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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

PEGGY MILLER,

Petitioner,

v.

WORKERS' COMPENSATION APPEALS
BOARD, CALIFORNIA DEPARTMENT OF
MENTAL HEALTH, et al.,

Respondents.

F060092

(WCAB No. ADJ6603653)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of review from a decision of the Workers' Compensation Appeals Board. Alfonso J. Moresi, Deidra E. Lowe, and Ronnie G. Caplane, Commissioners. Thomas J. Heslin, Workers' Compensation Administrative Law Judge.

Peggy Miller, in propria persona, for Petitioner.

No appearance by Respondent Workers' Compensation Appeals Board.

Suzanne Ah-Tye, Patricia Brown, and Alan R. Canfield, for Respondents,
California Department of Mental Health and State Compensation Insurance Fund.

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* Wiseman, A.P.J., Levy, J., and Gomes, J.

BACKGROUND

Petitioner, Peggy Miller filed a claim for workers' compensation benefits alleging she sustained mind, body, psyche, and stress injuries caused by working as a registered nurse for the California Department of Mental Health at the Coalinga State Hospital (Hospital). Miller alleged the psychological injuries arose out of a medication administration dispute with her supervisor, Brandie Walker, a psychiatric technician licensed by the state Board of Licensed Vocational Nurses and Psychiatric Technicians.

Miller reported to the Hospital on March 18, 2008, at 10:00 p.m. and was scheduled work until 8:00 a.m. the next morning. Walker arrived an hour after Miller and asked her to distribute medications in the male sexual offender unit. Around 5:00 a.m., a patient requested a dose of the pain medication Darvon. Miller reviewed the patient's records and noted that the treating physician had prescribed one tablet every four hours as needed, not to exceed four doses in a 24-hour period. The patient's records indicated he received a dose of Darvon at 6:00 a.m. on March 18, 2008, and had already received three additional doses. Following her training as a registered nurse, Miller informed the patient that he could not receive his next dose of Darvon until 6:00 a.m.

The patient became upset and complained to Walker, who ordered Miller several times to administer the medication based on her understanding of the Hospital's Nursing Policy and Procedure Manual. The manual provided that in administering medications, "A 24-hour period is defined as 0001 to 2400."¹ Miller refused, began swearing, and became emotionally upset at being ordered by a psychiatric technician to violate the physician's order. She tried to call the Hospital's registered nurse on duty, but became physically unable to do so. According to Miller, she later met with the nurse on duty who

¹ Effective May 13, 2009, the Hospital's Nursing Policy and Procedure Manual removed the definition of a 24-hour period, replacing it with "All PRN orders require a maximum number of doses that can be administered in a 24 hour period."

initially agreed that the 24-hour period began with the first dose of medication and did not reset at midnight, but that nurse subsequently changed her opinion. The incident, and her treatment thereafter, led to Miller's claimed psychiatric injuries.

After two hearings, a workers' compensation administrative law (WCJ) judge reported his belief that as a registered nurse, Miller resented taking orders from psychiatric technicians and that resentment led to her inappropriate overreaction and breakdown following Walker's order that she administer the dose of Darvon at 5:00 a.m. instead of 6:00 a.m. The WCJ thus found that the Hospital's conduct "did not constitute injurious activity and that the directions given to [Miller] were not discriminatory, unlawful nor in bad faith." Accordingly, the WCJ concluded Miller did not sustain a compensable industrial injury.

Miller petitioned the WCAB for reconsideration. The WCJ repeated to the WCAB that "[t]he evidence as a whole demonstrated to the Court that the true cause of the problem was applicant's belief that as a Registered Nurse she should not have to take orders from a Psychiatric Technician, a position which the applicant believes to be educationally and managerially inferior to her own." The WCJ opined that the incident was merely an excuse for a confrontation over the Hospital's chain of command, and that the dosage order constituted a lawful, good faith personnel action barring Miller from recovering workers' compensation benefits within the meaning of Labor Code section 3208.3, subdivision (h).²

A two-member majority of the reviewing WCAB panel adopted and incorporated the WCJ's Report and Recommendation, affirming that the WCJ's conclusion that

² Labor Code section 3208.3, subdivision (h) provides: "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."

Walker's directions to Miller barred her psychological claim as a lawful, nondiscriminatory, good faith personnel action. The dissenting WCAB commissioner was not convinced that Walker's action constituted a "personnel action," but argued that even if it had been made in good faith, it was not legal because it could have been harmful to the patient and placed Miller's registered nursing license in jeopardy. Accordingly, the dissenting commissioner would not have found Miller's claim barred under section 3208.3, subdivision (h).

Neither the WCJ nor WCAB majority have answered Miller's primary contention nor explained, based on legal authority or substantial evidence, how Walker's dosage instructions overriding a physician's order constituted a *lawful* personnel action within a psychiatric technician's medical scope of authority. While this court may not weigh such evidence on appeal, we note that neither the WCJ nor WCAB majority acknowledged a letter obtained by Miller from the California Board of Licensed Vocational Nurses and Psychiatric Technicians concluding, under the facts and physician's order presented, that the next dose of medication should not have been administered until 6:00 a.m. because "[t]he 'clock' for determining when a patient should receive a medication must be based on the physician's order. Administration times should be established based on the time the initial dose was given, with subsequent administration occurring pursuant to the physician's order." The licensing board response added that "[i]t is illegal for the [psychiatric technician] to independently amend a medical order for a specific patient based on a general nursing policy and without the direction of a physician," and that restarting the medication dosage "clock" at midnight "is not in keeping with standards of professional practice and, more importantly, may be harmful to the patient."

To the extent the WCAB's decision rests on its determination that Walker's order that Miller administer the medication at 5:00 a.m. instead of 6:00 a.m. was a legal personnel action, this court is unable to determine how the WCAB majority reached the

finding so as to conduct an adequate review. Accordingly, we conclude the WCAB opinion does not sufficiently “state the evidence relied upon and specify in detail the reasons for the decision” as mandated by Labor Code section 5908.5.³ “The purpose of this section requiring the appeals board to specify in detail the reasons for its decision is to assist the reviewing court to ascertain principles relied upon by the lower tribunal to help avoid careless or arbitrary action and to make the right of appeal more meaningful.” (*Burbank Studios v. Workers’ Comp. Appeals Bd.* (1982) 134 Cal.App.3d 929, 936.) The WCAB’s failure to set forth its reasoning in adequate detail constitutes a sufficient basis to annul the decision and remand for a statement of reasons. (*Le Vesque v. Workers’ Comp. App. Bd.* (1970) 1 Cal.3d 627; *Painter v. Workers’ Comp App. Bd.* (1985) 166 Cal.App.3d 264, 268; *City of Fresno v. Workers’ Comp App. Bd.* (1985) 163 Cal.App.3d 467, 470.) Because the deficiency of the WCAB’s reasoning is apparent from the face of its decision, certification of the record and further briefing would add nothing to the presentation already submitted. (See *Goodenough v. Superior Court* (1971) 18 Cal.App.3d 692, 697.)

Nothing in this opinion should be construed as expressing any opinion of this court as to whether, or to what extent, Miller sustained a psychological injury, as that decision has not been reached by the WCAB.

³ Labor Code section 5908.5 provides: “Any decision of the appeals board granting or denying a petition for reconsideration or affirming, rescinding, altering, or amending the original findings, order, decision, or award following reconsideration shall be made by the appeals board and not by a workers’ compensation judge and shall be in writing, signed by a majority of the appeals board members assigned thereto, and shall state the evidence relied upon and specify in detail the reasons for the decision. [¶] The requirements of this section shall in no way be construed so as to broaden the scope of judicial review as provided for in Article 2 (commencing with Section 5950) of this chapter.”

DISPOSITION

Let a writ of review issue returnable before this court forthwith.

The WCAB's March 29, 2010, "Opinion and Order Denying Petition for Reconsideration" is annulled. The matter is remanded to the WCAB to conduct any further proceedings it deems appropriate, including granting reconsideration and taking additional evidence or briefing, to enable the WCAB to determine and explain whether the Hospital's dosage instructions to Miller giving rise to her psychological injury claims constituted a *lawful* personnel action within the meaning of Labor Code section 3208.3, subdivision (h).