a result of an injury on duty on dates including February 3, 2008 through March 16, 2008. (Ex. 22, E-Mail from Sandra Brito to Paul Chambers, p. 2.) The emails also show that defendant accepted applicant's claim on December 19, 2008. (*Id*.)

At trial, applicant testified that that he took time off work in February 2008 for industrial injuries, namely stress manifested by symptoms of anxiety, heart palpitations, and difficulty sleeping and aggravation of a prior back and neck injury. (Further Minutes of Hearing and Summary of Evidence, December 28, 2015, 3:2-3, 3:8-9.) He received treatment from defendant's psychologist after his involvement in a fatal officer-involved shooting. (*Id*., p. 3:6-7.) He also went to Kaiser, and his physician there took him off work in February 2008. (*Id*., 3:10-11.) He was notified by letter that his employment was being terminated in July 2009

> as a result of a Board of Rights hearing held as a result of his industrial injury. (*Id*., p. 2:20-22.)
>
> He notified defendant of his industrial injury by submitting a slip to the Injury on Duty coordinator, Sergeant Scott, but was never contacted about his submission. (*Id*., p. 3:16-19.) The record before us, however, does not include evidence of when he submitted the slip.[fn] When an injury form is filled out, one copy is given to the injured employee and another copy proceeds through the chain of command, but applicant was not given the form. (*Id*., p. 3:21-23.)
> (Opinion and Decision After Reconsideration, September 20, 2019, pp. 2:2-5:2.)

On September 23, 2021, the matter proceeded to further trial on the issues of the petition for Labor Code section 132a benefits and attorney's fees. (Minutes of Hearing, September 23, 2021, p. 2:1-6.)

The WCJ admitted exhibit 23, entitled "Los Angeles Police Department Non-Occupational Sick, Revisit or Injury Report, dated February 2, 2008" into evidence, and the matter was submitted for decision. (*Id.*, pp. 1, 2:16-18.) The exhibit states that applicant "telephoned from his residence and stated that he was not able to report to work due a non-IOD illness." (Ex. 23, LAPD Non-Occupational Sick, Revisit or Injury Report, February 2, 2008.) It contains a stamp showing that it was received by the Medical Liaison Section on March 5, 2008.(*Id*.)

On December 20, 2021, the WCJ found that the evidentiary record required further development and ordered that the submission of the matter for decision be vacated. (Order Vacating Submission in Order to Develop the Record and Set Further Proceedings, December 20, 2021.)

On March 24, 2022, the matter proceeded to further trial. (Minutes of Hearing and Summary of Evidence, March 24, 2022.) Applicant testified that defendant has a procedure whereby officers notify their supervisor if they are unavailable to report for duty. The supervisor then fills out paperwork and gives it to the sick/IOD coordinator. Once it goes from the supervisor to the sick/IOD coordinator, whether it is signed by the captain or not, it then goes to the Medical Liaison Unit (MLU) for processing. MLU is the official department for sick/IOD time. They are to retain any medical related documents. (*Id*., pp. 6:24-7:9.) After a report is received by MLU, MLU is required to prepare an informal injury report, which is then sent to chain of command within a day. MLU did not respond to his sick leave or doctor's notes; this was different treatment

than others.' MLU processes the paperwork; command staff gives MLU directives. (*Id.*, p. 10:1-13.)

On May 12, 2022, the matter proceeded to further trial. (Minutes of Hearing and Summary of Evidence, May 12, 2023.) Applicant testified that defendant alleged that he did not turn in paperwork about his illness on time, but he did so. The doctors' notes or sick slips he turned in were from Kaiser. Lieutenant Lee or Captain Nathan did not file a claim form or DWC-1 form. As a watch commander when you receive a sick slip or a medical note regarding an employee, it is noted on the report if it is IOD or NIOD, and then the medical note is attached. The form is then put in a box for the sick/IOD coordinator, who picks up the forms at various times during the day and sends the forms downtown to the MLU. This process did not take place in his case to his knowledge. (*Id.*, p. 2:8-18.)

Applicant further testified that Ex. 23, the Los Angeles Police Department Non-Occupational Sick, Revisit or Injury Report dated February 2, 2008, is signed by his supervisors and stamped received by the Medical Liaison Unit on March 5, 2008. Defendant filed a complaint against him for not turning in paperwork on March 4, 2008. (*Id*., p. 3:15-23.)[3]

On March 9, 2023, the matter was submitted for decision. (Minutes of Hearing and Summary of Evidence, March 9, 2023, p.1:22)

On December 26, 2023, the WCJ noted that there had been an order vacating submission of the matter and that exhibit 28, the DWC-1 claim form dated August 20, 2008, which was signed by applicant and stamped as received on August 27, 2008 by the Medical Liaison Section, had been admitted in evidence. (Minutes of Hearing and Summary of Evidence, December 26, 2023, p. 2:1-9.) The form contains a section which is filled out by the employer. In that section, the form provides:

[3] In our September 20, 2019 decision, we noted the following: We note that applicant alleges that defendant subjected him to disciplinary action for failing to notify it of work status information by way of not only the March 6, 2008 complaint, but also a complaint dated March 4, 2008, alleging that he failed to report to work in early February 2008.. (Petition, p. 3:17-18.) While the March 4, 2008 complaint does not appear in the record before us, we note applicant s testimony that he was off work in early February as a result of his industrial injury as well as the parties stipulation that applicant was restricted from work as a result of his industrial injury for the period of February 3, 2008 through February 10, 2008. (Further Minutes of Hearing and Summary of Evidence, December 28, 2015, 3.2-3, 3.8-9, Ex. 2, Stipulations with Request for Award, October 8, 2014, p. 7.) We further note that defendant determined the outcome of the March 6, 2008 complaint based in part on the March 4, 2008 complaint, finding that when the allegations of the March 6, 2008 were viewed "in concert with" those of the March 4, 2008 complaint, it appeared that applicant had abused his right to receive sick time. (Ex. 5, Downgrade and Administrative Transfer, pp. 1, 3.) (Opinion and Decision After Reconsideration, September 20, 2019, p. 5, fn. 3.)

11. Date employer first knew of injury. *Fecha en que el empleador sup por primera vez de la lesion o accidente*. **2/2/2008**
(Ex. 28, DWC-1 Claim Form, August 20, 2008.)

The form has a space for the employer's representative's signature but it is not signed. (*Id.*)

On March 25, 2024, the WCJ found that applicant did not establish his prima facie section 132a claim, that defendant had a legitimate business reason for its discipline of applicant, and that defendant did not discriminate against applicant in violation of section 132a. (Findings of Fact and Order, March 25, 2024.)

On April15, 2024, applicant sought reconsideration.

On April 29, 2024, the WCJ rescinded the findings and order, and set the matter for a status conference. (Order Rescinding Decision, Vacating Submission and Setting for Further Proceedings, April 29, 2024.)

On July 9, 2024, the matter was resubmitted for decision. (Minutes of Hearing

On October 29, 2024, the WCJ entered the following into the minutes:

> LET THE RECORD REFLECT that the slip referred to in the Opinion and Decision After Reconsideration dated September 20, 2024 is the Kaiser Permanente Visit Verification Form dated February 3, 2008 and is contained in Applicant's Exhibit 4 which was previously admitted into evidence.
> (Minutes of Hearing, October 29, 2024, p. 2:1-3.)

The matter was thereafter resubmitted, and on January 27, 2025 the WCJ issued an Amended Findings of Fact, Order, and Award, and Amended Opinion on Decision.

In the Amended Opinion on Decision, the WCJ states:

> Applicant Tarriel Hopper filed a Petition pursuant to Labor Code Section 132a dated June 3, 2010 and an amended Petition pursuant to Labor Code Section 132a dated July 20, 2013 alleging that his employer, the City of Los Angeles Police Department ('LAPD"), during the period January 1, 2004 through 12/29/2009 discriminated against him for filing a workers' compensation case for work related injuries to his back, neck and psyche during the period January 1, 2004 through February 2, 2008 and for LAPD filing various personnel complaints against him and by LAPD failing to investigate applicant's claims of retaliation and discrimination. This case was the subject of a Petition for Reconsideration by the applicant dated May 4, 2016 in connection with the prior decision of the Honorable Judge Bewick dated April 14, 2016. **In the September 20, 2019 Opinion and Decision After Reconsideration, the Board went through all of the evidence at that point in detail concerning the allegations which led to the applicant's termination from the LAPD.**

. . .
The applicant reported by way of a Non-Occupational sick, revisit or injury report on February 2, 2028, which noted it was a non-IOD illness with the first day off sick as February 3, 2008, a return to duty date of February 11, 2008 which was received by the Medical Liaison Section on March 5, 2008 (Applicant's Exhibit 23). This is also contained in Applicant's Exhibit 4 along with documents from Kaiser noting his medical treatment visits during this period of time. The applicant filed a DWC-1 claim form for a work related injury dated August 20, 2008 in the form of stress which was received by the Medical Liaison Unit of LAPD on August 27, 2008 for a date of injury on February 2, 2008. The DWC-1 Claim Form is not signed but notes the employer first knew of injury on February 2, 2008 (Applicant's Exhibit 28). Based on the documentary and testimonial evidence it does not appear that LAPD or his supervisors investigated the actual reasons for his time off after February 3, 2008 as to whether they were for a work related injury or not, instead the documentary record reflects that Captain Nathan started the disciplinary process which ultimately resulted in action by the LAPD Board of Rights resulting in his termination on July 14, 2009. The documentary evidence including the Board of Rights transcripts that contain the testimony of Captain Nathan, Lieutenant Synthia Lee, and currently Captain Colomonico, only reflect that the applicant was disciplined for actions that did not relate to his claims of injury on a work related basis. The discipline was for insubordination for disobeying a verbal order regarding a doctor's note for an absence which at the time was not specified to be a work related injury in February 2008, and for making false statements (Defense Exhibits G, H & I). . . . It appears that Captain Nathan failed to investigate the reasons why applicant was requesting time off since the time audit made it appear that the applicant had taken an excessive time off even though his credible testimony reflected that he had time off on the books.

After reviewing all of the evidence presented and after assessing the credible testimony of the applicant at the trial before me, as well as assessing the testimony of defense witness Captain Sonia Monico, it does appear that the applicant has established a prima facie claim pursuant to Labor Code Section 132a.
(Amended Opinion on Decision, pp. 1-4.)

In the Report, the WCJ states:

[D]efendant did not introduce any witnesses at trial with the exception of Captain Sonia Monico, and her testimony primarily dealt with her counselling applicant on how to do certain administrative task.
. . .
The LAPD does have a valid reason for making sure they are properly staffed at all times. While applicant did have a work related injury, even though it may not have been clear at the time of complaints leading to his discipline and ultimate termination, the LAPD does have guidelines regarding the reporting of both work related and non-work related injuries and time off requests. When those steps are not followed they can lead to discipline. Here, Applicant appeared to [be] following

those steps. The Kaiser off work slip submitted as medical records as Applicant's Exhibit 4 (EAMS DOC ID#54259750) is for a visit on 2/6/2008 and notes the applicant was unable to attend work from 2/3/2008 through 2/10/2008, nowhere in this Dr.'s note is there any mention of the time off being a work injury or some other illness. Applicant's Exhibit 4 also notes that the applicant was taken off work by Kaiser after March 4, 2008 to March 14, 2008, July 29, 2008, August 5, 2008, August 19, 2008 and October 29, 2008 which were the periods of time encompassed in the Stipulations with Request for Award & Award dated April 3, 2012. Nevertheless it appears that LAPD was aware of an industrial injury claim by the applicant based on the DWC-1 Claim form as of February 2, 2008 and yet Captain Nathan instead of inquiring further as to if the reasons for the applicant's absence were on an industrial basis commenced disciplinary proceedings which ultimately resulted in applicant's termination which appear to be related to his worker's compensation claim.

Therefore after assessing all of the evidence presented and the numerous days of trial testimony, it was found that the applicant did establish the basis for a 132a claim with defendant not prevailing on their assertion that the termination was not related to the applicant's industrial injury, it was found that the Petition for benefits pursuant to Labor Code Section 132a was granted and the applicant is entitled to the benefits contained therein.
(Report, pp. 5-6.)

DISCUSSION

I.

Former Labor Code 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. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

> (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.
>
> (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 March 3, 2025, and 60 days from the date of transmission is May 2, 2025. This decision is issued by May 2, 2025, so that we have timely acted on the petition as required by 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 March 3, 2025, and the case was transmitted to the Appeals Board on March 3, 2025. 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 section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 3, 2025.

II.

Defendant first contends that applicant failed to establish his prima facie section 132a claim. Specifically, defendant argues that because it was not aware of applicant's workers' compensation claim until August 27, 2008, and because it initiated disciplinary proceedings before that date, it could not have singled him out for disadvantageous treatment.

Section 132a provides in pertinent part:

> Any employer who **discharges**, or threatens to discharge, **or in any manner discriminates against any employee because** he or she has filed or **made known his or her intention to file a claim**...or an application for adjudication, or because the employee has received a rating, award, or settlement...testified or made known his or her intention to testify in another employee's case... may be guilty of a misdemeanor and responsible for the payment of increased compensation, costs, lost wages and work benefits to the injured employee.
> (§ 132a [Emphasis added].)

Hence, the issue of whether defendant discriminated against applicant does not turn on when applicant filed a workers' compensation claim, but on when he "made known . . . his intention to file for compensation."

Here, the record reveals that (1) applicant testified that he turned in an off work slip for an industrial injury to the injury on duty coordinator, Sergeant Scott; (2) the slip was turned in on or about February 3, 2008; (3) the slip did not state that applicant was off work as a result of a work injury or otherwise; (4) applicant's supervisors prepared a report for the Medical Liaison Unit to allow investigation as to applicant's medical-work status which stated that applicant was off work for a "a non-IOD illness"; (5) applicant testified that reports for the Medical Liaison Unit are picked up for delivery to the Medical Liaison Unit on the same day they are generated; and (6) applicant's supervisors' report to the Medical Liaison Unit was not delivered until March 5, 2008. (Further Minutes of Hearing and Summary of Evidence, December 28, 2015, p. 3:16-19; Minutes of Hearing and Summary of Evidence, May 12, 2023, p. 2:8-18; Minutes of Hearing, October 29, 2024, p. 2:1-3; Amended Opinion on Decision, p. 2; Minutes of Hearing and Summary of Evidence, May 12, 2023; Ex. 23, LAPD Non-Occupational Sick, Revisit or Injury Report, February 2, 2008.)

Because the WCJ found applicant's testimony credible, because defendant presented no testimony in rebuttal, and because we agree with the WCJ that the DWC claim form's unsigned statement that defendant became aware of applicant's claim on February 2, 2008 supports the proposition that defendant became aware of applicant's claim on or about February 3, 2008, we conclude that applicant made known his intent to file a workers' compensation claim on or about February 3, 2008. (*Garza v. Worker's Comp. Appeals Bd*. (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500] (finding that the WCJ's credibility determinations are to be afforded great weight because the WCJ had the opportunity to observe the demeanor of the witness while testifying at trial); Amended Opinion on Decision, p. 3; Report, pp. 4-5; Ex. 28, DWC-1 Claim Form, August 20, 2008.)

Moreover, although the Petition asserts that defendant could not have known of the workers' compensation claim until it received the DWC claim form on August 27, 2008, we note that defendant's March 6, 2008 disciplinary action against applicant alleges that on March 4, 2008 applicant "advised Lt. Moten that he had an Injury on Duty (IOD) appointment at 0730 hours," an

allegation which belies defendant's subsequent assertion that it lacked contemporaneous knowledge of the claim. (Ex. 3, LAPD Complaint No CF No 08-001039 dated March 6, 2008, p. 2.)

Turning to the issue of whether the evidence establishes that defendant discriminated against applicant for making known his intention to file a claim, we previously explained that *Department of Rehabilitation v. Workers' Comp. Appeals Bd.* (*Lauher*) (2003) 30 Cal.4th 128 [68 Cal.Comp.Cases 831] sets forth the requisite elements of proof:

> [W]e view the Court's phrase "singled out for disadvantageous treatment" to be an *application* of the broader standard adopted by *Lauher*—that, in addition to showing that he or she suffered an industrial injury and that he or she suffered some adverse consequences as a result of some action or inaction by the employer that was triggered by the industrial injury, an applicant "must also show that he or she had a legal right to receive or retain the deprived benefit or status, and the employer had a corresponding legal duty to provide or refrain from taking away that benefit or status." (*Lauher*, *supra* at p. 1300.) Stated another way, an employee must show they were subject to "disadvantages not visited on other employees because they were injured. . . ." (*Id*.) [fn.] Because the employee in Lauher was not deprived of a legal right to TDI, and therefore could not show he was treated differently than other employees with respect to his alleged detriment, he could not establish a prima facie case of discrimination.
> (Opinion and Decision After Reconsideration, September 20, 20219, pp. 7:26-8:9.)

For example, in *St. John Knits v. Workers' Comp. Appeals Bd*. (*Dewey*), 84 Cal.Comp.Cases 846 [writ den.], the Court of Appeals upheld an Appeals Board panel's finding that the applicant established her prima facie section 132a claim under *Lauher* by presenting evidence that (1) defendant singled her out for disadvantageous treatment by terminating her employment shortly after she filed an application for adjudication of her claim; and (2) the termination was based on the false grounds that she failed to report for modified work following her injury.

Similarly, in *Jones v. AC Transit*, 2021 Cal. Wrk. Comp. P.D. LEXIS 66, an Appeals Board panel found that the applicant established her prima facie section 132a claim under *Lauher* by presenting evidence that defendant (1) terminated her employment because she had made an a workers' compensation claim; and, as a separate and independent legal ground, (2) deviated from its usual procedures for responding to employee injury claims by initiating disciplinary

proceedings alleging that she failed to timely report her injury status and failing to complete its usual inquiry regarding whether she had a pending claim.

In the present case, the record shows that after applicant made known his intention to make a workers' compensation claim on or about February 3, 2008, defendant (1) demoted and transferred him on February 21, 2008; (2) initiated a disciplinary action against him on March 6, 2008; and (3) cited the results of the disciplinary action as grounds for his July 14, 2009 termination. (Ex. 5, Downgrade & Administrative Transfer dated February 21, 2008; Ex. 3, LAPD Complaint No CF No 08-001039 dated March 6, 2008; Ex. 18, Termination Notice, June 30, 2009, p. 1.)

Accordingly, we conclude that applicant met his burden of presenting evidence sufficient to establish his prima facie section 132a claim.

We note that defendant also subjected applicant to disadvantages not visited upon other employees because they were injured by deviating from its usual procedures for responding to and investigating employee injury claims. (§ 132a; see also *San Diego Transit, PSI, Hazelrigg Risk Management Services, Administrator* v. *Workers' Compensation Appeals Board* (2006) 71 Cal.Comp.Cases 445, 446-557 (*Calloway*) 71 Cal.Comp.Cases (finding that an industrially injured employee may establish section 132a discrimination based upon evidence that the employer deviated from its usual procedures for evaluating whether the employee can perform the job); *Jones*, *supra*.)

Here, we have explained that defendant's usual procedures for responding to and investigating an injury claim include preparation of an injury or illness report following receipt of an injury slip from an employee—and then delivery of the report to the Medical Liaison Unit for investigation of the employee's medical-work status. (See Ex. 1, Management Rules and Procedure, p. 2; Further Minutes of Hearing and Summary of Evidence, December 28, 2015, p. 3:16-19; Minutes of Hearing and Summary of Evidence, May 12, 2023, p. 2:8-18; Minutes of Hearing, October 29, 2024, p. 2:1-3.)

Defendant prepared an injury or illness report regarding applicant's need for medical time off work of early February 2008 but deviated from its usual procedures by failing to deliver the report to the Medical Liaison Unit until March 5, 2008. (See *Id.*) Notably, during the interval defendant began disciplinary action against applicant which culminated in his termination.

Accordingly, we conclude that applicant presented evidence sufficient to establish his prima facie section 132a claim on the additional and separate ground that defendant deviated from its usual procedures for responding to and investigating injury claims.

We next address defendant's alternative contention that it established its business necessity defense.

We observe that when an employee establishes a prima facie case, the defendant still retains the right to present evidence to rebut the applicant's prima facie case. (See § 5705; *Judson Steel Corp. v. Workers' Comp. Appeals Bd*. (1978) 22 Cal.3d 658, 667 [43 Cal.Comp.Cases 1205].) The rebuttal must show that the defendant's actions were "…necessitated by 'the realities of doing business.'" (*Judson*, *supra*, 22 Cal.3d at p. 667.) The defendant's stated business reasons must be reasonable under the facts of the case. (*Barns v. Workers' Comp. Appeals Bd.* (1989) 216 Cal.App.3d 524, 534-535.) Evidence produced by an employee in the prima facie case, and the related inferences raised therefrom, may support a finding of retaliation or discrimination if the reason offered by the employer is unreasonable or not credible under the totality of the circumstances of an individual case. (See *Westendorf v. W. Coast Contrs. of Nev., Inc*. (9th Cir. 2013) 712 F.3d 417, 423. (Citation omitted.).) We also note that while an employer's motivation might be discriminatory in its effect, section 132a does not require proof of discriminatory intent. (*Lauher*, *supra*, at p. 1301, fn. 8.)

Here, defendant's stated business reason for terminating applicant was that applicant committed five disciplinary offenses, including failing to timely notify it of an absence from work on March 4, 2008. (Ex. 18, Termination Notice, June 30, 2009, p. 1; Ex. H, Board of Rights Transcript.)

However, we are unpersuaded that defendant's stated reason was reasonable based upon evidence that defendant knew that (1) applicant told Lt. Moten on March 4, 2008 that "he had an Injury on Duty (IOD) appointment at 0730 hours"; and (2) applicant filed a DWC claim form almost a year before his termination alleging industrial injury which resulted in disability from work after February 2, 2008, including the March 2008 period at issue. (Ex. 3, LAPD Complaint No CF No 08-001039 dated March 6, 2008, p. 2; Report p. 5; see also Ex. 2, Stipulations with Request for Award, October 8, 2014, p. 7; *Barns*, *supra*, 216 Cal.App.3d at p. 534-535.)

We therefore conclude that the evidence before us is insufficient to demonstrate that defendant terminated applicant for a legitimate business reason.

Accordingly, we conclude that the evidence in the record demonstrates that defendant terminated applicant in violation of section 132a.

Accordingly, we will deny the Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of Amended Findings of Fact and Order/Award issued on January 27, 2025 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA
May 2, 2025

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

TARRIEL HOPPER
LAW OFFICES OF MARVIN L. MATHIS, P.C.
FLOYD, SKEREN, MANUKIAN & LANGEVIN, LLP

SRO/bp

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