

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

TIM DESOTO,

Applicant

vs.

COUNTY OF RIVERSIDE;

Defendants.

Case No. ADJ8839974

FINDINGS AND ORDER

Law Offices of Edward Singer, by Edward Singer, Esq.
Attorney for Applicant;
Floyd, Skeren, Munukian, & Langevin, by Zlatan Muminovic, Esq.
Attorney for Defendants

An application having been filed herein; all parties having appeared in the above entitled matter having been heard and submitted, the Honorable DAVID THORNE, Workers' Compensation Administrative Law Judge, finds and awards as follows:

FINDINGS OF FACT

1. Tim Desoto, born 12/9/1954, while employed during the period 1/31/2012 through 1/31/2013, as an Investigator, by County of Riverside, sustained injury arising out of and in the course of employment to psyche.
2. The applicant did not sustain an injury to his cardiovascular system arising out of and in the course of his employment.
3. The psychiatric injury was substantially caused by a lawful, nondiscriminatory, good-faith personnel action.
4. There are no funds from which to award attorney fees.

ORDER

IT IS ORDERED that the applicant take nothing by way of the claim he has filed herein.

RIVERSIDE, CALIFORNIA

David Thorne

DAVID THORNE
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVED BY MAIL ON PERSONS SHOWN ON
THE OFFICIAL ADDRESS RECORD
ON: 09/18/2018 BY: C. Garcia

**STATE OF CALIFORNIA
WORKER'S COMPENSATION APPEALS BOARD
CASE NO. ADJ8839974**

TIM DESOTO v. COUNTY OF RIVERSIDE

**WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE: David Thorne**

DATE:

OPINION ON DECISION

Tim Desoto, born 12/9/1954, while employed during the period 1/31/2012 to 1/31/2013, as an Investigator, by the County of Riverside, claims to have sustained injury arising out of and in the course of employment to his psyche and cardiovascular system. He began working for the County of Riverside in June 2006.

INJURY AOE/COE

At the trial on 8/20/2018, the applicant alleged that he was terminated after an arbitrated hearing. There was a violation of work rules involving the use of county vehicles. He had lunch with friends' widow in Hemet, CA. There was an allegation that he had an ownership interest in an investigation business (AAI). He felt that he was singled out for having a philosophy that 95% of the people before the public defenders' office were guilty.

Per the Summary of Administrative Investigation, dated 3/5/2013, during the hiring process the applicant was advised to cease any involvement in PI work due to potential conflict of interest issues. It was alleged that the applicant was dishonest he denied being actively involved in the business affairs of AAI while employed with the Public Defenders' Office. Income Tax Returns showed that the applicant reported Reimbursements received from his employer (AAI) for expenses and business expenses (Exhibit H).

Per the Notice of Proposed Termination, dated 5/10/2013 (Exhibit I), the County of Riverside intended to terminate the applicant for dishonesty, willful violation of an employee regulation, and conduct either during or outside of duty hours which adversely affects the employee's job performance or operation of the department.

The applicant's termination hearing took place on four days. In the Arbitrator's Opinion and Award, dated 2/14/2018 (Exhibit K), it was found that there was a willful violation of work

rules; and that there was conduct either during or outside of duty which adversely affected the operation of the Public Defenders' Office. It was found that the County did not meet its burden of proving dishonesty by a preponderance of the evidence. The arbitrator found that the applicant was terminated for engaging in the Charged Misconduct. The County had good cause to terminate the applicant.

James O'Brien, M.D., in his Psychiatric QME report dated 10/2/2014 (Exhibit A), stated that the applicant fled his claim as a result of stress and anxiety at the workplace. A complaint was filed against him alleging that he was operating his own company on County time and that it was against the policies of the Public Defender's Office. He alleged that he had a heart attack from excessive hours and a heated verbal confrontation. The applicant believed that he had a myocardial infarction, the medical evidence does not show that he did have a myocardial infarction.

In his supplemental report dated 1/12/2015 (Exhibit B), Dr. O'Brien reviewed additional documents including the Summary of Administrative Investigation (Exhibit H) and Notice of Proposed Termination (Exhibit I). Dr. O'Brien wrote that his termination does not appear to be the result of any bad faith personnel action. The applicant was fired after an extensive investigation for expense account abuses and violating moonlighting policy (page 7).

Jonathan Green, M.D., in his Independent Medical Examination, dated 9/23/2016 (Exhibit C), stated that stress in some patients can lead to elevations of blood pressure which can then cause cardiac damage, but that type of problem did not occur in this case (page 9).

In a Supplemental Report dated 11/6/2016 (Exhibit D), Dr. Green reviewed medical records showing a history of high blood pressure. He concluded that the applicant did not suffer a hypertensive injury while working for the County.

The report of William Soltz, Ph.D, dated 3/14/2013, was reviewed by Dr. O'Brien in a report dated 10/2/2014 (Exhibit A, page 14). Dr. Soltz concluded that the evidence does not support a psychiatric problem that is in way disabling or could be the cause of his elevated blood pressure. The evidence suggests that the applicant has no demonstrable emotional or psychological problems that could in any way explain the elevated blood pressure from a psychological perspective.

Based upon the medical reports of Jonathan Green, M.D., dated 9/23/2016 and 11/6/2016, which are the better reasoned and more persuasive, it is found that applicant did not

sustain injury to his cardiovascular system arising out of and occurring in the course of employment during the period 1/31/2012 to and including 1/31/2013.

GOOD FAITH PERSONNEL ACTION

Pursuant to LC 3208.3(h) no compensation is payable for a psychiatric injury, which was substantially caused by a lawful, nondiscriminatory, good-faith personnel action. To be a substantial cause such actions which are deemed to be good faith personnel actions must constitute at least 35 to 40% of the causation from all sources combined.

In the case of *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp. Cases 241 (en banc), the WCAB established a four step process to be used when the defense of a good faith personnel action is raised. First, the WCJ must determine, as a matter of fact and law whether the alleged psychiatric injury arose out of actual events of the employment. Second, the WCJ must determine, based on medical evidence, whether the actual events were the predominant cause of the injury. Third, the WCJ must decide, as a matter of fact and law, whether any of the actual employment events were personnel actions that were lawful, nondiscriminatory, and in good faith. Fourth, the WCJ must determine, based on medical evidence, whether the good faith personnel actions were a “substantial cause” of the injury.

As defined in the case of *Larch v Contra Costa County*, 63 Cal. Comp. Cases 831 (1998) personnel actions are conduct attributable to management in running its business including acts by those in authority to review, criticize, demote or discipline the employee. The action must be executed in a manner that is not outrageous conduct, is honest and with sincere purpose. It must be performed free of intent to mislead, deceive or defraud and without collusion or unlawful design. It is lawful if authorized and not contrary to or forbidden by law. The act is not discriminatory if the employee is treated in a similar manner to other employees in a similar situation.

The first step is to determine as a matter of fact and law whether the alleged psychiatric injury arose out of actual events of the employment. James O’Brien, M.D., in his medical report dated 10/2/2014 (Exhibit A), the predominant cause of the applicant’s stress was industrial. The applicant has a perception of being disciplined and fired at work as part of a bad faith personnel action.

Second, based on medical evidence, were actual events the predominant cause of the injury? Dr. O’Brien, in his medical report dated 10/2/2014 (Exhibit A), stated that it is clear that

the events of employer were the predominant cause of the injury. He stated that 90% of the applicant's permanent disability is caused by or the result from the perception of bad faith harassment on the job. Based upon the medical report of Dr. O'Brien, dated 10/2/2014, actual events were the predominant cause of the injury.

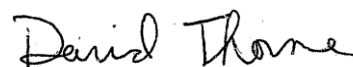
Third, it is found that the actual employment events were personnel actions that were lawful, nondiscriminatory, and in good faith. In the Arbitrator's Opinion and Award, dated 2/14/2018 (Exhibit K), it was found that there was a willful violation of work rules; and that there was conduct either during or outside of duty which adversely affected the operation of the Public Defenders' Office. The arbitrator found that the applicant was terminated for engaging in the Charged Misconduct. The County had good cause to terminate the applicant.

It is not disputed that the psychiatric injury arose out of actual events of the employment. The medical evidence, by Dr. O'Brien shows that actual events were the predominant cause of the injury. The actual employment events involved supervising the applicant and reviewing her work. It is found that the employment events were lawful, nondiscriminatory, and in good faith. Based on the opinion of Dr. O'Brien, the good faith personnel actions were a "substantial cause" of the injury.

REMAINING ISSUES

Based upon the finding of a good faith personnel action and the findings of Dr. O'Brien, it is found that there is no permanent disability arising out and in the course of employment. All other issues, including attorney fees, are hereby rendered moot.

DATE: 9/18/2018



David Thorne
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Service made on all parties as shown on the Official Address Record.
On: 09/18/2018 By: C. Garcia