

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

3
4 **CHAKA FERRELL,**

5 *Applicant,*

6 **vs.**

7 **COUNTY OF RIVERSIDE, Permissibly Self-**
8 **Insured,**

9 *Defendant.*
10

Case No. ADJ8180265
(Riverside District Office)

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

11 Defendant seeks reconsideration of the April 15, 2016 Supplemental Findings and Order issued
12 by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant
13 sustained injury arising out of and occurring in the course of employment (AOE/COE) to her psyche
14 while employed as a community improvement specialist from July 12, 2011 to November 22, 2011. The
15 WCJ further found that defendant failed to prove that the claim is barred by the "good faith personnel
16 action" defense or barred as a post-termination claim. The WCJ also found that the medical treatment
17 provided by lien claimant Southland Spine and Rehabilitation (Southland) was reasonable and necessary
18 to cure or relieve applicant from the effects of her injury.

19 Defendant contends that the WCJ erred in failing to find applicant's claim barred by the "good
20 faith personnel action" defense.

21 We did not receive any answer. The WCJ issued a Report and Recommendation of Judge on
22 Petition for Reconsideration (Report) recommending that we deny reconsideration.

23 Based on our review of the record and for the reasons discussed in the WCJ's Report, which we
24 adopt and incorporate herein, and for the reasons discussed below, we deny reconsideration.

25 Defendant appears to argue that all the actions undertaken by the employer constituted "personnel
26 actions" and that they were all conducted in good faith so as to meet the substantial cause threshold.
27

1 However, in addressing how Labor Code¹ section 3208.3(h) applies, past Appeals Board panel decisions
2 have recognized a distinction between general working conditions that cause psychiatric injury, such as
3 heavy workloads, and a "personnel action" specifically directed toward an individual that involves
4 his/her employment status. In *Larch v. Contra Costa County* (1998) 63 Cal.Comp.Cases 831 (Significant
5 Panel Decision), the panel addressed the meaning of "personnel action" as used in section 3208.3(h) as
6 follows:

7 [T]he term personnel action 'was not intended to cover all actions by any level of
8 personnel in the employment situation or all happenings in the workplace done in
9 good faith'.... This would be too broad an interpretation that would preclude from
10 consideration practically all events occurring such as work loads imposed in good
11 faith...

12 [A] personnel action is conduct either attributable to management including such
13 things as done by one who had the authority to review, criticize, demote, or discipline
14 an employee. It is not necessary for the personnel action to have a direct or immediate
15 effect on the employment status. Personnel actions may include but are not
16 necessarily limited to transfers, demotions, layoffs, performance evaluations, and a
17 disciplinary action such as warnings, suspensions and terminations of employment.

18 (*Larch, supra*, 63 Cal.Comp.Cases at pp. 833-835.)

19 The distinction between the effect of working conditions, and the effect of an action directed
20 towards an individual's employment status, has been recognized and applied by several Appeals Board
21 panels in determining whether a psychiatric injury was substantially caused by lawful,
22 nondiscriminatory, good faith personnel actions. (*Kaiser Foundation Hosp. v. Workers' Comp. Appeals*
23 *Bd. (Berman)* (2000) 65 Cal.Comp.Cases 563 (writ den.) [corporate reorganization that increased
24 workloads not "personnel action" for purpose of section 3208.3(h) even though it was non-discriminatory
25 and generally applied to all employees]; *Atlantic Mutual Insurance Companies v. Workers' Comp.*
26 *Appeals Bd. (Brodsky)* (2001) 66 Cal.Comp.Cases 370 (writ den.) [increasing sales quotas, changing
27 commission structure, reassigning applicant's sales accounts to other people, and offering applicant
lower paying job at fixed salary, found not to be "personnel actions" for purpose of section 3208.3(h)];
Sunsweet Growers Inc. v. Workers' Comp. Appeals Bd. (Milliron) (1999) 64 Cal.Comp.Cases 1432 (writ

¹ All further statutory references are to the Labor Code, unless otherwise noted.

den.) [announcement of a shift change to seven days per week/nine hours per day for an indefinite period not a "personnel action" within meaning of section 3208.3(h)]; *Neighborhood Legal Services of Los Angeles v. Workers' Comp. Appeals Bd. (Rivera)* (2002) 67 Cal.Comp.Cases 1367 [10] (writ den.) [assignment of new and increased work requirements not "personnel action" under section 3208.3(h)].)

We recognize that not every Appeals Board panel has recognized the distinction between a psychiatric injury caused by stressful working conditions and injury caused by an action specifically directed towards an individual's employment status. (See *Schultz v. Workers' Comp. Appeals Bd.* (1998) 63 Cal.Comp.Cases 222 (writ den.) [changes in the employment environment resulting from change in company ownership, frequent change of managers, alteration of sales territory, change in the pay structure, increased workload caused by reduction of sales staff, and requirement to maintain a neat desk construed by panel to be "personnel actions" that barred compensation because they were taken for reasonable and proper business purposes].)

However, we find that recognizing the distinction between a psychiatric injury caused by stressful working conditions, and an injury caused by a good faith nondiscriminatory "personnel action" directed specifically towards an individual's employment status, is both important and necessary, and the contrary view of the panel in *Schultz* is not adopted here. Without the distinction, the phrase "personnel action" would encompass everything in the employment environment that stems from good faith management actions, and that "would be too broad an interpretation that would preclude from consideration practically all events occurring such as work loads." (*Larch, supra*, 63 Cal.Comp.Cases at p. 835; see also *County of Butte v. Workers' Comp. Appeals Bd. (Purcell)* (2000) 65 Cal. Comp. Cases 1053, 1058 (writ den.) [not all actions by management may be construed as personnel actions because such a construction would be overly broad and would result in the denial of compensation for injuries caused by management's criticism of an employee's conduct].)

We agree with the WCJ that the elimination of one department due to budgetary concerns and the transfer of several employees to a different department with all the consequences of a new probationary period and the need to share limited resources were general working conditions and not "personnel actions" within the meaning of section 3208.3(h). Therefore, we will affirm the WCJ's finding that

1 defendant did not meet its burden of proof that applicant's claim was barred by the "good faith personnel
2 action" defense.

3 Finally, we find it necessary to admonish defense counsel Louis D. Seaman for the improper tone
4 he used throughout the Petition for Reconsideration. In particular, he used the following objectionable
5 language: (1) "[w]hy the Workers' Compensation Judge does not understand what those components are
6 is somewhat of a mystery...." (Petition for Reconsideration, at p. 7:23-24); (2) "[w]hat about this move is
7 mysterious to the Workers' Compensation Judge as to not to identify it as being part and parcel of the
8 good faith personnel act?" (Petition for Reconsideration, at p. 8:16-18); and (3) "[i]t is beyond the realm
9 of comprehension as to how these acts as defined by the witnesses' own testimony and history as given
10 to the Panel Qualified Medical Evaluator did not amount to anything but good faith personnel acts."
11 (Petition for Reconsideration, at p. 13:16-20.) These comments are inappropriate and unprofessional,
12 and we admonish defense counsel for writing in the disrespectful, insulting tone reflected in the Petition
13 for Reconsideration. Any such conduct by him in the future may result in sanctions. (See Lab. Code, §
14 5813; see also Cal. Code Regs., tit. 8, § 10561(b)(9)(B) [sanctionable conduct includes "using any
15 language in any pleading or other document [...] where the language or gesture impugns the integrity of
16 the Workers' Compensation Appeals Board or its Commissioners, judges, or staff"].)

17 Accordingly, for the reasons stated herein, we deny reconsideration.

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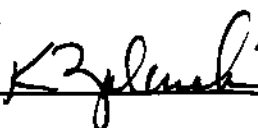
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1 For the foregoing reasons,

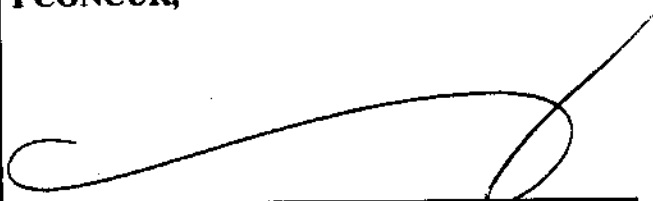
2 **IT IS ORDERED** that defendant's Petition for Reconsideration of the April 15, 2016
3 Supplemental Findings and Order is **DENIED**.

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5 **WORKERS' COMPENSATION APPEALS BOARD**

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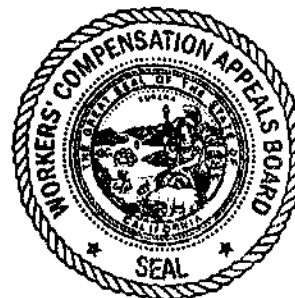
8 **KATHERINE ZALEWSKI**

9 **I CONCUR,**

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11 

12 **MARGUERITE SWEENEY**

13
14 **CONCURRING, BUT NOT SIGNING**



JOSÉ H. RAZO

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUN 27 2016

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

**CHAKA FERRELL
DIAL & ASSOCIATES
SOUTHLAND SPINE & REHABILITATION MEDICAL CENTER
LOUIS D. SEAMAN**



PG/acw

FERRELL, Chaka

**STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD
CASE NO: ADJ 8180265**

**CHAKA FERRELL
APPLICANT
Vs.
COUNTY OF RIVERSIDE, PSI
DEFENDANT**

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:

CHRIS ELLEN WILLMON

**REPORT & RECOMMENDATION OF JUDGE ON PETITION FOR
RECONSIDERATION**

INTRODUCTION

Defendant filed a timely, verified Petition for Reconsideration ("Petition") asserting that: (1) By the 4/15/16 Order of the undersigned, the Appeals Board acted without or in excess of its powers; (2) the evidence does not justify the Findings of Fact; (3) the Findings of Fact do not support the Order.

CONTENTIONS

That defendant met its burden of showing that psychiatric injury was substantially caused by lawful, non-discriminatory, good faith personnel actions, by arguing that every job-related stress was a "personnel action" per LC 3208.3(h), such that payment of a lien for treatment should be disallowed.

FACTS

Chakka Ferrell, while employed from 7/12/11 – 11/22/11 as a community improvement specialist at the Economic Development Agency (“EDA”) of the County of Riverside (“County”), claimed injury to her psyche. She worked for the County in Code Enforcement (“CE”) from 2005 until July, 2011. At that time, County budget cuts caused the transfer of essentially all CE employees, including applicant, to the EDA, where they became probationary employees.

While at EDA, Ms. Ferrell claimed stresses such as the unfairness of having to be on probation; the EDA office environment; the new director; the fact that cars were pooled instead of assigned individually; the pooling of other equipment causing inadequate access.

By November, 2011, applicant sought treatment for work stress from a Kaiser psychiatrist and was taken off work. She was transferred to CE and laid off.

Applicant settled her case by compromise and release. Lien claimant Southland Spine and Rehabilitation (“Southland”) sought reimbursement for treatment of depression.

DISCUSSION

Following trial, it was found that Southland met its burden of proving that a DSM IV disorder was properly diagnosed, and that actual events of employment at EDA were the predominant cause of injury, which has not been challenged by the Petition. The Petition challenges the finding that defendant failed to prove that injury was substantially cause by lawful, non-discriminatory, good faith personnel actions.

Defendant's first burden was to prove that Ms. Ferrell's stressors included actual employment events that were "personnel actions." Not every event, involving employer and employee, is a "personnel action". Questions of whether an event is lawful, discriminatory or good faith do not arise if the *event* is not a *personnel action*.

Petition cites the discussion of 'personnel action' found in *Larch v. Contra Costa County* (1998) 63 Cal. Comp. Cases 831. "We conclude that a personnel action is conduct by or attributable to management including such things as done by one who has the authority to review, criticize, demote, or discipline *an employee*." [Page 835. Emphasis added.] One management action in *Larch* consisted of confronting Larch's inappropriate conduct, and was found to be a personnel action. Another, disagreement on day-to-day operations, was not a personnel action.

The budgetary needs of the County resulted in eliminating CE and transferring its employees to EDA. As an indirect result, changes were made in the work environment for applicant and the other CE employees, which Ms. Ferrell found stressful. The transfer and its consequences were not management conduct directed at Ms. Ferrell. This was a general restructuring of agencies, not a personnel action against Ms. Ferrell. *Kaiser Foundation Hospitals v. WCAB (Berman)* (2000) 65 Cal. Comp. Cases 563.

The Petition cites many difficult work situations at EDA, but they were present for all employees, not just applicant. Two personnel actions were taken against Ms. Ferrell: her December 2011 transfer back to CE followed by her lay-off. These occurred after she was taken off work for stress on or about 11/22/11. The panel QME, Sarah Watkin, MD, misapplied the phrase "personnel actions" to all Ms. Ferrell's stresses at

Applicant:

Case No.:

EDA, however, Dr. Watkin also properly deferred to the trier of fact to determine how the definition applies in this case.

Defendant has not shown that personnel actions substantially caused Ms. Ferrell's injury.

RECOMMENDATION

That the Petition for Reconsideration be denied.

DATED 5/10/16 AT RIVERSIDE, CA



**CHRIS ELLEN WILLMON
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE**

CEW:

Service made on all parties as listed
on the Official Address Record.

Effective 5/10/2016
By A. Sawalga