

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

DENNIS LINDSEY, *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, legally
uninsured, administered by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ9111192
Santa Ana District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant¹ seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on September 16, 2022.

We have considered the allegations in the Petition for Reconsideration, the answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record, for the reasons stated in the WCJ's Report, which we adopt and incorporate, and for the reasons stated below, we will dismiss the petition as untimely.

There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10615(b), 10940(a).)

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979,

¹ Applicant filed a Notice of Dismissal of Attorney, which signed on June 26, 2023 and served on interested parties on July 17, 2023.

984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

The petition in this matter was filed on November 13, 2023. This was more than 25 days after the service of the WCJ's September 16, 2022 decision and beyond whatever extension of time, if any, the petitioner might have been entitled to under WCAB Rule 10600.

If the petition had been timely, we would have denied it on the merits for the reasons stated in the WCJ's report.

We also note that Labor Code² section 5902 requires that a petition for reconsideration be verified. (Lab. Code, § 5902; see also Cal. Code Regs., tit. 8, § 10510(d).) In *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 (Significant Panel Decision), it was held that where a petition for reconsideration is not verified as required by section 5902, the petition may be dismissed if the petitioner has been given notice of the defect (either by the WCJ's Report or by the respondent's answer) unless, within a reasonable time, the petitioner either: (1) cures the defect by filing a verification; or (2) files an explanation that establishes a compelling reason for the lack of verification and the record establishes that the respondents are not prejudiced by the lack of verification. Here, the Petition for Reconsideration is not verified and notice of this defect was specifically given in both the WCJ's Report and by the respondent's answer. Moreover, a reasonable period of time has elapsed, but petitioner has neither cured the defect by filing a verification nor offered an explanation of why a verification cannot be filed.

In addition to the WCJ's Report, we offer the following as further clarification regarding "events of employment" and "personnel actions."

In order to establish that a psychological injury is compensable, an injured worker must show by a preponderance of the evidence that actual events of employment predominantly caused the psychological injury.³ (Lab. Code, § 3208.3(b)(1).)

Once the issue of industrial psychiatric injury has been established, an employer may seek to have the claim barred from compensation by proving that it was substantially caused by lawful, nondiscriminatory, good faith personnel actions. (Lab. Code, § 3208.3(h).) Again, the burden of

² All future statutory references are to the Labor Code unless otherwise specified.

³ "[T]he phrase 'predominant as to all causes' is intended to require that the work-related cause has greater than a 50 percent share of the entire set of causal factors." (*Department of Corrections v. Workers' Comp. Appeals Bd. (Garcia)* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356].)

proof rests with the party holding the affirmative of the issue. (*Id.*) Thus, defendant holds the burden of proving the good faith personnel action defense.

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, base on *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241. After considering all the medical evidence and the other documentary and testimonial evidence of record, 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 9; *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 245-247; see also *County of Sacramento v. Workers’ Comp. Appeals Bd. (Brooks)* (2013) 215 Cal.App.4th 785 [78 Cal.Comp.Cases 379].)

It is often helpful to break this analysis into discreet elements:

- (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 competent medical evidence;
- (3) if actual events of employment were the predominant cause of the psychiatric injury, whether any of the events of employment were personnel actions;
- (4) if so, were those personnel actions lawful, nondiscriminatory and in good faith; and
- (5) if so, whether the lawful, nondiscriminatory, good faith personnel actions were a “substantial cause” of the psychiatric injury.

Here, the WCJ found that applicant's psychiatric injury was caused by actual events of employment, and that these events of employment were the predominant cause of the applicant's psychiatric injury, thus finding that applicant satisfied **steps one and two**. (F&A, Findings No. 1 and 2.) Defendant raised the good faith personnel action affirmative defense, which then required the WCJ to move to steps three, four, and five, which are defendant's burden.

In *Larch v. Contra Costa County*, the Appeals Board defined personnel action as conduct either by or attributable to management, which includes actions taken by someone who has the authority to review, criticize, demote, or discipline an employee. (*Larch (Fleming) v. Contra Costa County* (1998) 63 Cal.Comp.Cases 831, 833 [“conduct attributable to management in managing its business including such things as done by one in authority to review, criticize, demote, transfer or discipline an employee in good faith.”].) It is not necessary that the action have a direct or immediate effect on the employment status. Not every action taken by someone who has the authority to review, criticize, demote, or discipline is necessarily a personnel action. The issue of whether the employee's psychiatric injury occurred as a result of a personnel action is a factual and legal issue for the WCJ, as is the determination of whether a personnel action is lawful, nondiscriminatory, and made in good faith.

Here, at step three, the WCJ found that some of the actual events of employment that caused applicant's psychiatric injury were indeed personnel actions (F&A, Finding No. 3). At step four, the WCJ found that the events of employment which were personnel actions were lawful, nondiscriminatory, and made in good faith. (F&A, Finding No. 4.) Finally, at step five, the WCJ found that the lawful, nondiscriminatory, good faith personnel actions were a “substantial cause” of applicant's psychiatric injury, i.e., accounting for at least 35 to 40 percent of the psychiatric injury as defined by section 3208.3(b)(3). (F&A, Finding No. 5.) Because defendant met their burden of proof with respect to the “good faith personnel action” defense, the WCJ made a finding that defendant has no liability for applicant's psychiatric injury. (F&A, Finding No. 6.)

Accordingly, we dismiss the Petition as untimely and unverified. However, if the petition had been timely and verified, we would have denied it on the merits for the reasons stated in the WCJ's report.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 12, 2024

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

**DENNIS LINDSEY
TOUS LAW GROUP
STATE COMPENSATION INSURANCE FUND**

JB/cs

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

1. Applicant's Occupation: Staff Psychologist
Applicant's Age: 66 at the time of injury
Date of injury: August 30, 2012 through August 30, 2013
Parts of Body Injured: psyche hypertension and aortic root dilation
Manner in which it occurred: Continuous trauma

2. Identity of Petitioner: Dennis Lindsey (in Pro Per)
Timeliness: Petition is untimely
Verification: Petition is unverified

3. Date of Order September 16, 2022

4. Petitioner contends that the WCJ erred in finding that:
 - a. Some of the events of employment that caused the applicant's psychiatric injury were personnel actions that were lawful, nondiscriminatory, and made in good faith.
 - b. The personnel actions that were lawful, nondiscriminatory, and made in good faith were a substantial cause of the applicant's psychiatric injury.
 - c. The defendant has no liability for the applicant's psychiatric injury.

II. PROCEDURAL BACKGROUND

On September 3, 2013, the applicant, Dennis Lindsey, filed an Application for Adjudication alleging injury arising out of and in the course of employment to his psyche, hypertension, and aortic root dilation.⁴

The matter was scheduled for trial on January 22, 2020, at which time the stipulations and issues were read into the record. Concurrently, the parties submitted the documentation and other evidence that was identified and taken into evidence without objection.⁵ The matter was continued to a further date, at which time the parties were to be allowed to submit testimony.

The matter was continued a number of times at the request of the applicant, who indicated to the Undersigned Judge that he strongly desires to give live testimony and not video testimony.

⁴ Application for Adjudication, 8/30/2013; EAMS Doc ID: 49832310

⁵ Minutes of Hearing and Summary of Evidence, 1-22-20; EAMS Doc ID: 72099685

The parties returned on June 9, 2022, at which time the direct testimony of the applicant was commenced.⁶ Unable to complete the applicant's testimony, the trial was continued to August 10, 2022.

The parties returned on August 10, 2022, and the applicant's testimony was completed. No other witnesses were called on behalf of the applicant. The defendant called Victor Jordan as a witness, and his testimony was completed, and the matter was submitted for decision.⁷

The undersigned Judge issued his Finding and Award on September 16, 2022.⁸

A transcript request filed on behalf of the applicant was received on January 23, 2023.⁹

The Transcript of Hearing on 6-9-2022 was uploaded for FileNet on 2/1/2023.¹⁰

The Transcript of Hearing on 8-10-2022 was uploaded for FileNet on 2/28/2023.¹¹

The applicant dismissed his attorney, Tous & Associates, on June 26, 2023.¹²

The applicant filed his Petition for Reconsideration on November 13, 2023.¹³

III **DISCUSSION**

PETITION IS UNTIMELY

At any time within 20 days, after the service of any final order, decision, or award made and filed by the appeals board or a workers' compensation judge granting or denying compensation, or arising out of or incidental thereto, any person aggrieved thereby may petition for reconsideration.¹⁴

The undersigned Judge issued his Finding and Award on September 16, 2022.¹⁵ The applicant filed his Petition for Reconsideration on November 13, 2023.¹⁶ As such, the applicant's

⁶ Minutes of Hearing (Further) and Summary of Evidence, 6-9-2022; EAMS Doc ID: 75620459

⁷ Minutes of Hearing (Further) and Summary of Evidence, 8-10-2022; EAMS Doc ID: 75838427

⁸ FINDINGS & AWARD; OPINION ON DECISION, 9/16/2022; EAMS Doc ID: 75934986

⁹ Transcript Request Letter 1/4/2023; EAMS Doc ID: 76349896

¹⁰ Transcript of Hearing on 6-9-2022 - Dennis Lindsey; EAMS Doc ID: 76390032

¹¹ Transcript of Hearing on 8-10-2022 - Dennis Lindsey; EAMS Doc ID: 63909441

¹² Notice of Dismissal of Attorney, 6/26/2023; EAMS Doc ID: 47283943

¹³ PETITION FOR RECONSIDERATION 11/13/2023; EAMS Doc ID: 77349862

¹⁴ Cal Lab Code § 5903

¹⁵ FINDINGS & AWARD; OPINION ON DECISION, 9/16/2022; EAMS Doc ID: 75934986

¹⁶ PETITION FOR RECONSIDERATION 11/13/2023; EAMS Doc ID: 77349862

Petition for Reconsideration was filed 423 days after the decision, and the award was filed by the undersigned workers' compensation judge.

The applicant has asserted that he has discovered new evidence material to him which he could not, with reasonable diligence, have discovered and produced at the hearing.

The applicant identifies as the new evidence as the official transcript from the WCAB that he asserts was not received until February 28, 2023, from his then attorney of record, Mr. Tous.

The request for the official transcript of the trial proceeding was not requested until January 23, 2023,¹⁷ which was 129 days after the decision and award filed by the undersigned workers' compensation judge.

The official transcript from the WCAB is a record of the evidence submitted in the form of documentation and testimony. The applicant was present at trial and provided both the documentation and testimony. The applicant was served with the documentation submitted jointly by the defendant and was present during the testimony. The official transcript from the WCAB contained no new evidence not already known or in the possession of the applicant.

As such, the official transcript from the WCAB is not new evidence material to the applicant, which he could not, with reasonable diligence, have discovered and produced at the hearing.

It has been established that the Board is without jurisdiction to grant an untimely petition for reconsideration.¹⁸

Based on the above, the undersigned Judge respectfully recommends that the applicant's petition for reconsideration be denied.

PETITION IS UNVERIFIED

A Petition for Reconsideration shall be verified upon oath in the manner required for verified pleadings in courts of record. It shall contain a general statement of any evidence or other matters upon which the applicant relies in support thereof.¹⁹

¹⁷ Transcript Request Letter 1/4/2023; EAMS Doc ID: 76349896

¹⁸ Nestle Ice Cream Co. v. Workers' Comp. Appeals Bd., 72 Cal. Comp. Cases 13, 16 (Cal. App. 1st Dist. January 5, 2007, & Scott v. Workers' Comp. Appeals Bd. (1981) 122 Cal.App.3d 979, 984 [176 Cal. Rptr. 267, 46 Cal. Comp. Cases 1008]

¹⁹ Cal Lab Code § 5902

The undersigned Judge, having reviewed the applicant's Petition for Reconsideration, finds no verification as required by Cal Lab Code § 5902.

Petitions for reconsideration that are not verified may be dismissed if the filing party does not cure the defect within a reasonable time.

Based on the above, the undersigned Judge respectfully recommends that the applicant's petition for reconsideration be denied should a verification not be filed within a reasonable time of the undersigned Judge's Report and Recommendation advising the applicant of the lack of verification.

EVIDENCE NOT SUBMITTED AT TRIAL

In his petition for reconsideration, the applicant references multiple documents that were not offered at the time of trial. These documents include the following:

1. General Comments and Rebuttal Narrative to Dr. Jordan's Testimony sent in an email [57 pages] to Mr. William Lee, Senior Attorney at the San Bernardino County District Attorney/Workers' Compensation Fraud Unit, on April 12, 2023.
2. The official transcript of the 2017 Cal Pers Hearing.
3. Findings of ALJ Boyle in 2017 Cal Pers Hearing.
4. Victor Jordan's deposition testimony of May 14, 2016.
5. The deposition testimony of Dr. Muinos of May 20, 2016.
6. The deposition testimony of Dr. Cacianti of May 19, 2016.
7. The deposition testimony of Ms. Rivas of May 19, 2016.
8. Union Grievance (#G19-12-0037, Dated 11-19-2012)

These documents, which were available prior to the trial, were neither offered nor admitted into evidence at the trial.

A party seeking reconsideration must provide specific references to the evidentiary record when citing evidence, and the WCAB must support its decision by reference to the record. Documents or testimony not admitted into evidence may not be cited or attached to a petition to support a party's arguments on reconsideration. Furthermore, the WCAB may not rely on evidence that has not been admitted.²⁰

²⁰ McDonald v. Irwin Indus., 2012 Cal. Wrk. Comp. P.D. LEXIS 249, *4-5 (Cal. Workers' Comp. App. Bd. May 16, 2012, & Tolentino v. Conco Cement (2010) 2010 Cal. Wrk. Comp. P.D. LEXIS 388

The evidence identified above that was cited in the applicant's petition for reconsideration was not admitted into evidence and, therefore, cannot be relied on in determining the merits of the applicant's petition for reconsideration. As such, the undersigned Judge will address the applicant's petition for reconsideration within the framework of the evidence offered by the parties at the time of trial and taken into evidence.

THE DEFENDANT'S LIABILITY FOR THE APPLICANT'S PSYCHIATRIC INJURY

A psychiatric injury shall be compensable if it is a mental disorder that causes disability or need for medical treatment.²¹

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.²²

However, 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.²³ "Substantial cause" means at least 35 to 40 percent of the causation from all sources combined.²⁴

In interpreting Labor Code § 3208.3, the Appeals Board, in the en banc decision of *Rolda v. Pitney Bowes, Inc.*, (2001) 66 CCC 24, stated that a trial judge must first 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.

In determining the industrial nature of the applicant's physiological injury, the undersigned Judge relied on the medical opinions of Dr. Anne Welty, the Agreed Medical Examiner in psychology.

Dr. Welty issued a report diagnosing the applicant with adjustment disorder with mixed disturbance of emotions and conduct.²⁵

²¹ Cal Lab Code § 3208.3(a)

²² Cal Lab Code § 3208.3(b)(1)

²³ Cal Lab Code § 3208.3(h)

²⁴ Cal Lab Code § 3208.3(b)(3)

²⁵ Court Exhibit X, Report of Dr. Anne C. Welty, exam date 7/31/2014, Page 14

As to causation, Dr. Welty stated that with a reasonable degree of medical probability, over 51% of the applicant's acute and presenting psychiatric symptoms developed as a result of the events that transpired during the course of his employment with the Chino Institute for Men.²⁶

Dr. Welty stated that no nonindustrial issues would have contributed to the acute onset of the applicant's adjustment disorder, absent the events as they occurred while employed with Chino Institute for Men.²⁷

When deciding on a medical issue, a WCJ cannot disregard a medical expert's conclusion when the conclusion is based on expertise in evaluating the significance of medical facts.²⁸

Based on the opinions of Dr. Welty, the undersigned Judge found that the events of employment were the predominant cause of the applicant's psychiatric injury.

If the events of employment were the predominant cause of the applicant's psychiatric injury, a trial judge must then decide whether any of the actual employment events were personnel actions. If some or all of the employment events were personnel actions, the trial judge must determine whether the personnel action or actions were lawful, nondiscriminatory, and made in good faith.²⁹

Dr. Welty, at the parties' request, provided a more detailed analysis of the events during the applicant's employment. Dr. Welty, apportioned causation of the applicant's psychological injury as follows:

1. 10% to the implantation of AB109
2. 15% to the disciplinary action for his paperwork submission and timeliness of patient team meetings and scheduled appointments.
3. 10% to the disciplinary action for going outside the chain of command and for using profane language.
4. 10% to the disciplinary action for going outside the chain of command when he submitted a complaint regarding a particular staff psychiatrist who was going to come to work on the team.
5. 10% to the zero provider cancellation policy
6. 25% to the increased workload and responsibilities during his coworker's medical leave

²⁶ Court Exhibit Y, Report of Dr. Anne C. Welty, dated 9/13/2018, Page 25

²⁷ Court Exhibit Y, Report of Dr. Anne C. Welty, dated 9/13/2018, Page 25

²⁸ E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (2006) 145 Cal.App.4th 922 [71 Cal.Comp.Cases 1687]

²⁹ Rolda v. Pitney Bowes, Inc., (2001) 66 CCC 24

7. 20% to the transfer to the mental health crisis unit.

The undersigned Judge, upon review of the medical reporting and the testimony of the applicant, determined that there were a number of personnel actions that were employment events that contributed to the causation of the applicant's psychiatric injury.

Of these personnel actions, the undersigned Judge found that three were lawful, nondiscriminatory, and made in good faith.

The first was the applicant's belief that he was unfairly disciplined for submitting his complaints concerning the inaccessible "C" files.³⁰

This discipline arose from an Email sent by the applicant to a Mr. Blogden, who oversaw the new computer system. The email inquired about when the psychologists would get access to the "C" files. The applicant acknowledged that he failed to identify himself as a union steward in the email.³¹

The communication provided Mr. Blogden with an example of why access to the "C" files was essential and included the statement from the applicant: "Don't pee on my shoes and tell me it's raining."³² The applicant was written up and counseled, stating that he had failed to follow the chain of command and for using profanity in an Email.³³

Receiving the ECR upset and angered the applicant, as he felt it was unjust and unfair. The applicant was also frustrated and angry as he felt he did not use inappropriate profanity. The applicant believed that the ECR was in retaliation for his asking about access to the C-files.³⁴

Defense witness Dr. Victor Jordan testified that each employee has a supervisor, who then has a manager, and the manager has a supervisor. If an employee goes outside the chain of command, there can be repercussions. However, an employee can sometimes go outside a chain of command.³⁵ Dr. Jordan stated that an employee could be disciplined for using profane language.³⁶

According to Dr. Jordan, an ECR is documentation of communication between the employee and the employer about behavior and corrections to that behavior that need to be made.

³⁰ Court Exhibit Z, Report of Dr. Anne C. Welty, dated 2/21/2019, Page 2

³¹ EAMS Doc ID: 75620459 Minutes of Hearing (Further) and Summary of Evidence, 6-9-2022 Page 4 Lines 4 - 9

³² EAMS Doc ID: 75620459 Minutes of Hearing (Further) and Summary of Evidence, 6-9-2022 Page 5 Lines 15 - 16

³³ EAMS Doc ID: 75620459 Minutes of Hearing (Further) and Summary of Evidence, 6-9-2022 Page 4 Lines 14 - 16

³⁴ EAMS Doc ID: 75620459 Minutes of Hearing (Further) and Summary of Evidence, 6-9-2022 Page 5 Lines 20 - 22

³⁵ EAMS Doc ID: 75838427 Minutes of Hearing (Further) and Summary of Evidence, 8-10-2022, Page 8, Lines 17 - 20

³⁶ EAMS Doc ID: 75838427 Minutes of Hearing (Further) and Summary of Evidence, 8-10-2022, Page 8, Line 14

ECRs are preventive measures and come before any corrective measures are taken. All ECRs are purged from an employee's file at the performance evaluation. The ECR that the applicant received was purged from his file, and no corrective action was needed.³⁷

Given the colorful language used in the communication to Mr. Blogden, the undersigned Judge found that the level of discipline the applicant received in connection to this event was appropriate.

The undersigned Judge found that the personnel action concerning the applicant's use of the colloquial "Don't pee on my shoes and tell me it's raining." was lawful, nondiscriminatory, and made in good faith.

The second personnel action found by the undersigned Judge to be a lawful, nondiscriminatory, and made in good faith was the disciplinary action for the applicant's paperwork submission and timeliness of patient team meetings and scheduled appointments.³⁸

The applicant testified that Mr. Thomas observed him for about a week and stated that everything was relatively fine. Mr. Thomas asked if the applicant was putting the inmates' diagnoses in the PHIP, the patient health information portal. The applicant advised Mr. Thomas that he had not because he was overwhelmed but intended to do it upon the return of Mr. Scott. Three days later, the applicant received disciplinary action for willful disobedience because he had not been entering the diagnoses in the PHIP.³⁹

The applicant was disciplined for an action he conceded he had not done. Based on the applicant's testimony, the undersigned Judge found the disciplinary action was lawful, nondiscriminatory, and made in good faith.

The third personnel action that the undersigned Judge found to be lawful, nondiscriminatory, and made in good faith was the discipline the applicant received when he submitted a complaint regarding a particular staff psychiatrist who was going to come work on the team.⁴⁰

The applicant testified to an incident when the applicant filed a complaint about a colleague. The applicant had been advised that a particular colleague was to become the new lead

³⁷ EAMS Doc ID: 75838427 Minutes of Hearing (Further) and Summary of Evidence, 8-10-2022, Page 8, Lines 12 - 25

³⁸ Court Exhibit Z, Report of Dr. Anne C. Welty, dated 2/21/2019, Page 2

³⁹ EAMS Doc ID: 75838427 Minutes of Hearing (Further) and Summary of Evidence, 8-10-2022, Page 2 Line 23 to Page 3 Line 3

⁴⁰ Court Exhibit Z, Report of Dr. Anne C. Welty, dated 2/21/2019, Page 3

EOP psychologist. The applicant stated that the particular colleague had a very poor reputation and asked the supervisor if the particular colleague's transfer could be changed. The applicant received an ECR for going outside the chain of command and talking disparagingly and derogatorily about a colleague.⁴¹

The applicant did not feel that the ECR was fair as Dr. Scott was part of the request that their colleague not be head of EOP, and Dr. Scott did not get a reprimand or ECR for his participation in the request.⁴²

Dr. Jordan testified that the impugning of a colleague rarely leads to an ECR issuance. The issue with the applicant's email was the manner of communication and the specific information contained therein about his colleague. The ECR was for how the applicant sent the email, as it was sent to too many individuals, and some were outside of the psych treatment department.⁴³

Based on the testimony provided, the undersigned Judge found that the disciplinary action for talking disparagingly and derogatorily about a colleague was lawful, nondiscriminatory, and made in good faith.

Having determined that the applicant's psychiatric injury involves actual events of employment and that some of those events of employment were lawful, nondiscriminatory, and made in good faith personnel actions, the undersigned Judge was required to determine if those personnel actions were a substantial cause of the applicant's psychiatric injury.⁴⁴

Substantial cause is defined by the Labor Code to mean at least 35 to 40 percent of the causation from all sources combined.

Based on the medical opinion of Dr. Welty, 15% of the cause of the applicant's psychological injury was the result of the disciplinary action for the paperwork submission and timeliness of patient team meetings and scheduled appointments, 10% attributed to the disciplinary action for going outside the chain of command and for using profane language, and 10% attributed to the disciplinary action for going outside the chain of command when he submitted a complaint regarding a particular staff psychiatrist who was going to come work on the team.

⁴¹ EAMS Doc ID: 75620459 Minutes of Hearing (Further) and Summary of Evidence, 6-9-2022 Page 6 Lines 15 - 17

⁴² EAMS Doc ID: 75620459 Minutes of Hearing (Further) and Summary of Evidence, 6-9-2022 Page 6 Lines 18 - 20

⁴³ EAMS Doc ID: 75838427 Minutes of Hearing (Further) and Summary of Evidence, 8-10-2022, Page 9 Lines 13 - 17

⁴⁴ Rolda v. Pitney Bowes, Inc., (2001) 66 CCC 24

When combined, these three events of employment total 35% of the causation from all sources combined and were a substantial cause of the applicant's psychological injury.

With the applicant's psychological injury having been substantially caused by lawful, nondiscriminatory, and made in good faith personnel actions, the defendant would not be liable for any compensation for the applicant's psychological injury.

Based on the above, the undersigned Judge was not in error in finding that the defendant had no liability for the applicant's psychological injury.

IV. RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the applicant's petition for reconsideration be denied.

Date: November 27, 2023

/s/ Oliver Cathey

Oliver Cathey
WORKERS' COMPENSATION
JUDGE