

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

TOMMIE FIELDS,

Plaintiff and Appellant,

v.

INTERIM INCORPORATED,

Defendant and Respondent.

H043478
(Monterey County
Super. Ct. No. M110478)

Plaintiff Tommie Fields brought a wrongful termination action against defendant Interim Incorporated based on allegations of racial discrimination, harassment, and retaliation pursuant to the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). In a prior worker's compensation proceeding, the worker's compensation judge (WCJ) granted Fields's claim after finding that his psychiatric injuries were not caused by Interim's nondiscriminatory, good faith personnel action. On appeal, Fields contends that the trial court erred when it concluded that Interim was not collaterally estopped from presenting evidence of its nondiscriminatory, good faith personnel action. We agree and reverse the judgment.¹

¹ Since the judgment is reversed on this ground, we do not consider Fields's remaining contentions.

I. Statement of the Case

In February 2011, Fields filed a complaint for wrongful termination. In January 2016, the trial was held and the following causes of action were submitted to the jury: (1) hostile work environment harassment based on race in violation of FEHA; (2) disparate treatment based on race in violation of FEHA; (3) retaliation for complaints of race-based discrimination or harassment in violation of FEHA; (4) wrongful discharge in violation of public policy; and (5) intentional infliction of emotional distress. The jury found in favor of Interim on the FEHA and wrongful discharge causes of action. However, the jury found in favor of Fields on his intentional infliction of emotional distress cause of action and awarded him \$2 million in damages. The trial court later granted Interim's motion for judgment notwithstanding the verdict.

II. Factual Background

Interim provides housing and related services to adults with mental health disabilities. Interim hired Fields, an African-American man, as a counselor in 1989. During his 22-year career with Interim, he was one of the few African-American male counselors or employees. In 2000, Fields became a counselor in Interim's Community Housing Program. Dave Howell was the program director and Fields's immediate supervisor. Barbara Mitchell was the executive director at Interim.

A. Evidence Presented by Interim

Kate Spacher was the deputy director and Howell's supervisor. She had heard that Fields said Mitchell "must be racist" and she tried to convince him that Mitchell was not racist. Spacher never received a complaint that Howell was racist, had harassed anyone based on race, or discriminated against anyone based on race. Fields never complained to her that Howell shut him down in staff meetings.

Spacher received complaints from Fields's three supervisors prior to Howell. These complaints included that Fields: continually used Interim's equipment for personal use; asked for vacation time "at the last minute"; used sick time excessively; was always behind in his documentation; made excessive phone calls; went over the food budget; submitted inaccurate time sheets; refused to learn how to use the computer; and did not respond to voice mail.

In 2001, Spacher and Mitchell discussed firing Fields when they discovered that a substantial number of his Medi-Cal charts needed correction. Other employees helped Fields get the charts up to date. Spacher and Mitchell hoped that Fields would improve, but the problem continued "on and off"

Chris Kinard, Interim's director of human resources and information technology, had more than 100 communications with Interim employees about Fields's performance issues, which was far more than his communications about any other employee. According to Kinard, Fields had been informed of Interim's policy that e-mail, the Internet, cell phones, and the employee's work station were to be used only for work-related purposes and during working hours. Fields was later informed that he could use his cell phone for personal use, but no more than 30 daytime minutes per month. During a six-month period, Fields's use of the cell phone was greater than 50 percent of the minutes of the cell phones used by the other 56 employees.

In April 2010, Fields was placed on disciplinary probation for rules violations. These violations included: failure to complete documentation; excessive phone calls; not working a regular schedule; excessive use of sick time; not letting his supervisor know where he was; not asking for vacation time when he should have; failure to act in a professional manner; and not following parking restrictions. None of these issues involved Fields's race.

In May 2010, Spacher received a letter from Stephanie, an Interim client, in which she complained that Fields was mistreating her. The following day, Spacher and Howell met with Stephanie and two other clients, Fern and Michael. Stephanie stated that Fields had called her a liar, talked to her in a derogatory manner, ranted when he found something that was not clean, and threw out her coffee pot. Fern and Michael corroborated Stephanie's statements. All three clients stated that Fields had told them that they were not to call Howell. Spacher did not think that the three clients were symptomatic, psychotic, or delusional.

Fern also told Spacher that she had complained to Fields about a client who was "very symptomatic" When he failed to do anything, Fern told her counselor. A few days later, Fields told Fern that he got in trouble after she reported the situation to her counselor. Spacher called the counselor after the meeting and the counselor confirmed her conversation with Fern.

Spacher and Kinard decided to terminate Fields's employment before they heard his side of the story. Spacher explained that she did not feel that she could keep the clients safe if she told Fields about the complaints based on his 20-year history of not following his supervisors' instructions and his tendency to do things his way. She was "a hundred percent sure" that he would talk to the clients even if she had told him not to do so.

Mitchell also testified that Fields's supervisors before Howell had complained about Fields's performance. Mitchell had never asked an employee to falsify Medi-Cal billing, charts, or treatment plans. If she had discovered that an employee had done that, his or her employment would likely have been terminated.

According to Mitchell, Howell issued Fields a written warning in August 2008. Fields appealed this disciplinary action and met with Mitchell. At that time, they discussed race-based comments that another employee had made to Fields and his

response. According to Mitchell, Fields told her that the comments and his response were made in jest. Until this meeting, Fields had never stated that Howell or any employee had treated him differently based on his race. After this meeting, Fields sent Mitchell a letter refuting what had occurred in the meeting and later filed a complaint with the Equal Employment Opportunity Commission (EEOC). Fields claimed that he was treated differently and disciplined more frequently than “non-black, non-male employees.” He later asked that the warning, which had been issued by Howell, be removed from his file because he was applying for law enforcement positions. When Interim complied, he withdrew his EEOC complaint.

Fields’s disciplinary issues next came to Mitchell’s attention in April 2010. She was told that clients had alleged mistreatment and intimidation. When she met with Fields after the termination of his employment, he provided letters from clients and told her that the clients were lying and that one of them was “mentally retarded and should not be listened to.” According to Mitchell, Fern is not developmentally delayed. Mitchell talked to staff about Fields’s statements and held a meeting with clients, including Stephanie, Fern, and Michael. According to the clients, Fields had emotional outbursts, took away their belongings, did his laundry at the house, received packages at the house, and told them that he was their boss and Howell was not to be contacted. One client said nothing while the other clients were lucid and not agitated or upset. Mitchell concluded that Fields had been “ruling this house,” using it for his own purposes, and not looking out for the welfare of the clients. She felt “horrible,” because they “should have seen this and done something sooner.”

Contrena McPheter is African-American and one of Fields’s former clients. She never observed Howell act dismissively towards Fields. According to McPheter, Howell treated everyone “the same way.”

Carmen Torres, program director for community housing, regularly attended weekly staff meetings conducted by Howell between 2001 and 2010. She did not recall Howell being disrespectful, dismissive, or demeaning towards Fields during these meetings. She then recounted incidents in which she experienced problems with Fields's behavior. Judith Gonzalez, assistant program director for community housing, also attended weekly staff meetings. According to Gonzales, Howell treated Fields in the same manner as any other counselor.

B. Evidence Presented by Fields

Other employees at Interim described Fields as an effective counselor. Fields's colleagues often sought his advice and assistance in dealing with clients. Some of his clients and their families testified that he was fair, never abusive, and professional. In 2007, Fields received an award for an Interim employee "who was willing to go to any length for a client."

Fields told Howell and Mitchell that he was treated differently based on his race. Howell gave Fields disciplinary write-ups for behavior that he did not enforce with the rest of the staff. Several of his colleagues, testified that he was treated differently than they were. Juli Amaral was also supervised by Howell. She would be extremely frustrated at staff meetings when raising concerns on behalf of clients, but Howell did not discipline her for acting inappropriately. However, when Fields raised concerns in a more appropriate manner at these meetings, Howell would "shut him down." According to Amaral, Howell reacted differently to Fields than he did to other colleagues regarding vacation requests as well as phone and computer use. Amaral also observed that Howell would call on Fields's expertise to assist with problem clients.

Josh Powers was supervised by Howell. When Powers came in after his shift to get his billing done before the end of the month, he was not disciplined for doing so.

Though he used his work computer to check personal e-mails on a couple of occasions, nothing was said to him. Powers also parked a company vehicle in the fire lane at the Soledad facility and switched schedules with coworkers. Powers was never written up or threatened with termination while at Interim.

According to Powers, Fields was a “pretty good advocate for his clients,” but Howell dismissed his views. Powers was familiar with Stephanie, one of Fields’s clients. She complained to Powers that Fields would not let her have a coffee pot. Powers reported Stephanie’s complaint to Howell, who said that “there wasn’t anything to worry about and this was a pattern.” Powers later learned that other clients, not Fields, had made the decision about the coffee pot.

When Donna Mello, a counselor at Interim, was introduced to Fields by Howell, Fields was washing his own car during work hours. Howell became very angry, yelled at Fields, and told Mello that Fields does what he wants to do and doesn’t listen. She later found out that Fields transported clients, who were living in the woods and had lice, in his own car. According to Mello, Interim allowed employees to wash their personal vehicle when they were used to transport clients.

Mello’s observations of Fields were not consistent with Howell’s description of him. Howell consistently treated Fields in a disapproving and condescending manner and he did not treat other staff this way. Fields sent her copies of e-mails from Howell. They were usually something that he was doing wrong, like “[y]ou can’t stay late. Your hours are this to this.” Fields was reprimanded for washing his clothes during work hours. Mello explained that often people with mental illness do not wash their clothes and Fields was attempting to teach them how to do their laundry.

Mello was in her office outside of business hours and she was never disciplined for this conduct. Howell did not always enforce the 2-week notice requirement for asking for time off. Mello once asked if she could take the next day off. Howell said,

“‘Okay, but don’t tell’” Fields. Mello and other employees used their computers for personal use and were never disciplined for doing so.

According to Mello, Howell offered Imelda as a resource to help employees with Medi-Cal billing, but not to help Fields. Interim counselors were assigned one week of being on call. Counselors regularly traded their on-call schedule and informed Howell of the change. They were not required to obtain his authorization before making the change. Howell told Mello that Fields tried to take advantage of new counselors and get them to take his on call for him. Fields never took advantage of her and she never observed him trying to take advantage of her colleagues.

Mello thought that Howell’s actions towards Fields were unfair. Howell spoke to Fields in a derogatory manner at 70 percent of the staff meetings. She believed Howell would not have treated Fields in this manner if he was not African-American. Mello noted that another employee told Fields, “I’m going to slap the black off you,” and then she bragged to Mello that she was never reprimanded.

Victoria Coley was employed as a housing management specialist by Interim and frequently interacted with Fields. Beginning in 1996 or 1997, she interacted with Fields almost every day. She heard conversations between Fields and Howell that she felt were disrespectful. Coley recounted one of these conversations. Fields asked Howell, “‘Well, why are you against me so much? What is it?’ And Dave’s like, ‘I just don’t -- I just don’t like the way you do things. You think you don’t have to abide by the rules.’ He said, ‘What rules have I broken, Dave?’ And he couldn’t come up with a rule. He just said, ‘I want you gone. I want you to go to another program. I want you gone.’”

Howell also dismissed Fields’s concerns about clients. Valerie, one of Fields’s clients, had a substance abuse problem. Fields repeatedly advocated that she be transferred to a drug and alcohol program. However, Howell told Fields to stop raising these concerns about Valerie and other clients. Fields eventually found Valerie dead in

her room. Fields was also very concerned about another client, Daniel, who stated that he felt like committing suicide. After Fields reported the statement to Howell, they met with Daniel, who denied being suicidal. Fields did not believe Daniel and asked Howell to have him monitored more closely. Howell refused to allow Fields or anyone else to monitor Daniel. Daniel committed suicide that evening and Fields felt that he had “let him down” and should have returned to Daniel’s apartment to monitor him.

Fields testified in his own behalf. He felt Howell and Mitchell were racist, because he was written up for things that he did not do. He expressed this concern, but there was never an investigation. After the first complaint in 2000, diversity training was provided for staff, but not management.

Fields was given several reasons for the termination of his employment. He was told that he called a client a liar and had been abusive. Since he was familiar with his clients, he knew that Stephanie had made the allegation. He explained that Stephanie had made several allegations over the 18-year period that she was his client. Fields, Stephanie’s daughter, her physician, and her case manager met with Stephanie and the allegations were proved “fruitless” at each meeting. He denied that he ever called Stephanie a liar. Stephanie’s daughter called her mother a “habitual liar” during one of the meetings. Stephanie’s social worker testified that Stephanie was emotionally unstable, “kind of flighty,” and “sometimes very manipulative.”

Fields was admonished for washing his clothes in the coin-operated washer and dryer at an Interim facility. Fields explained that some clients defecated or urinated on themselves. When these clients washed their clothes, other clients refused to use the washer and dryer. Fields then cleaned out the washer and dryer and washed his own clothes in the machines to encourage the clients to do the same. After Fields stopped washing his clothes at the Interim facility, the clients also stopped. When he then brought his clothes for washing, the clients started washing their clothes again.

Fields described Interim's process for billing Medi-Cal. Counselors were required to document their interactions with clients. The billing requirement was 18-19 hours per week and eventually increased to 27-28 hours per week. The billing requirement was difficult for Fields, because he was slow with computers and had inherited three months of billing that his predecessor had not completed. He also noted that since his clients were the most difficult and were frequently in crisis, they required substantial attention from him and impeded his ability to complete the billing. Though Fields requested help with billing, Howell told him that he needed to make time for billing and that it came first. Howell also suggested that Fields place a "do not disturb" sign on his door. Fields felt that his clients would feel abandoned when they were in crisis if he placed such a sign on his door. The only way that Fields could meet the billing requirement was by coming back to work outside of business hours for which he was not paid.

When Fields began working at Community Housing, he was concerned that he was asked to bill for 45 minutes with clients when he only spent 15 minutes with them. After he raised this issue with Howell, Spacher, and Mitchell, he was told to just do his job. He was also disciplined by Howell.

Unlike his colleagues, Fields was required to request permission from Howell or Howell's supervisors to make an on-call switch.

Interim employees were required to call Howell on the days that they were sick and to request vacation time in writing two weeks in advance. However, this policy was not always enforced. Since Howell did not always acknowledge that Fields had called in sick or submitted written vacation requests, Fields began calling a colleague or sending a copy of the request to the colleague to demonstrate that he had taken the correct action. In response, Howell angrily told Fields not to involve other employees.

Fields provided an example of the difficulties he experienced in requesting vacation time. Torres, who was acting supervisor while Howell was on vacation,

verbally approved Fields's vacation request at a staff meeting. She later claimed that she had not approved his request and wrote him up for being AWOL. When Howell returned, he confronted Fields about taking time off without permission. With the help of IT personnel, Fields sent a copy of the e-mail request to Howell. Howell then admonished him for failing to obtain approval of his request in writing. Howell also produced an e-mail from Fields to Torres in which he requested two days off that he did not actually take. Fields told Howell that he had never sent this e-mail and IT personnel confirmed that he had not done so.

Fields summarized his emotional distress while at Interim. In 2007, Fields was depressed and began having anxiety attacks due to harassment from Howell and the death of a client. His interactions with Howell became more critical in 2008. Fields felt that Howell was pushing to make sure that he was fired. His depression was becoming more intense and he took a medical leave. While he was on leave, he received a letter from Kinard that if he did not return to work by a certain date, he would be relocated to Salinas. Though his doctor did not think he was ready to return to work, Fields did so. When he returned to work, Howell told him to report to Salinas. Fields followed this directive. He also contacted his worker's compensation attorney, who informed Interim that if it did not correct the violation, he would seek legal action. Fields was sent back to Monterey the following day. After Fields received the final warning in April 2010, he requested some time off. Since he was under a lot of pressure, not thinking correctly, and very nervous, he obtained medical treatment.

III. Discussion

A. Collateral Estoppel

Fields contends that the trial court erred when it failed to find that Interim was collaterally estopped from presenting evidence that its termination of Fields's employment was a nondiscriminatory, good faith personnel action.

1. Background

a. Worker's Compensation Hearing

Fields brought a worker's compensation claim for psychiatric injuries. At the hearing, Interim argued that its decision to terminate Fields's employment was "a nondiscriminatory, good faith personnel action" under Labor Code section 3208.3, subdivision (h),² and thus Fields was not entitled to any benefits for his injuries. The WCJ rejected this argument and found that Interim's termination of Fields's employment "was not a good faith personnel action; had the termination been a good faith personnel action it would not have met the . . . threshold necessary to bar the injury claim." The WCJ focused on Interim's failure to investigate the claims upon which the employment termination was based, Howell's statement that he wanted Fields "gone," the numerous letters of recommendation on Fields's behalf, and the award that Fields received for his commitment to his clients.

Interim filed a petition for reconsideration with the Worker's Compensation Appeals Board (WCAB) in which it argued that there was insufficient evidence to support the order. Interim summarized the evidence presented at the hearing that supported its position that his claim was barred by the lawful, nondiscriminatory, good faith personnel action defense. Interim focused on Fields's history of misconduct: his

² Labor Code section 3208.3, subdivision (h) provides that "no compensation . . . 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."

failure to follow the on-call system or his work schedule; his use of work e-mail and cell phone for personal communications in violation of company policy; and his placement on probation in 2010 when problems persisted. The bases for probation were: working outside regular work hours; use of a company cell phone and office for personal purposes; failure to stay current with documentation on his cases; failure to act in a professional manner; failure to follow instructions regarding vacation and sick leave; and consistently parking in a fire zone at one of Interim's locations. Shortly after Fields was placed on probation, Interim learned of a client's complaints against him, investigated the complaints, and terminated his employment. In its petition, Interim specifically stated that Fields had complained about discrimination, but Interim determined that the comments were made in jest. Interim further claimed that there was "no evidence of pretense or dishonesty on the part of the employer." According to Interim, there was no evidence that Fields "was treated any differently than any other employees. There [were] other African American counselors at Interim as well and no evidence of complaints from any of them of discrimination." Interim argued that the WCJ disregarded evidence that Fields's injuries were substantially caused by a lawful, nondiscriminatory, good faith personnel action.

The WCJ filed a report on the petition for reconsideration and recommended that the petition be denied. The WCJ stated that Fields's "testimony regarding his employment, his injury and his relationship with his supervisor was found to be credible and reliable evidence." The WCJ further stated that Fields's "dedication to his clients and his work for [defendant] was quite clear. Defendant did not have any witnesses at trial. . . . Obviously the review of deposition testimony does not provide the same opportunity to determine witness credibility." The WCJ concluded: "Having reviewed and considered the entire record, including the deposition transcripts, disciplinary documents, letters of recommendation, various statements made by the AME [agreed

medical evaluator] and [Fields's] testimony, it appears that the original finding was correct; the termination of [Fields's] employment was not a nondiscriminatory, good faith personnel action.”

The WCAB's order stated: “We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in said report which we adopt and incorporate, we will deny reconsideration. [¶] We are, moreover, extending to the WCJ's finding on credibility the great weight to which it is entitled [citation].”

b. Trial Court Proceedings

In his opposition to Interim's motion for summary judgment, Fields argued that the doctrine of collateral estoppel barred any evidence or argument that Interim did not cause his psychological or emotional injuries and that its termination of his employment was the result of a nondiscriminatory, good faith personnel action, because these issues had been litigated and resolved by the WCAB. The trial court did not address this argument in its order on Interim's motion.

Fields subsequently brought an in limine motion in which he argued that collateral estoppel barred Interim from presenting evidence and argument that its conduct toward him and the termination of his employment were the result of lawful, nondiscriminatory, good faith personnel actions.

The trial court denied the motion. It stated: “And what I understand plaintiff to be asking is that Interim would be prevented from defending against the plaintiff's FEHA claim, the fact that the plaintiff was terminated from his employment due to his race; that that would be based on a worker's comp award where there was a reference to the termination not being a good faith personnel action. Essentially in this request, which would be a motion in limine, I'm going to deny the request. It is essentially asking the

Court to make a legal determination rather than to specifically exclude the evidence. And I'm going to deny it on that basis.”³

Fields subsequently requested that he be allowed to put on his case-in-chief and have the jury determine whether there was racial discrimination as to each claim. He would then “raise a proper trial issue based on the court’s ruling because you said it was a legal issue. And it then becomes a legal issue once we put on our case in chief. If you can’t rule on this motion in limine, the Court can certainly rule on it as a matter of law.” The trial court denied the request. Fields also made a standing objection to any evidence “in support of its defenses on why they terminated Mr. Fields.”

2. Analysis

The doctrine of collateral estoppel bars relitigation of an issue that has been decided in a former proceeding, including a worker’s compensation proceeding. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701-702; *Housing Authority v. Workers’ Comp. Appeals Bd.* (1998) 60 Cal.App.4th 1076, 1083.) As the California Supreme Court explained in *Lucido v. Superior Court* (1990) 51 Cal.3d 335 (*Lucido*), “we have applied the doctrine only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former

³ The trial court granted Interim’s motion in limine to exclude “the workers’ compensation order and decision by the administrative law judge, and by the review hearing by the Board.” The trial court reasoned that the “evaluation by the administrative law judge appears to be a different sort of evaluation than what will be going on here in the trial, which is basically to connect the termination to racial discrimination. . . . Here the standard is different, the form is different, . . . the evidence that I assume will be presented by the employer will be through witness testimony, not through declaration. . . . I found the two proceedings to be different, in that the admission of the order of the workers’ comp case is not relevant to this particular proceeding.”

proceeding. Third, it must have been necessarily decided in the former proceeding.” (*Id.* at p. 341.)⁴

The issue of whether collateral estoppel applies is a question of law that this court reviews de novo. (*Samara v. Matar* (2017) 8 Cal.App.5th 796, 803.)

We first consider whether the issue in both proceedings was identical. An employer does not pay worker’s compensation for a psychiatric injury which was “substantially caused by a lawful, nondiscriminatory, good faith personnel action.” (Lab. Code, § 3208.3, subd. (h).) In *City of Oakland v. Workers’ Comp. Appeals Bd.* (2002) 99 Cal.App.4th 261 (*Oakland*), the Court of Appeal considered the definition of “‘lawful, nondiscriminatory, good faith personnel action’” as used in this statute. (*Oakland*, at pp. 265-267.) The *Oakland* court agreed with the objective good faith standard set forth in *Cotran v. Rollins Hudig Hall Internat., Inc.* (1998) 17 Cal.4th 93. Under this standard, the employer is required to show: the employer honestly concluded that the employee had committed a dischargeable offense; the employer conducted an appropriate investigation; the employer’s reason for the termination decision was not arbitrary; and the employer’s reason for the termination was not pretextual. (*Oakland*, at pp. 266-267.)

In a civil action under FEHA, after the plaintiff employee establishes a prima facie case of discrimination, the defendant employer has the burden to show a legitimate, nondiscriminatory reason for the adverse employment action. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355-356.) Once this burden is met, the plaintiff may show that the defendant’s reason is pretextual or produce other evidence of a discriminatory motive. (*Id.* at p. 356.)

⁴ The *Lucido* court listed two additional requirements: “the decision in the former proceeding must be final and on the merits . . . [and] the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.” (*Lucido, supra*, 51 Cal.3d at p. 341.) There is no dispute that these two requirements have been met in the present case.

An employer, who has failed to establish that the employee's psychiatric injuries were substantially caused by its lawful, nondiscriminatory, good faith personnel action in a worker's compensation proceeding, cannot establish that its adverse employment action was based upon legitimate, nondiscriminatory factors under FEHA. Thus, one of the issues in the WCAB proceeding was identical to the issue at trial, that is, whether Interim's termination of Fields's employment was lawful and nondiscriminatory.

We next consider if the issue of whether the termination was based on legitimate, nondiscriminatory factors was actually litigated in the worker's compensation proceeding. At oral argument, counsel for Interim and Fields disagreed as to whether racial discrimination by Interim was at issue in the worker's compensation proceeding. Interim correctly points out that the WCJ's order and opinion did not discuss differential treatment based on race or mention the "nondiscriminatory" element of the good faith defense. But Interim's petition for reconsideration cited to evidence which it presented at the worker's compensation hearing on the element of racial discrimination, summarized its view of this evidence, and specifically argued that this evidence established that its personnel action was nondiscriminatory. Interim also argued that there was no evidence of "pretense or dishonesty" Thus, Interim's petition for reconsideration establishes that the issue of whether the termination was based on racial discrimination was actually litigated in the worker's compensation hearing.

The third requirement for application of collateral estoppel was also met. The WCJ's report on the petition for reconsideration, which was adopted by the WCAB, rejected Interim's arguments when the WCJ found that "the termination of [Fields's] employment was not a nondiscriminatory, good faith personnel action." Thus, the issue was decided in the worker's compensation proceeding.

When the threshold requirements of the collateral estoppel doctrine are met, courts must examine the policies underlying the doctrine to determine whether it should apply in

a particular case. (*Lucido, supra*, 51 Cal.3d at p. 343.) These public policies are: “preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation.” (*Ibid.*) Here, the integrity of the judicial system is not preserved by allowing a litigant to relitigate in court an issue previously decided against it in WCAB proceedings. As was demonstrated in the present case, relitigation led to inconsistent outcomes. Judicial economy would also have been promoted if the parties had not relitigated the issue of whether the termination was the result of a nondiscriminatory, good faith personnel action by Interim. In addition, the policy against vexatious litigation favors applying collateral estoppel, because Interim had an adequate opportunity to present evidence of its nondiscriminatory, good faith defense to Fields’s claims of racial discrimination.

Interim contends, however, that the trial court properly denied Fields’s motion in limine, because he did not identify any specific evidence to be excluded. Interim relies on the concurring opinion of Justice Rylaarsdam in *R&B Auto Center, Inc. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327 (*R&B*), which criticizes the common use of in limine motions as a substitute for motions for summary judgment or summary adjudication but without the procedural protections provided by statute. (*Id.* at pp. 371-372.) First, this concern was not a holding of the *R&B* court. Second, reviewing courts have accepted that trial courts have properly granted motions in limine to exclude evidence after applying the doctrine of collateral estoppel. (See *Roos v. Red* (2005) 130 Cal.App.4th 870; *People v. Lopez* (2006) 146 Cal.App.4th 1263.) Moreover, we disagree with Interim’s characterization of Fields’s motion. Relying on the doctrine of collateral estoppel, Fields’s motion in limine sought to exclude evidence that Interim’s reasons for terminating his employment were legitimate, nondiscriminatory, and not pretextual.

Interim also contends that the denial of Fields’s motion in limine was at most harmless error. Interim claims that its affirmative defenses were not relevant, because the

jury found that Fields had not met his initial burden as to his FEHA and *Tameny*⁵ claims and thus never reached the issue of Interim's defenses.⁶ Interim has overlooked its own characterization of the evidence that it presented to defeat Fields's claims of racial discrimination and retaliation. Interim stated in its appellate brief that it had "presented overwhelming evidence that Fields was terminated for reasons having nothing to do with race or retaliation. Fields' performance problems were long-standing, well-documented and serious." Had Interim not presented this evidence, it is reasonably probable that a different result would have occurred had the evidence been excluded. (Cal. Const., art. VI, § 13; Evid. Code, § 353; *People v. Watson* (1956) 46 Cal.2d 818, 834, 836.)

In sum, we conclude that Fields met the requirements of collateral estoppel and that public policy considerations favor the application of the doctrine. Thus, the trial court erred when it failed to find that Interim was collaterally estopped from presenting evidence that its termination of Fields's employment was a lawful, nondiscriminatory, good faith personnel action. Since the motion in limine should have been granted, we remand the case for the trial court to determine which evidence must be excluded.

IV. Disposition

The judgment is reversed. Costs on appeal are awarded to Fields.

⁵ *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167.

⁶ In its verdict forms, the jury responded in the negative to the following questions: "Was Tommie Fields subjected to unwanted harassing conduct because he was African-American"; "Was Tommie Fields' race a substantial motivating reason for Interim's discharge"; "Was Tommie Fields' complaints of race based harassment or discriminatory treatment a substantial motivating factor in Interim's adverse employment action"; and "Was Tommie Fields' opposing or complaining about an unlawful activity and conduct protected by public policy, including discrimination and harassment in violation of Gov. Code § 12940(a) and (j)."

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.

Fields v. Interim, Inc.
H043478