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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DEBORAH LARSEN,

Applicant,

vs.

**SECURITAS SECURITY SERVICES;
permissibly self-insured, adjusted by
SEDGWICK CMS,**

Defendants.

Case No. ADJ9034489
(Santa Rosa District Office)

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration from the Findings and Award (F&A) issued on March 1, 2016, by the workers' compensation administrative law judge (WCJ), which found, in pertinent part, that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her psyche which resulted in permanent disability of 56% after apportionment and after combination with the permanent disability to applicant's shoulders. The WCJ further found that applicant's psychological permanent disability resulted from a "violent act" in accordance with Labor Code section 4660.1(c)¹ and thus was compensable.

Defendant contends that the award of permanent disability to applicant's psyche is not consistent with section 4660.1(c), which prohibits an increase in permanent disability for psychiatric disability that arises out of a compensable physical injury, because applicant's injury did not constitute a "violent act."

We have received an answer from applicant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that we deny reconsideration. We have considered the allegations of the Petition for Reconsideration, the answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will deny reconsideration.

¹ All future references are to the Labor Code, except where noted.

1 **FACTUAL AND PROCEDURAL BACKGROUND**

2 Applicant worked as a security guard for defendant. Applicant sustained an accepted industrial
3 injury to her neck, back, and bilateral shoulders as a result of being hit by a car while walking through a
4 parking lot on February 21, 2013. Applicant also alleged injury to her psyche as a result of the accident.

5 Applicant attended a qualified medical evaluation with Ann Allen, M.D., who diagnosed
6 applicant with cognitive disorder, post-traumatic stress disorder, and depressive disorder. (Joint Exhibit
7 5, Report of Ann Allen, M.D., July 7, 2014, p. 23.) Dr. Allen described applicant's injury as follows:

8 On the date of injury February 21, 2013, she was in the middle of a
9 walking patrol. Apparently, a car struck her from behind, she hit the back
10 of her head so hard when she was hit by the car, at one point she had a
11 thought that she was going to die. However, she does not recall seeing the
12 car. Taken by ambulance to the ER., she was kept in the emergency room
13 for observation, she developed headaches and dizziness as well as memory
14 problems.

15 (*Id.* at p. 3.)

16 Dr. Allen commented upon causation of injury as follows:

17 It is reasonable and probable and based on substantial evidence that
18 Ms. Larsen sustained an injury to the psyche predominantly due to her
19 work injury on February 21, 2013 while employed for Securitas Security.
20 The event was sudden, she has fragmented memories of being hit by a car
21 and falling to the ground in a parking lot in the course of her employment.
22 At one point she thought she would die, but she was unable to recall when
23 this occurred exactly. Subsequently she experienced significant
24 nightmares, increased startle response, insomnia, anxiety, fear of parking
25 lots, and fear of moving cars.

26 Further, she developed a cognitive disorder that evolved into a depression.
27 Records reflect post- concussive disorder diagnosis, she probably did
sustain a loss of consciousness, although imaging study, CT, and MRI of
the head were normal. She has a history of encephalitis from meningitis
which probably made her more susceptible to the development of cognitive
impairment as compared to the average individual.

(*Id.* at p. 22.)

Dr. Allen assigned apportionment of 10% to residual psychiatric disability flowing from
applicant's non-industrial medical conditions, 10% to prior emotional difficulties, and 80% from the
work event of February 21, 2013. (*Id.* at p. 25.)

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ANALYSIS

I.

WHAT CONSTITUTES 'A VIOLENT ACT'

Unless otherwise compelled by the language of the statute, workers' compensation laws are "... liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." (§ 3202.)

Defendant contends that applicant's psychological permanent disability is not compensable under section 4660.1(c) because the act of being hit by a car is not a "violent act" as intended by the Legislature in drafting section 4660.1. Defendant would define a "violent act" as an act of criminal or quasi-criminal violence that is perpetrated against applicant.

Applicant's injury occurred in 2013, which is subject to section 4660.1(c), which states:

(c) (1) Except as provided in paragraph (2), there shall be no increases in impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury. Nothing in this section shall limit the ability of an injured employee to obtain treatment for sleep dysfunction, sexual dysfunction, or psychiatric disorder, if any, that are a consequence of an industrial injury.

(2) An increased impairment rating for psychiatric disorder shall not be subject to paragraph (1) if the compensable psychiatric injury resulted from either of the following:

(A) Being a victim of a violent act or direct exposure to a significant violent act within the meaning of Section 3208.3.

(B) A catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury.

Although the Legislature refers to the term "violent act" as coming within the meaning of section 3208.3, section 3208.3 does not define what constitutes "a violent act", but instead uses the term to create a lower threshold for compensability of psychological injuries as follows:

(2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

(§ 3208.3(b)(2).)

1 Section 3208.3 was amended on July 16, 1993, as part of a package of comprehensive workers'
2 compensation reform legislation designed to decrease the perceived fraud and abuse occurring with
3 purely psychiatric claims. (1993 Cal AB 119; *Lockheed Martin vs. Workers' Comp. Appeals Bd.*
4 (*McCullough*) (2002) 96 Cal.App.4th 1237, 1249 [67 Cal.Comp.Cases 245].) In *McCullough*, the court
5 interpreted section 3208.3 as applying to all psychiatric injuries, including psychiatric injuries that are a
6 compensable consequence of physical injuries. *McCullough* focused on the precise words of the statute
7 while acknowledging "... the undeniable fact that the Legislature was aiming primarily at phony stress
8 claims, especially those filed by disgruntled short-term former employees(.)" (*Id.*)

9 As part of the 1993 reform package, the Legislature increased the threshold of compensability for
10 stress claims to require predominant industrial causation (51%). (§ 3208.3(b).) However, stress claims
11 that resulted from being the victim of a violent act or being exposed to a violent act only require
12 substantial causation (35-40%). (*Ibid.*) The Labor Code does not define what constitutes a "violent
13 act."²

14 Black's Law Dictionary defines 'violent' as follows:

- 15 1. Of, relating to, or characterized by strong physical force <violent blows
16 to the legs>. 2. Resulting from extreme or intense force <violent death>. 3.
Vehemently or passionately threatening <violent words>.

17 (Black's Law Dictionary (7th ed. 1999).)

18 Here, applicant was struck by a car in a parking lot where she was conducting a walking patrol as
19 a security guard. Furthermore, the evidence establishes that applicant was hit from behind with enough
20 force to cause her to fall, hit her head, and lose consciousness. Being hit by a car under these
21 circumstances constitutes a violent act. Applicant was therefore a victim of a 'violent act' within the
22 definition of section 3208.3(b). Thus, applicant is entitled to additional permanent disability for her
23 psychological injury as an exception to section 4660.1(c).

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26 ² Throughout the entirety of California law, we have found one code section that defines a "violent act" and that section states:
27 "Violent act means any act that results in bodily harm or injury to any party involved." (Bus. & Prof. Code, § 7500.1(aa).)
However, that code section concerns the reporting requirements for those engaged in repossession of property and appears
broadly defined for the purpose of that statute.

1 Defendant argues to limit the definition of violent act to either criminal or quasi-criminal conduct
2 perpetrated against applicant. However, as in *McCullough*, we must look to the words of the statute.
3 Had the Legislature intended a violent act to constitute either criminal or quasi-criminal conduct, the
4 Legislature could have included such language in the statute. Indeed, there are multiple statutes that
5 indicate such language. (See Ed. Code, § 7008 [Establishing certain employment benefits for “a violent
6 act perpetrated on his or her person while performing duties in the scope of employment.”]; Gov. Code
7 § 20046.5 [Defining PERS industrial death benefits for an injury “. . . that is a direct consequence of a a
8 violent act perpetrated on his or her person by a patient or client of the State Department of State
9 Hospitals at Metropolitan State Hospital or Napa State Hospital.”]; Gov. Code, § 20047 [Defining PERS
10 industrial death benefits for and injury “. . . that is a direct consequence of a violent act perpetrated on his
11 or her person by a patient or client of the State Department of State Hospitals at Patton State Hospital or
12 Atascadero State Hospital, an inmate at the State Department of State Hospitals Psychiatric Program at
13 California Medical Facility at Vacaville, or a patient at any other state hospital which is deemed a
14 forensic facility.”]; Gov. Code, § 20047.5 [Defining PERS industrial death benefits for an injury “. . . that
15 is a direct consequence of a violent act perpetrated on his or her person by a patient or client of the State
16 Department of Developmental Services, at Porterville Developmental Center, Canyon Springs
17 Community Facility, or Sierra Vista Community Facility]; Gov. Code, § 20048 [Defining PERS
18 industrial death benefits for an injury “. . . that is a direct consequence of a violent act perpetrated on his
19 or her person by an inmate of a state prison, correctional school or facility of the Department of
20 Corrections or the Department of the Youth Authority, or a parolee therefrom.”]; Gov. Code, § 20382
21 [Defining PERS industrial death benefits to apply “. . . to any other state employee whose death or
22 disability results from an injury which is a direct consequence of a violent act perpetrated on his or her
23 person by an inmate of a state prison, correctional school or facility of the Department of Corrections or
24 the Department of the Youth Authority or a parolee therefrom.”]; Gov. Code, § 21540.5 [Further defining
25 the PERS special death benefit as arising from “. . . a violent act perpetrated on his or her person that
26 arose out of and was in the course of his or her official duties.”]

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1 "To perpetrate" is defined as: "To commit or carry out (an act, especially a crime)[.]" (Black's
2 Law Dictionary (7th ed. 1999).) The Legislature has indicated a requirement that a violent act be
3 'perpetrated' upon the victim within numerous other statutes, but has omitted such language from section
4 3208.3. Thus, we conclude that for purposes of section 3208.3, a "violent act" is not limited solely to
5 criminal or quasi-criminal activity, and may include other acts that are characterized by either strong
6 physical force, extreme or intense force, or are vehemently or passionately threatening.

7 Accordingly, we will deny defendant's Petition for Reconsideration.

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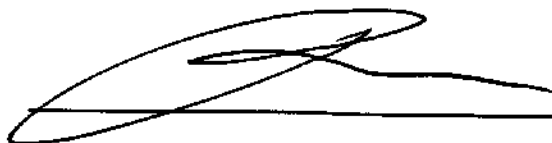
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1 For the foregoing reasons,

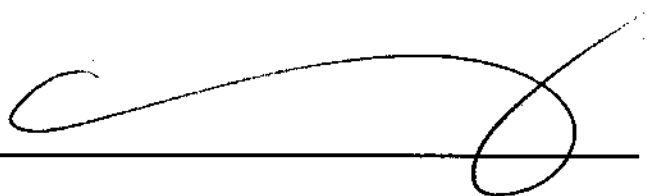
2 **IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings and Award
3 issued on March 1, 2016, by the workers' compensation administrative law judge is **DENIED**.

4 **WORKERS' COMPENSATION APPEALS BOARD**

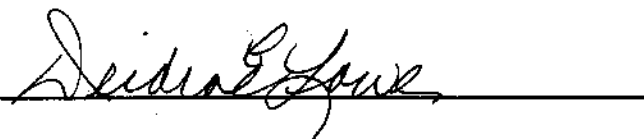
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7 **DEPUTY RICHARD L. NEWMAN**

8 **I CONCUR,**

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12 **MARGUERITE SWEENEY**

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15 **DEIDRA E. LOWE**



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

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19 **MAY 17 2016**

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

22 **DEBORAH LARSEN**
23 **FLUSS & WILLIAMS**
24 **HANNA, BROPHY, MACLEAN, MCALEER & JENSEN LLP**

25 

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27 **EDL:mm**

LARSEN, Deborah