

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

MARIA LOPEZ RODRIGUEZ, *Applicant*

vs.

**KERN COUNTY HOSPITAL AUTHORITY, permissibly self-insured,
administered by ADMINISURE, INC., *Defendants***

**Adjudication Number: ADJ11141161
Bakersfield District Office**

**OPINION AND DECISION
AFTER
RECONSIDERATION**

We granted reconsideration in order to further study the factual and legal issues in this case.¹ This is our Opinion and Decision After Reconsideration.

Defendant Kern County Hospital Authority seeks reconsideration of the August 4, 2021 Findings and Orders (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained injury arising out of and in the course of employment (AOE/COE) to the psyche and that applicant's claim was not barred by the good faith personal action defense.

Defendant contends that the WCJ failed to properly apply the good faith personnel action defense as set forth in Labor Code section 3208.3(h),² and that the WCJ's decision is not supported by substantial evidence.

No answer was received. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied.

We have considered the Petition for Reconsideration and the contents of the Report with respect thereto. Based upon our review of the record, and for the reasons set forth below, as our Decision After Reconsideration, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

¹ Commissioner Lowe, who was on the panel that issued this decision, no longer serves on the Appeals Board. Another panelist was appointed in her place.

² All further statutory references are to the Labor Code unless otherwise noted.

BACKGROUND

Applicant claimed injury AOE/COE to her psyche and nervous system while employed by defendant as a medical receptionist on November 15, 2017.

On April 5, 2018, applicant was evaluated by a qualified medical evaluator (QME), Greg Hirokawa, Ph.D., who took the following history of injury as reported by applicant:

Ms. Lopez Rodriguez reported sustaining an industrial psyche injury on November 15, 2017 during the course of her employment with Kern Medical Hospital. Ms. Lopez Rodriguez claimed stress from her supervisor Marie [Ruffin] and attributed 100% of her symptoms due to her.

Ms. Lopez Rodriguez reported that her supervisor would try to find anything to reprimand her related to her job performance. She reported wanting to transfer, but was denied. She reported notifying her union and management without success. On November 15, 2017, her supervisor was sitting very close to her to talk to her about an incident. She reported days before she was covering the front desk. The person she was covering for was gone for over an hour. She reported asking the co-worker's supervisor how long that person was going to be gone so she could bring her work to the desk. She reported that her supervisor, Marie, was mad at her because she emailed the other supervisor. She reported feeling weird with a headache and breathing fast. She reported going to her physician. She reported that her supervisor would stand behind her and tell her what she has to do. She reported her supervisor behaves this way with certain other co-workers and does not feel it is only her. She feels the harassment started 18 to 24 months ago. She reported not wanting to take time off due to financial issues. She reported her supervisor would ask her co-workers how often she takes breaks to the bathroom. She reported that she offered to notify her supervisor via email as to when she was going to the restroom.

(App. Exh. 5, Dr. Hirokawa QME Report, 5/2/18, pp. 4-5.)

Dr. Hirokawa diagnosed applicant with anxiety disorder. Dr. Hirokawa opined that the predominant (greater than 50%) cause of applicant's psychological condition was industrial. Specifically, Dr. Hirokawa stated:

Causation:

The predominant (greater than 50%) cause of [applicant's] psychological symptoms of anxiety were due to her work stress (approximately 90%). Approximately 80% of the work stress was due to personnel actions by her supervisor in which she was written up and verbally reprimanded....Based upon the Labor Code, causation is deferred to the Trier of Fact to determine if the supervisor's actions are legal, nondiscriminatory, and non-retaliatory.

(App. Exh. 5, p. 21.)

The parties proceeded to trial on September 25, 2019. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 9/25/19.) They stipulated that applicant claimed to have sustained injury AOE/COE to the psyche and nervous system. Injury AOE/COE and the good faith personnel action defense were among the issues identified for decision. (*Id.* at p. 2.) During trial, the court received testimony and admitted exhibits. The matter was submitted for decision on May 11, 2021. (MOH/SOE, 5/11/21.)

On August 4, 2021, the WCJ issued the disputed F&O, finding that applicant sustained psychiatric injury AOE/COE, and that her claim was not barred by the good faith personnel action defense. In the appended Opinion on Decision (Opinion), the WCJ addressed the good faith personnel action defense as follows:

Good-Faith-Personnel-Action Defense

Defendant raised the good-faith-personnel-action defense. Applicant testified that Marie Ruffin grabbed her shoulder hard and hit her back. Applicant was given only 30 minutes for lunch when one hour was supposed to be given. Ms. Ruffin told Applicant to take toys to Ms. Ruffin's church and not leave at the hospital. Ms. Ruffin would yell at Applicant.

While Defendant witnesses discussed other incidents that were good-faith personnel actions, those discussed by Applicant were are (*sic*) not good-faith-personnel actions. This defense does not bar the claim of Applicant based on the incidents Applicant testified to.

The WCJ adopted Dr. Hirokawa's opinion on causation, stating:

AOE/COE – Parts of the Body Injured

Dr. Hirokawa stated that the predominant cause of Applicant's symptoms were from work stress. Approximately 80 percent of that stress was due to personnel actions by Applicant's supervisor. Dr. Hirokawa left it to the trier of fact to determine if the supervisor's actions were legal, non-discriminatory, and non-retaliatory.

These actions are being found not to be good-faith-personnel actions. Based on Dr. Hirokawa's report, Applicant has suffered industrial injury to the psyche.

(Opinion, 8/4/21, p. 2.)

Defendant filed a timely, verified Petition for Reconsideration of the F&O.

DISCUSSION

The sole issue raised in this case is whether the WCJ properly determined that the good faith personnel action defense does not bar compensation for applicant's psychiatric injury. More specifically, defendant challenges the WCJ's determination that applicant's psychiatric injury was not "substantially caused" by good faith personnel actions, as required by section 3208.3(h). (Lab. Code, § 3208.3(h).)

Section 3208.3 governs claims for psychiatric injury. Section 3208.3 provides, in relevant part:

In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

(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]; *Watts v. Workers' Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 684, 688 (writ den.).) If the threshold for a compensable psychiatric injury has been met under section 3208.3(b), and the employer has asserted that some of the actual events of employment were good faith personnel actions, the WCJ must determine whether section 3208.3(h) bars applicant's claim. Section 3208.3(h) provides as follows:

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

(Lab. Code, § 3208.3(h).)

Section 3208.3(b)(3) defines substantial cause as "at least 35 to 40 percent of the causation from all sources combined." (Lab. Code, § 3208.3(b)(3).) A multilevel analysis is accordingly required when an industrial psychiatric injury is alleged and the employer raises the affirmative defense of a lawful, nondiscriminatory, good faith personnel action. As explained in our en banc

decision *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc),³ the required multilevel analysis is as follows:

The WCJ, after considering all the medical evidence, and the other documentary and testimonial evidence of record, must determine: (1) whether the alleged psychiatric injury involves actual events of employment, a factual/legal determination; (2) if so, whether such actual events were the predominant cause of the psychiatric injury, a determination which requires medical evidence; (3) if so, whether any of the actual employment events were personnel actions that were lawful, nondiscriminatory and in good faith, a factual/legal determination; and (4) if so, whether the lawful, nondiscriminatory, good faith personnel actions were a “substantial cause” of the psychiatric injury, a determination which requires medical evidence. Of course, the WCJ must then articulate the basis for his or her findings in a decision which addresses all the relevant issues raised by the criteria set forth in Labor Code section 3208.3.

(*Id.* at p. 247.)

Steps one and two of *Rolda* are applicant’s burden, whereas steps three and four are defendant’s burden. (*Rolda* at pp. 245-247; see also *San Francisco Unified School Dist. v. Workers’ Comp. Appeals Bd. (Cardozo)* (2013) 190 Cal.App.4th 1 [75 Cal.Comp.Cases 1251] (writ den.).) Here, defendant apparently does not dispute that applicant satisfied her burden under section 3208.3(b)(1).

In the F&O, the WCJ found that applicant “sustained injury arising out of and occurring in the course of employment to the psyche.” (F&O, 8/4/21, Finding of Fact No. 1.) In the Opinion on Decision, the WCJ noted four incidents that he appears to have deemed actual events of employment, namely, when 1) Ms. Ruffin grabbed applicant’s shoulder hard and hit her back; 2) applicant was given only 30 minutes for lunch when one hour was supposed to be given; 3) Ms. Ruffin told applicant to take toys to Ms. Ruffin’s church and not leave at the hospital; and 4) Ms. Ruffin would yell at applicant. (Opinion, 8/4/21, p. 2.)

We do not conclude that these are the only potential actual events of employment, or that they even occurred; instead, these are factual/legal determinations to be made by the WCJ in the first instance. Yet, because applicant described these incidents in the record, defendant concedes that applicant established actual events of employment, and defendant does not appear to dispute

³ Appeals Board en banc decisions are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10325; *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418 [67 Cal.Comp.Cases 236].)

that the foregoing incidents constitute events of employment, so that the first prong of *Rolda* is potentially satisfied.

Per *Rolda*, the QME must provide the necessary medical evidence for the WCJ to be able to determine whether those actual events of employment were predominantly, i.e., more than 50%, responsible for applicant's injury. (*Rolda, supra*, 66 Cal.Comp.Cases at p. 247.) Importantly, the question of predominant cause is assessed "as to all causes combined," and therefore does not call for or require a detailed breakdown of the role that each individual event of employment played in causing the injury. (Lab. Code, § 3208.3(b)(1); *Rolda* at p. 246.) Here, Dr. Hirokawa found predominant causation in his QME report, thus potentially satisfying the second prong of *Rolda*. (App. Exh. 5, p. 21.) As noted above, defendant also appears to concede that applicant satisfied her second and final burden under section 3208.3(b)(1) to prove predominant cause. That is, we note that the finding that applicant sustained an injury to psyche appears to be unchallenged.

Under the third prong of *Rolda*, once the WCJ finds actual events of employment predominantly caused the injury, the WCJ must then determine whether any of the actual events of employment were personnel action(s), and if so, whether the personnel actions were lawful, nondiscriminatory and in good faith. Under the fourth prong of *Rolda*, if the WCJ finds lawful, nondiscriminatory, good faith personnel actions, the WCJ must then determine whether these actions amounted to a substantial cause, i.e., 35-40%, of the claimed injury - a determination that must be supported by substantial medical evidence. (Lab. Code, § 3208.3(b)(3); *Escobedo v. Marshalls* (*Escobedo*) (2007) 70 Cal.Comp.Cases 604, 620 (Appeals Board en banc), citing Lab. Code, § 5952(d) ["it is well established that any decision of the WCAB must be supported by substantial evidence."].)

When deciding a medical issue, the WCJ must utilize expert medical opinion. (*Insurance Company of North America v. Workers' Comp. Appeals Bd. (Kemp)* (1981) 122 Cal.App.3d 905, 912 [46 Cal.Comp.Cases 913].) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo, supra*, 70 Cal.Comp.Cases at pp. 620-621.) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect

legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Defendant contends that Dr. Hirokawa's medical opinion is not sufficient because he did not analyze each of the events of employment and did not assign percentages of causation to each event, and that Dr. Hirokawa did not specially consider the events of November 17, 2017.

In the Opinion on Decision, the WCJ provided the following analysis regarding good faith personnel actions:

Good-Faith-Personnel-Action Defense

Defendant raised the good-faith-personnel-action defense. Applicant testified that Marie Ruffin grabbed her shoulder hard and hit her back. Applicant was given only 30 minutes for lunch when one hour was supposed to be given. Ms. Ruffin told Applicant to take toys to Ms. Ruffin's church and not leave at the hospital. Ms. Ruffin would yell at Applicant.

While Defendant witnesses discussed other incidents that were good-faith personnel actions, those discussed by Applicant were are (sic) not good-faith-personnel actions. This defense does not bar the claim of Applicant based on the incidents Applicant testified to.

(Opinion, 8/4/21, p. 2, emphasis added.)

The point of the third prong of *Rolda* is to distinguish the actual events of employment that do not constitute good faith personnel actions from those that *do*. However here, it is not entirely clear what all of the actual events of employment are, as applicant's testimony seems to include more events than the four articulated in the WCJ's Opinion. Thus, we are unable to determine which constituted good faith personnel actions and which did not.

The WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Board en banc).) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation* (2001) 66

Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd. (Evans)* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) A decision “must be based on admitted evidence in the record” (*Hamilton* at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd. (Lamb)* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd. (Garza)* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd. (LeVesque)* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton* at p. 475.) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] ... For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476, citing *Evans* at p. 755.)

Upon return to the trial level, the WCJ must specifically identify the actual events of employment and set forth the evidence relied upon so that the parties, and the WCAB, may fully understand the basis for those findings. (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476; *Rolda, supra*, 66 Cal.Comp.Cases at p. 247 “[T]he WCJ must...articulate the basis for his or her findings in a decision which addresses all the relevant issues raised by the criteria set forth in Labor Code section 3208.3.”]; *Lamb, supra*; *Garza, supra*; *LeVesque, supra*.)

Unlike “predominant cause,” which does not call for or require a detailed breakdown of the role that each individual event of employment played in causing the injury, determining “substantial causation” requires a more detailed analysis. The fourth prong of *Rolda* requires the evaluating physician(s) to parse the factors of causation and offer an opinion as to the percentage of causation for each. (*Rolda, supra*, 66 Cal.Comp.Cases at p. 246.)

Dr. Hirokawa’s May 2, 2018 report discusses a variety of potential factors that may have contributed to applicant’s psychiatric condition. (App. Exh. 5, pp. 15-20.) However, Dr. Hirokawa does not address each of the various factors individually and does not assign percentages of causation to each factor. Moreover, because the WCJ’s findings did not clearly identify the good faith personnel actions that contributed to applicant’s psychiatric injury, any percentage breakdowns by Dr. Hirokawa may have been based on incomplete information and therefore

inaccurate. In other words, if the good faith personnel actions as determined by the WCJ are not clearly articulated, the QME has no way to intelligently opine as to whether the injury was substantially caused by those actions.⁴ (Cf. *Silva v. Dept. of Transportation Headquarters Operations* (June 6, 2025, ADJ13014565) [2025 Cal. Wrk. Comp. P.D. LEXIS 220].) Thus, we conclude that there is insufficient evidence to currently determine the issue of whether defendant met its burden to show that compensation is barred under section 3208.3(h).

Without substantial medical evidence, the proper procedure is to develop the record. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394-395 [62 Cal.Comp.Cases 924]; Lab. Code, §§ 5701, 5906.) The typical procedure is to return the parties to the original QME in order to further develop the record. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Here, if Dr. Hirokawa's subsequent reporting is not substantial evidence, the WCJ may appoint a regular physician to examine applicant pursuant to section 5701. (Lab. Code, § 5701.) However, we remind the parties that they always have the option to decide to proceed with an agreed medical evaluator (AME).

Based upon the foregoing, as our Decision After Reconsideration, we rescind the WCJ's August 4, 2021 Findings and Orders and return this matter to the trial level for further proceedings consistent with this decision.

⁴ We note that, in his report, Dr. Hirokawa opined that the incidents involving Ms. Ruffin constituted "good faith personnel actions." (App. Exh. 5, p. 21.) However, whether an event is a "personnel action" made in "good faith" are factual/legal determinations to be made by the WCJ, not the QME. (*Rolda, supra*, 66 Cal.Comp.Cases at p. 247; *County of Sacramento v. Workers' Comp. Appeals Bd. (Brooks)* (2013) 215 Cal.App.4th 785, 797 [78 Cal.Comp.Cases 379] ["[t]he medical evaluator has no authority to decide what is or is not a personnel action."].) Because the WCJ had not issued any such determinations at the time of the report, Dr. Hirokawa was precluded from using these terms.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 4, 2021 Findings and Orders is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 8, 2026

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

**MARIA LOPEZ RODRIGUEZ
PACIFIC ATTORNEY GROUP
YRULEGUI & ROBERTS**

AC/mt

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