

COMPENSATION NEWS

MONTHLY REPORT

Psychiatric injury must be based on substantial evidence

The Court Of Appeal in a case certified for partial publication has reviewed the good faith personnel action defense in a psychiatric case.

Northrop Grumman v. WCAB (Graves)

The applicant was to train other employees for his employer. During the course of the training it was alleged that the applicant discriminated against one of the employees. The employer initiated an investigation of the alleged racial discrimination. After the investigation the applicant was given a final warning notice by the employer.

The applicant filed a claim for workers' compensation benefits for a psychiatric condition caused by this allegation of racial discrimination. The applicant testified at his workers' compensation

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trial that he did not have any problems at work until he received his final warning notice as the result of the employer level investigation.

The Workers' Compensation Judge (WCJ) found the psychiatric injury industrial relying on the applicant's testimony and the applicant's medical reports alleging harassment of the applicant. The defendant filed a Petition for Reconsideration. The Workers' Compensation Appeals Board (WCAB) denied reconsideration and adopted the WCP's opinion.

The Court of Appeal indicated that they must review the entire record to see if board's opinion was based on substantial evidence. They indicated that the right to receive benefits for a psychiatric injury is described in Labor Code section 3208.3. The relevant exception to a finding of compensability is in 3208.3 (h).

This section deals with a lawful, nondiscriminatory, good faith personnel action. They looked at the case of *Cotran v. Rolling Hudig Hall Internat*, (1998) 17 Cal.43th 93 to assess the objective reasonableness of the employers actions. They looked at the "objective good faith standard."

They also looked at *City of Oakland v. WCAB* (2002) 99 Cal. App.4th 261 to determine that the employer must be given a degree of freedom "in making its regular and routine personnel decisions (such as discipline, work evaluation, transfer, demotion, layoff, or termination.) If the employer's conduct meets the objective reasonableness standard, section 3208.3's exemption applies".

The court indicated you must look at "the totality of the circumstances". "To be in good faith, the personnel action must be done in a manner that is lacking in outrageous conduct, is honest and with a sincere purpose, is without intent to mislead, deceive, or defraud, and is without collusion or unlawful design."

In this case they indicated the employer was mandated to investigate by law, therefore, it was in good faith.

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