

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

Case No. [REDACTED]

[REDACTED]
Applicant,

vs.

[REDACTED] administered by
[REDACTED]
INC.,

Defendants.

FINDINGS AND ORDER

The matter having been heard by and submitted for Decision to the Honorable [REDACTED] Workers' Compensation Administrative Law Judge, said Judge Finds and Orders as follows:

FINDINGS OF FACT

1. The Stipulations of the parties as specified on page 2 of the Minutes of hearing and Summary of Evidence dated August 2, 2011 are true and are adopted by reference as though fully set forth herein.
2. Applicant did not sustain a compensable industrial injury to his psyche while employed by the [REDACTED] November 27, 2006 through August 2, 2007.
3. All other issues are moot.

ORDER

IT IS ORDERED that the applicant take nothing by way of the application filed herein.

DATE: 9-2-11

[REDACTED]

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served by mail on all parties listed on the Official Address record on the above date.
BY: MCastillo

[REDACTED]

[REDACTED]

OPINION ON DECISION

Applicant is claiming a cumulative trauma injury to his psyche while employed by [REDACTED] from November 27, 2006 through August 2, 2007. [REDACTED] proceeded to an [REDACTED] Evaluation with [REDACTED] who found that there is no evidence in the records or applicant's deposition testimony to support any allegations of harassment, discrimination or mistreatment by the employer. Therefore he opined that applicant's claim is not compensable on an Industrial Basis. However, Dr. [REDACTED] deferred to the Trier of Fact to determine if applicant's psyche problems were substantially caused by lawful, non-discriminatory, good faith personnel actions, as specified in Labor Code § 3208.3(h).

A personnel action is in good faith under Labor Code § 3208.3(h) if it is not outrageous (i.e. done with an honest and sincere purpose), lawful and non-discriminatory. In Rolda v. Pitney Bowes, Inc. (2001) 66 CCC 241, the WCAB in an *en banc* opinion established a four step process to be used whenever the defense of a good faith personnel action is raised by the defendant. These four steps are as follows:

- 1) The Worker's Compensation Judge must first determine as a matter of fact and law, whether the alleged psychiatric injury arose out of actual events of employment.
- 2) The Workers' Compensation Judge must next determine, based on medical evidence, whether the actual events were the predominant cause of the injury.
- 3) The Workers' Compensation Judge must determine, as a matter of fact and law, whether any of the actual employment events were personnel actions that were lawful, non-discriminatory, and in good faith.
- 4) The Workers' Compensation Judge must determine, based on medical evidence whether the good faith personnel actions were a substantial cause of the injury.

Applicant testified that he thinks he was discriminated against and mistreated by [REDACTED] because of his race. Applicant's wife also testified about this alleged discrimination and mistreatment.

However, the documentary record reviewed [REDACTED] clearly does not provide any evidence to support these allegations. Moreover, the trial testimony of [REDACTED] does not provide any credible evidence to support their allegations.

Based on my review of the entire record, it is apparent that applicant's psychiatric problems commenced after [REDACTED] pursued disciplinary action against him for violating several personnel rules. The question is whether or not this personnel action was lawful, non-discriminatory, in good faith and the substantial cause of applicant's psychiatric injury.

After reviewing all of the evidence, including the trial testimony and the documentary exhibits, I find that applicant has not met the burden of proof mandated by L.C. § 3208.3 (b)(1). Moreover, I find that the personnel action taken by [REDACTED] against the applicant was lawful, non-discriminatory and done in good faith. Therefore, I find that applicant did not sustain a compensable industrial injury to his psyche as a result of his employment by [REDACTED].

Since applicant did not sustain a compensable industrial injury to his psyche, all other issues are moot.