

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

**TIA HERNANDEZ, *Applicant***

**vs.**

**MESA VERDE CONVALESCENT HOSPITAL, INC.; XL SPECIALTY INSURANCE  
COMPANY, administered by INTERCARE, *Defendants***

**Adjudication Number: ADJ15921770  
Long Beach District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

On August 21, 2023, we granted reconsideration for the sole purpose of issuing a Notice of Intention to Impose Sanctions (NIT) against defendant's attorney Steven J. Alves, the Alves Law Office, and XL Specialty Insurance Company, administered by Intercare, jointly and severally, pursuant to Labor Code<sup>1</sup> section 5813 and WCAB Rule 10421(b)(9). (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.) We now issue our Decision After Reconsideration.

Defendant seeks reconsideration of the Findings and Order (F&O) issued on June 8, 2023 by a workers' compensation administrative law judge (WCJ), wherein the WCJ found 1) applicant sustained psychiatric injury arising out of and occurring in the course of employment (AOE/COE); 2) the good faith personnel action defense to applicant's claim was inapplicable, as defendant failed to sustain its burden of proof under section 3208.3(h); and 3) the issue of the need for further medical treatment required further development of the record and was thus deferred.

In the Petition for Reconsideration, defendant argues that the WCJ "ignored" and "craftily omitted" evidence that defendant believes establishes the good faith personnel action defense to applicant's claim, including applicant's testimony that she was suspended from work (an alleged "personnel action"), and the opinion of the panel qualified medical evaluator (QME) Dr. Alexander Thanh Nguyen, M.D., that applicant's suspension was a "substantial cause" of her psychiatric injury. Defendant also contends that the WCJ's decision to reject the good faith personnel action defense rests upon the WCJ's "false statement" that defendant introduced no evidence of personnel

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

actions at trial. Lastly, defendant contends that additional discovery on any issues raised at trial is “inappropriate.”

No Answer was received. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny reconsideration. The WCJ also recommended that we consider imposing sanctions against defendant’s attorney Steven J. Alves for accusing the WCJ of “ignoring” and “craftily omitting” evidence and making a “false statement.” The WCJ noted that this language may violate WCAB Rule 10421(b)(9)(B), which allows the Appeals Board to sanction parties and attorneys for using language in any pleading that is intemperate, disrespectful, or that impugns the WCJ’s integrity. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

On August 21, 2023, we issued our NIT, and defendant’s attorneys timely responded (NIT Response).

Having reviewed the record in this matter, and considered the allegations in the Petition for Reconsideration and the NIT Response, for the reasons stated in the WCJ’s Opinion on Decision and in the Report, both of which are adopted and incorporated herein, and as discussed below, as our Decision After Reconsideration, we will affirm the F&O, and we will impose sanctions, jointly and severally, against defendant’s attorney Steven J. Alves and the Alves Law Office in the amount of \$250.00.

## **DISCUSSION**

### **I. Sanctions**

As noted above, on August 21, 2023, we issued a NIT notifying Steven J. Alves and the Alves Law Office of an intention to impose sanctions for the use of language in the petition for reconsideration that was “patently insulting, offensive, insolent, intemperate [and] disrespectful” and that “impugn[ed] the integrity of the Workers’ Compensation Appeals Board or its commissioners, judges or staff” in violation of WCAB Rule 10421(b)(9).

WCAB Rule 10421(b) authorizes sanctions against a party who has committed “[b]ad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers’ Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit.” (Cal. Code Regs., tit. 8, § 10421(b).) WCAB Rule 10421(b) provides a comprehensive but non-

exclusive list of actions that could be subject to sanctions. As applicable here, violations subject to sanctions are:

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(9) Using any language ... in any pleading or other document:

(A) Where the language or gesture:

(i) Is directed to the Workers' Compensation Appeals Board, to any of its officials or staff or to any party (or the attorney or non-attorney representative for a party); and

and

(ii) Is patently insulting, offensive, insolent, intemperate, foul, vulgar, obscene, abusive or disrespectful; or

(B) Where the language or gesture impugns the integrity of the Workers' Compensation Appeals Board or its commissioners, judges or staff.

(Cal. Code Regs., tit. 8, § 10421(b)(9).)

Here, the specific grounds for the NIT were Mr. Alves's accusations in the petition for reconsideration that the WCJ "ignored" and "craftily omitted" evidence establishing the good faith personnel action defense and rested his opinion on a "false statement" that defendant produced no evidence of personnel actions at trial. In the NIT, we explained that this language was not only patently insulting, intemperate, and disrespectful to the WCJ, but also impugned the WCJ's integrity, and that such conduct was sanctionable pursuant to WCAB Rule 10421(b)(9). We concluded that, absent good cause to the contrary, we would order Steven J. Alves and the Alves Law Office to pay sanctions, jointly and severally, in the amount of \$250.00 for violation of WCAB Rule 10421(b)(9). (NIT, August 21, 2023, pp. 4-6.)

On September 5, 2023, Mr. Alves filed an objection to the NIT, and on September 6, 2023, Mr. Alves filed an amended objection. (collectively, NIT Response.)

For the sake of discussion, we repeat that the basis for the NIT was Mr. Alves's contentions in the petition for reconsideration that the WCJ "ignored" and "craftily omitted" evidence and made a "false statement." In his NIT Response, Mr. Alves offers alternative definitions of these words that he believes reflect a respectful, or, at least unintentionally insulting, meaning or connotation. Specifically, Mr. Alves states 1) by "ignore," he meant "refuse to take notice of or acknowledge, disregard intentionally"; 2) by "craftily," he meant the Miriam-Webster definition of "skillful, clever, or adept in the use of subtlety and cunning"; and 3) by "false," he meant

“incorrect.” (NIT Response, September 5, 2023, pp. 3-4.) Mr. Alves maintains that he meant no disrespect in using these terms and that, “in hindsight,” he should not have characterized the WCJ’s alleged “omission” of evidence in any way and apologizes for doing so. (NIT Response, September 5, 2023, pp. 3-4.)

We are not convinced by Mr. Alves’s explanations for his use of these terms, and do not find his limited expression of remorse to be genuine. Mr. Alves cannot avoid responsibility for the natural and foreseeable meaning of the words deliberately chosen and placed into the petition by offering convenient alternative definitions that, in his view, depict them as respectful, excusable, or, at the very least, not intentionally insulting. The language used is unmistakably disrespectful and intemperate toward the WCJ, and the unsupported accusations of misconduct and/or dishonesty of the WCJ clearly impugn the WCJ’s integrity. We conclude that Mr. Alves’s use of this language is significant enough to deem the petition filed in bad faith and subject to sanctions as a violation of WCAB Rule 10421(b)(9). (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421(b)(9).)

With respect to the merits of defendant’s Petition, when a psychiatric injury is alleged and the “good faith personnel action” defense has been raised, the WCJ must evaluate the defense according to a multilevel analysis. (*San Francisco Unified School Dist. v. Workers’ Comp. Appeals Bd. (Cardozo)* (2013) 190 Cal.App.4th 1, 9 [75 Cal.Comp.Cases 1251] (writ den.)) This is often referred to as a *Rolda* analysis, based on *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc). After considering all the medical evidence and the other documentary and testimonial evidence, the WCJ must make the following determinations:

First, the [WCJ] must determine whether the alleged psychiatric injury involves actual events of employment and, if so, whether competent medical evidence establishes the required percentage of industrial causation. If these first two conditions are met, the [WCJ] must then decide whether any of the actual employment events were personnel actions. If so, the [WCJ] must next determine whether the personnel action or actions were lawful, nondiscriminatory, and made in good faith. Finally, if all these criteria are met, competent medical evidence is necessary as to causation; that is, whether or not the personnel action or actions are a substantial cause, accounting for at least 35 to 40 percent of the psychiatric injury as defined by section 3208.3(b)(3).

(*Cardozo, supra*, at p. 9; *Rolda, supra*, at pp. 245-247; see also *County of Sacramento v. Workers’ Comp. Appeals Bd. (Brooks)* (2013) 215 Cal.App.4th 785 [78 Cal.Comp.Cases 379].)

While an applicant’s testimony may be sufficient to show that an event occurred, it is not

applicant's burden to provide evidence about *why* defendant acted. Here, it is undisputed that the investigation and the suspension occurred. To meet its burden, defendant had to present evidence to explain its intention because the mere fact that an investigation was conducted, without more, is not sufficient to show that defendant acted in good faith. By its choice not to bring any witnesses to testify at trial, defendant failed its burden. Since substantial medical evidence by both applicant's treating physician and the QME supports that applicant sustained an industrial injury, defendant is liable for compensation.

Accordingly, as our Decision After Reconsideration, we affirm the F&O, and we impose sanctions, jointly and severally, against defendant's attorney Steven J. Alves and the Alves Law Office in the amount of \$250.00.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Appeals Board, that the June 8, 2023 Findings and Order of the workers' compensation administrative law judge is **AFFIRMED**.

**IT IS FURTHER ORDERED** that **STEVEN J. ALVES (CA BAR # 269329)** and **THE ALVES LAW OFFICE**, *jointly and severally* pay sanctions per Labor Code section 5813 and WCAB Rule 10421 in the amount of \$250.00, payable by check **within 20 days** of service of this Order to **Workers' Compensation Appeals Board** Tax ID 94-3160882 for transmission to the General Fund and **shall reference the case name and the case number on the memo portion of the check**. The check shall be mailed with a copy of this Order to:

ANNE SCHMITZ  
Secretary and Deputy Commissioner  
WORKERS' COMPENSATION APPEALS BOARD  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102  
Attn: Sanctions Coordinator

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**JUNE 8, 2026**

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

**TIA HERNANDEZ  
PRATT LAW CORPORATION  
ALVES LAW OFFICE**

**AC/mt**

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

## OPINION ON DECISION

### Injury AOE/COE

In a disputed injury case, the Applicant has the burden of proof to establish that an injury occurred.<sup>1</sup> This burden is met by establishing that a compensable injury occurred by a preponderance of the evidence.<sup>2</sup> Generally, psychiatric injuries require that the Applicant demonstrate that actual events of employment were predominant in causation.<sup>3</sup> This determination of actual events is a factual determination for the undersigned and predominant causation requires competent medical evidence.<sup>4</sup>

In the matter herein, the Applicant testified credibly regarding her experiences at work. She testified that there was an investigation by the Department of Health (DOH) regarding an allegation that she was selling drugs at work. The allegations that prompted the DOH investigation were found to be without merit. She also discussed an incident when her name was removed from a computer database at work and a time where her office's lock was broken.

Additionally, the documents in evidence supplement Applicant's version of events. Gabrielle Harden, Director of Nursing, wrote an email on January 27, 2022 in response to the DOH investigation to Carli Gonzales, an individual with the California government. (Joint Exhibit 15). The email seems to imply that the drug sale allegations are simply retaliation by other staff who had personal issues with the Applicant.

The medical reporting of Dr. Nelson Flores supports a finding of industrial causation on a psychiatric basis. (Joint Exhibits 16-18). Specifically, Dr. Flores finds predominate causation to work exposure. (Joint Exhibit 16, Page 9). The version of events is set forth in detail and tracks what the Applicant credibly testified was causing her work-related injury. (Joint Exhibit 16, Pages 2-6). The reporting of Dr. Flores is better reasoned than that of the Panel Qualified Medical Evaluator.

In short, the medical reporting, along with the Applicant's credible testimony and documents in evidence, support the finding of an industrial psychiatric injury.

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<sup>1</sup> Labor Code 5705

<sup>2</sup> Labor Code 3202.5

<sup>3</sup> Labor Code 3208.3 (b)(1)

<sup>4</sup> Rolda v. Pitney Bowes, 66 Cal. Comp. Cases 241, 245 (Cal. Workers' Comp. App. Bd. February 21, 2001)

### **Labor Code 3208.3(h)**

The Labor Code bars a psychiatric injury if it was substantially caused by a lawful, nondiscriminatory, good faith personnel action.<sup>5</sup> The Workers' Compensation Appeals Board has established a four step test to determine if the "good faith personnel defense" applies to a psychiatric injury, colloquially known as a "Rolda analysis."<sup>6</sup> Personnel actions are "conduct attributable to management in managing its business including such things as done by one in authority to review, criticize, demote, or discipline an employee."<sup>7</sup> The burden of proof for the defense rests with Defendant.<sup>8</sup> If a trier of fact finds no personnel actions based on an absence of evidence, a Rolda analysis is not required.<sup>9</sup>

The Applicant's credible testimony pointed to a whole host of issues that caused her psychiatric stress. She discussed the allegations themselves, the DOH investigation, the removal of her name from a work database, and the breaking of her office's lock. The reporting of Dr. Flores corroborates this version of events in attributing the psychiatric injury to a variety of causes. None of these issues are "personnel actions," even in the broadest sense of the term.

The DOH investigation is an investigation by an outside governmental agency incidental to the drug selling allegation, not anything undertaken by management or the employer. This does not appear to be a personnel action. Moreover, it appears that because the DOH investigation is automatically triggered by an allegation of selling drugs and the allegation caused the Applicant distress, this appears to stem from the conflict with other employees rather than from anything attributable to management or anything in the sense of a "personnel action" as defined by prior cases.

Additionally, the Defendant introduced no evidence of personnel actions. The evidence at hand instead shows that the Applicant had former coworkers at the worksite who had a conflict with her and likely made the allegation of selling drugs. The Applicant even testified that she was only aware of the DOH investigation and not aware of any other investigation or action by her employer.

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<sup>5</sup> Labor Code 3208.3(h)

<sup>6</sup> Rolda, 66 Cal. Comp. Cases 241

<sup>7</sup> Fleming v. Contra Costa County, 63 Cal. Comp. Cases 831, 834 (Cal. Workers' Comp. App. Bd. July 10, 1998)

<sup>8</sup> Labor Code 3208.3 (h)

<sup>9</sup> Gentry v. Dep't of Corr., 2019 Cal. Wrk. Comp. P.D. LEXIS 34, 10 (Cal. Workers' Comp. App. Bd. February 1, 2019)

Therefore, as Defendant has the burden of proof on the defense and has not met it, the undersigned finds that the “good faith personnel defense” is inapplicable herein.

**Need for Further Medical Care**

The record is ambiguous on the issue of the need for future medical care. Dr. Flores’s reports are a bit older and it is unclear if ongoing care is needed based on those reports. The reports of the PQME indicate that no further care is needed “other than” some additional follow-up appointments with a nurse practitioner. More substantial evidence is needed in this regard.

DATE: June 8, 2023

**Michael Joy**  
WORKERS' COMPENSATION JUDGE

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE  
ON PETITION FOR RECONSIDERATION**

**I  
INTRODUCTION**

- |    |                           |  |
|----|---------------------------|--|
| 1. | Applicant's Occupation:   | LVN  |
|    | Applicant's Age:          | 42 at DOI  |
|    | Date of Injury:           | CT ending February 9, 2022   |
|    | Parts of Body Injured:    | Psyche   |
| 2. | Identity of Petitioner:   | Defendant  |
|    | Timeliness:               | Yes  |
|    | Verification:             | Yes  |
| 3. | Date of Order:            | June 8, 2023   |
| 4. | Petitioner's Contentions: | That Applicant's claim is barred by the Good Faith Personnel Defense, despite introducing no employer witnesses. |

**II  
STATEMENT OF THE CASE AND FACTS**

Applicant initially worked for the employer as an admissions nurse in a part-time capacity and enjoyed a positive work environment. Subsequently, she changed to full-time status as the Assistant Director of Nursing. Upon changing to full-time status, the Applicant's work environment changed negatively.

An anonymous complaint accused the Applicant of selling drugs at work, which spawned a regulatory investigation, as well as mandatory suspension. Moreover, Applicant found her name removed from a computer database at work. Applicant also found her office broken into in the middle of the workday around lunchtime. Furthermore, Applicant's relationship with her supervisor, Joseph Garibay deteriorated.

Applicant subsequently filed the claimed injury at issue herein. Defendant denied the claim based on the "Good Faith Personnel Defense." The parties then obtained medical reporting and the matter came around for a one day trial before the undersigned on May 23, 2023. At the trial, only the Applicant testified and the undersigned submitted the matter for decision.

On June 8, 2023, the undersigned issued a Findings and Order determining that the Applicant had sustained a compensable psychiatric injury that was not barred by the “Good Faith Personnel Defense.” Defendant, through counsel (hereinafter Petitioner), has filed a timely and verified Petition for Reconsideration (hereinafter Petition) asserting that this decision was in error.

### **III DISCUSSION**

The Petition contains multiple instances impugning the Court’s integrity and the integrity of the proceedings

Parties before the Board may be subject to sanctions if they file pleadings where the language contained therein impugns the integrity of the Board or a judge.<sup>1</sup>

The Petition contains multiple instances accusing the undersigned of having “ignored” evidence.<sup>2</sup> The Petition further accuses the undersigned of making a “false statement” in the Opinion on Decision.<sup>3</sup> Even further then, the Petition states that the undersigned “craftily omitted” evidence.<sup>4</sup>

Potentially even more egregious, the Petition accuses the Applicant of having been “coached” to provide testimony.<sup>5</sup> The undersigned finds no evidence of the Applicant having been “coached” to testify as to anything and finds this baseless accusation troubling.

The undersigned respectfully recommends that the Board review these statements and determine if further action is warranted.

#### Defendant failed to prove a “Good Faith Personnel Defense”

The Labor Code bars a psychiatric injury if it was substantially caused by a lawful, nondiscriminatory, good faith personnel action.<sup>6</sup> The Workers’ Compensation Appeals Board has established a four step test to determine if the “good faith personnel defense” applies to a psychiatric injury, colloquially known as a “Rolda analysis.”<sup>7</sup> Personnel actions are “conduct”

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<sup>1</sup> CCR 10421 (b)(9)(B)

<sup>2</sup> Petition, Page 2, Lines 14 & 18, Page 4, Line 26

<sup>3</sup> Petition, Page 3, Line 2

<sup>4</sup> Petition, Page 3, Line 4

<sup>5</sup> Petition, Page 6, Line 4

<sup>6</sup> Labor Code 3208.3 (h)

<sup>7</sup> See *Rolda v. Pitney Bowes*, 66 Cal. Comp. Cases 241 (Cal. Workers’ Comp. App. Bd. February 21, 2001)

attributable to management in managing its business including such things as done by one in authority to review, criticize, demote, or discipline an employee.”<sup>8</sup> The burden of proof for the defense rests with Defendant.<sup>9</sup> If a trier of fact finds no personnel actions based on an absence of evidence, a Rolda analysis is not required.<sup>10</sup>

In the matter herein, Petitioner introduced no employer witnesses to explain the documents or employer actions undertaken in this matter. The undersigned must therefore interpret the documents as they are found, in connection with the testimony provided by the Applicant. The undersigned again reiterates that the Applicant was a credible witness.<sup>11</sup> Despite the Petition’s meritless allegation that the Applicant was “coached” to provide testimony, she credibly testified that workplace stress as a whole contributed to her psychiatric state. In support of this, she cited instances where she was accused of selling drugs, the removal of her name from a computer database, the burglary of her office, and the strained relationship with her supervisor. None of these issues are personnel actions. Lastly, the Applicant testified she was not aware of the employer conducting any investigation, but instead was aware of the Department of Health conducting an investigation.<sup>12</sup>

Additionally, the documentary evidence supports Applicant’s credible testimony. The undersigned notes that the Director of Nursing acknowledges that the Applicant “was the subject of retaliation by other staff.”<sup>13</sup> The events that happened to the Applicant did not occur in a vacuum. Applicant’s credible testimony supports a variety of factors causing her workplace stress. The workplace appears to have been problematic with issues that were stressful to the Applicant. The undersigned does not see any personnel actions, even in the broadest sense, to be at issue here. Additionally, Petitioner could have introduced employer witnesses to rebut the allegations of the office burglary or explain the name removal from the computer database, but did not.

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<sup>8</sup> Fleming v. Contra Costa County, 63 Cal. Comp. Cases 831, 834 (Cal. Workers’ Comp. Bd. July 10, 1998)

<sup>9</sup> Labor Code 3208.3 (h)

<sup>10</sup> Gentry v Dep’t of Corr., 2019 Cal. Wrk. Comp. P.D. LEXIS 34, 10 (Cal. Workers’ Comp. App. Bd. February 1, 2019)

<sup>11</sup> Garza v. Workers’ Comp. Appeals Bd., 3 Cal. 3d 312, 318-319; Schmidt v. Superior Court, 44 Cal. App. 5th 570, 582.

<sup>12</sup> MOH, SOE, Page 6, Lines 10-12

<sup>13</sup> Joint Exhibit 15

The Petition also seems to assert that because the PQME in this matter conducted a Rolda analysis and addressed certain issues as personnel actions, that the reporting of the PTP, Dr. Flores, is not substantial. The undersigned notes that it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions.<sup>14</sup> Dr. Flores's report is more consistent and better reasoned, especially when read in conjunction with Applicant's un rebutted, credible testimony.

Lastly, notwithstanding that the Applicant credibly testified she was unaware of the employer's investigation, the undersigned cannot find that the employer's investigation or suspension would merit applying the Good Faith Personnel Defense. The employer investigation and suspension were automatic results of the false allegation that the Applicant was selling drugs. It appears that this is an automatic investigation and suspension whenever an allegation of selling drugs is made within this particular healthcare setting. The false allegation in this instance was seemingly used by individuals disgruntled with the Applicant to "weaponize" the subsequent mandatory investigation and suspension against the Applicant, especially when read in connection with the Director of Nursing's email.<sup>15</sup> The undersigned does not find that this falls under the orbit of personnel actions as defined by the code and pertinent case law, but rather is an extension of the unpleasant workplace supported by the Applicant's testimony and the opinion of Dr. Flores.

#### **IV CONCLUSION**

The undersigned respectfully recommends that the Petition for Reconsideration be DENIED for the reasons set forth above.

The undersigned further respectfully recommends that the Board review the Petition under CCR 10421 (b)(9)(B) and take action as may be warranted.

DATE: July 5, 2023

**Michael Joy**  
WORKERS' COMPENSATION JUDGE

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<sup>14</sup> Place v. Workers' Comp. Appeals Bd., 3 Cal. 3d 372, 378-379

<sup>15</sup> Joint Exhibit 15