Case Law 2021

By Donald Barthel, Esq. & Brittany Rothe-Kushel, Esq.
Law Offices of Bradford & Barthel, LLP

TOPIC SUGGESTIONS FOR NEXT YEAR?

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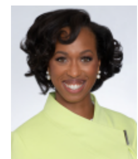
Meet Our Team

Donald Barthel, Esq.
B&B Sacramento
(916) 996-1263
dbarthel@bradfordbarthel.com

Brittany Rothe-Kushel, Esq.
B&B Los Angeles
(310) 981-5004
brothekushel@bradfordbarthel.com



Tahmeena Ahmed, Esq.
B&B Woodland Hills
(818) 654-0411
tahmed@bradfordbarthel.com

Julianna Crawford, Esq.
B&B Ventura
(805) 677-4808
jcrawford@bradfordbarthel.com

Rosa Sanchez-Ervin, Esq.
B&B Ontario
(909) 476-0552
rsanchez-ervin@bradfordbarthel.com

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COVID & Exclusive Remedy

Brooks v. Corecivic of Tennessee LLC (2020) 85 CCC 843

F:
- claim of negligent supervision and intentional infliction of emotional distress

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- [ER] "failed to protect its [EEs] from COVID-19"

H: dismissed claim

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R: barred by the exclusive remedy rule

- ER's actions didn't fall outside the risk inherent in employment relationship
- obligation to provide a safe and healthful workplace is inextricably part of comp bargain

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Lien SOL

Ross (Dec'd) v. Therma Corporation
2020 Cal. Wrk. Comp. P.D. LEXIS 251

F:
- $2.1 million lien filed > 18 months after DOS were provided
- record contained several pleadings in which ER referred to a lien filed by LC

I: barred by SOL?
H: yes [LC 4903.5(a)]

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R: no evidence ER

- knew of LC's error
- waived the defense, or
- intentionally caused LC to believe it had filed, or
- knew of LC's error, or
- caused LC to forego timely filing by on ER's conduct or statements

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TD for Terminated EEs

Corona v. California Walls, Inc, dba Crown Industrial Operators
2020 Cal. Wrk. Comp. P.D. LEXIS 256

F:
- ER accommodated EE's temporary work restrictions for a month
- then sent all EEs home per the COVID-19 emergency orders

H: entitled to TD when ER shut down by COVID-19 emergency orders

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R: ER must meet the burden of proving TPD EE was terminated for "good cause”

- termination was not “for cause”
- inability to accommodate work restrictions did not release obligation to pay TD
- EE entitled to TD regardless of whether ER was able to provide mod work

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Salazar v. Kodiak Roofing & Waterproofing 2020 Cal. Wrk. Comp. P.D. LEXIS 277

F:
- EE offered mod duty
- unable to work b/c undocumented

I: entitled to TD?

H: no

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R:
- b/c EE's inability to work and wage loss not due to injury=not entitled to TD
- would deprive ER of equal protection (con law) if req'd to provide more extensive benefits to EE ineligible for employment than it would have been required to provide to eligible EE

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Roan v. Department of Social Services 2020 Cal. Wrk. Comp. P.D. LEXIS 266

F: AA wanted to attend psychiatric ML w/EE

I: may he?

H: no

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R: CCR 2023.510, which allows atty to be present during "any physical exam","
does not allow presence at psych exam

- per *Edwards v. Superior Court of Santa Clara County* (1976) 16 Cal. 3d 905, neither AA nor court reporter may be present

BUT: Believe QME not properly conducting exam?

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may record via audio

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PADILLA v. LOS ANGELES METROPOLITAN TRANSPORTATION AUTHORITY (2011)
76 Cal.Comp.Cases 191

WCAB panel held that an employer rep (in this case the claimant's direct manager or supervisor) could appear at psyche depos.

F:
- Bus drive claimed ortho and psyche injuries when the brakes failed on his bus and the bus ran into a pole.
- Defendants set the applicant's depo and defendant's assistant transportation manager attended the depo.
- At the depo, applicant refused to answer questions about his medical history, psychiatric history or medical condition in her presence and sought a protective order. Applicant conceded that a claims adjuster or HR manager could attend but not his supervisor. The trial judge granted the protective order.

I: can an applicant's supervisor be present at a psyche deposition:

Holding: Yes. Following Defendant's Petition for Removal of the trial judge, the WCAB overturned the Judge's Decision. The WCAB held that the applicant waived any privacy related to his claimed injuries by filing the claim.

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Alvarado v. Sky Ready Mix Inc.
2020 Cal. Wrk. Comp. P.D. LEXIS 268

F:
- WCJ stated LC = "bottom of the barrel"
- discredited billing w/out review of evidence
- atty claimed he met with WCJ in chambers and asked him to recuse himself
- WCJ claimed he didn't recall meeting

I: disqualified?

H: yes

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TEST: reasonable person could entertain doubts concerning impartiality

SOLELY based on the potential for an ***appearance*** of bias, LC's petition to disqualify = granted

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Credit for Payment of Benefits

Bedi v. San Mateo County Transit District
2020 Cal. Wrk. Comp. P.D. LEXIS 228

F:

- EE compelled to retire b/c unable to work due to injury aoe/coe
- TD
- receiving pension payments

I: ER get a credit on TD against pension payments?

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H: no credit; pension payments don't preclude TD award

R: EE was compelled to take service retirement due to aoe/coe

- pension payments do NOT = salary
- pension payments do NOT = earnings

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SJDB o/a 1/1/13

London v. University of Redlands
2020 Cal. Wrk. Comp. P.D. LEXIS 223

F:
- after p&s, ER term'd EE for cause (sex harassment)
- ER made no offer of mod/alt

I: entitled to SJDB?

H: yes

R: absent a bona fide offer of reg, mod or alt work, regardless ER's ability to make such an offer, and regardless of EE's ability to accept such an offer, EE is entitled to an SJDB voucher.
(see *Dennis v. State of California* (2020) 85 CCC 389)

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Urias v. PT Gaming (2021)

F: applicant had voluntarily resigned

ER argued an SJDB Voucher was not an option:

- how can offer a RTW if there's no longer an employment relationship

I: entitled to an SJDB voucher even though voluntarily resigned?

H: yes

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Urias v. PT Gaming (2021)

R: WCAB ruled, “we conclude that applicant’s resignation has no bearing on his entitlement to a voucher" (citing Dennis)

UPSHOT:

- EE could force being provided a voucher by resigning
- after using voucher, EE could seek re-employment once more…

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Unreasonable Delay?

Angulo v. Pacific Coast Tree Experts
2020 Cal. Wrk. Comp. P.D. LEXIS 217

F:
- EE gave notice that he had not received a settlement check for $51,000
- reissued check 22 days after notice
- received 29 days after notice

I: ER's response reasonable?

H: no; ER unreasonably delayed payment

R: though ER needed to investigate to confirm check was not paid:

- investigation should be conducted "diligently"
- delay should be corrected "promptly"
- there was no "satisfactory explanation" as to why it took 29 days

PENALTY: =10%
=attys' fees of $3,200 [LC 5814.5]

Serious & Willful

State of California, Dept of Corrections and Rehab v. WCAB (Ayala, Case)
2020 Cal. Wrk. Comp. LEXIS 72 (writ denied)

F:
- prison guards attacked by gang members
- assoc warden and capt failed to act on memo warning inmates planning attack on staff
- Ws testified memo should have triggered investigation and cont'd lockdown and cell searches

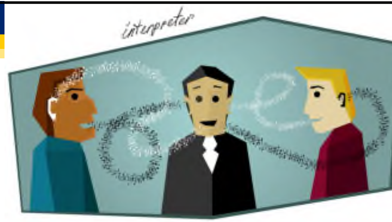
I: S&W?

H: WCAB: S&W (DCA den review)

R: failure to send the memo to superiors was more than a "mere passive failure to act"

- it was indicative of "intentional disregard" by ER specific, identified risk to EEs' safety

Interpreters



Reynoso v. Catchball Products Corp., RCG, LLC
2020 Cal. Wrk. Comp. P.D. LEXIS 246

F:
- interpreter provided
- later ruled ER did not employ worker (not "employee")

I: is interpreter entitled to reimbursement?
H: yes!

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R: per LC 5811(b), interpreter fees that are reasonably, actually and necessarily incurred must be paid by the "employer"

- "employer" = any def against whom a claim for benefits is asserted based on alleged employment relationship
- holding otherwise would result in difficulties securing interpreters

Do you *really* believe that!?!?

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Law Enforcement Do-Gooders

Gund v. County of Trinity
2020 Cal. LEXIS 5542 (CA S.Ct)

F:
- two civilians injured after responding to officer's request to respond to 911 call for unspecified help
- filed civil claim "omissions or misrepresentations" re dangers

I: proceed w/civil matter?

H: no; lawsuit barred; WCAB jurisdiction

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R: LC 3366: persons assisting officer in "**active law enforcement service**" at request of officer
=
w/c from the public entity

"**active law enforcement service**" includes officer's duties directly concerned with:

enforcing laws
investigating
preventing crime
protecting the public

- omissions/misrepresentations re dangers does not change this:

"Even when [ER] intentionally conceals and misrepresents hazards in order to induce an individual to accept employment, [w/c] is the...exclusive remedy."

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Lu v. Oakland Unified School District
2020 Cal. Wrk. Comp. P.D. LEXIS 117

Facts:
- EE getting into parking lot across street from work
- robbed

Issue: compensable?

Holding: no

Reasons:
- robbery occurred during "regular commute" home
- no "special risk" exception to "going and coming" rule apply = not at > greater risk of robbery getting into her car than others parked there

Fraire v. California Department of Corrections and Rehabilitation/SCIF

2020 Cal.Wrk.Comp. P.D. LEXIS

Facts:
- LC 4662(a)(1) "Loss of both eyes or the sight thereof."
- AME: "legally blind" = 100% PD
  - 60% aoe/coe (30% for each of two specifics)
  - 40% non-aoe/coe
  - WCJ did <u>not</u> apportion despite *Benson*, LC 4663

Reason: 4662(a)'s "conclusive presumption" that specified disabilities are "total in character"

Fraire v. California Department of Corrections and Rehabilitation/SCIF

LC 4662(a) Any of ***the following permanent disabilities shall be conclusively presumed to be total*** in character:

1) ***Loss of both eyes or the sight thereof***
2) Loss of both hands or the use thereof
3) An injury resulting in a practically total paralysis
4) An injury to the brain resulting in permanent mental incapacity

b. In all other cases, permanent total disability shall be determined in accordance with the fact

HOLDING (WCAB) LC 4662(a)'s PTD conclusive presumption does not preclude apportionment based on Labor Code section 4663 and under *Benson*

REASONING:

"....section 4662(a)'s conclusive presumption that certain specified disabilities are "total in character" does not establish that such conclusively presumed 100% permanent disabilities entirely resulted from industrial causation."

- remanded to WCJ apportion "to causation principles under sections 4663 and 4664(a)."

IN THE WCAB's OWN WORDS:

"[T]he clear and unambiguous language of section 4663 and 4664(a) requires that the apportionment of permanent disability-be it permanent total disability or permanent partial disability-"shall" be based on causation. (citations)"

WCAB's concern about hiring disabled workers

"[U]nder the dissent's interpretation of section 4662(a), an employer who hired an employee with a pre-existing loss of the use of one arm or one eye would be liable for the employee's entire 100% permanent disability if a workplace injury caused the loss of the use of the other arm or other eye."

Marquez v. LA County Employees Retirement Association

No. B295673, 11/24/2020

Facts:

- 20 year public safety officer
- disciplined and suspended 3 times
- applied for the position of deputy sheriff
- offered the position conditioned on his ability to pass psych exam

psychologist = "unfit"

- took med leave authorized by psych
- never RTW
- given nonservice-connected disability retirement based on psych
- trial judge: failure to pass fitness exam, demotion, and [psych condition caused psychological testing = work related

Issue: injury aoe/coe?

Holding: no

Reason: must prove disability:

- arose out of and
- in the course of employment
- and job substantially contributed to disability

"We do not quarrel with the court's finding that Marquez's injury arose during...employment"
BUT
injury did not arise out of employment

Reasoning:

- many cases hold injuries occurring while taking tests req'd by ER are work related

HOWEVER

precedents don't aid EE b/c not injured during the psych exam or by exam

EE suffered psych b/c of ER's decision not to promote him

"That decision, and [EE's] reaction to it, did not occur in connection with [EE's] performance of his job duties,".

Don't Get in the Weeds of FEHA

(but it's worth knowing…)

Razon v. Southern CA Permanente
No. B294103, 11/17/20, unpublished

Facts:
- mental injury from assault
- doctor: may RTW if not in facility assailant is located
- ER could accommodate temporary work restrictions are accommodated only at EE's current medical center assignment

- EE claimed FEHA:
  =inability to work at the facility a disability caused by assault
  =ER discriminating based on the disability
- settled w/c via C&R: $45,000
  =included voluntary resignation w/waiver of monetary damages arising directly/indirectly out of employment

Issue: FEHA claim waived?
Holding (2nd DCA): yes

R:
- resignation was voluntary and a condition of C&R
- "consideration" not necessary for written release
- even if consideration were req'd, C&R was a benefit that constituted "consideration"
- irrelevant that ER did not sign it
- release of non-w/c claims can be effected via separate document, independent of w/c preprinted form
- release need not include express reference to FEHA claim to bar it

"The release language in [EE's] voluntary resignation letter clearly encompasses causes of action outside [WC] law and, even more specifically, all claims arising directly or indirectly from his employment…

"Absent any admissible extrinsic evidence [EE] intended to exclude his FEHA claims from this broad, all-inclusive language, interpretation of the release remained a question of law."

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"Take nothing!" YIPPEE! "reversed" OUCH

Munoz* v. *Department of Corrections
2020 Cal. Wrk. Comp. P.D. LEXIS 363

F:
- denied psych claim

PQME:
- =35% e-mail to EE re a meeting (in all probability to follow up on a reprimand/corrective counseling)
- =35% hearing about her H's friend being attacked
- =10% was assigned to receiving a reprimand

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Munoz

F:
- defense=barred by non-discrim good-faith personnel action defense (LC 3208.3)

I: barred per LC 3208.3?

H: WCJ-yes
WCAB-no Labor Code section 3208.3

Munoz

R: WCAB cited analysis in *en banc Rolda v. Pitney Bowes, Inc.* 66 CCC 241:

1. Does psych involve "actual events of employment"?
2. Does med evidence est req'd percentage of AOE/COE causation?
3. Were the actual events of employment "personnel actions"?
4. Are those personnel actions lawful, nondiscriminatory, and made in good faith?

Munoz

10% was assigned to receiving a reprimand-undisputed (agreed non-discriminatory good-faith personnel action)

Email?
- told EE/staff re impending meeting
- did <u>not</u> include details re what would be discussed
- but EE "suspected" it would be for further remands
- suspicions were unfounded

email =non-discriminatory good faith personal action?

Munoz

WCAB says,
- **email about meeting is not a "personnel" action** as contemplated by ***Rolda***
- so a reaction to an email about a meeting or the meeting itself

NOT =
basis for the defense

Applied Materials et al. v. WCAB (6th DCA, 6/1/21)

F:

- multiple injuries, including psych (BAD DOCTOR)
- psych QME: PTSD, GAF=45
- 100% PD due solely PTSD (all due to BAD DOCTOR)
- WCJ: 100%

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WCJ relied on:
LC **4662.**
(a) Any of the following permanent disabilities <u>shall be conclusively presumed to be total</u> in character:
(1) Loss of both eyes or the sight thereof.
(2) Loss of both hands or the use thereof.
(3) An injury resulting in a practically total paralysis.
(4) An injury to the brain resulting in permanent mental incapacity.
(b) <u>In all other cases, permanent total disability shall be determined in accordance with the fact.</u>

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I: Does LC 4662(b) alone support a 100% PTD award?

H: no

R: while LC 4662(b) *allows* WCJ to make PTD determination "in accordance with the fact", LC 4660 addresses *how* the determination on the facts shall be made (doi pre 1/1/13)

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AMA *Guides* -> DFEC -> Occupation -> Age

in this case, EE relied on "alternative" theory

alternative theory options?

1. *LeBoeuf v. WCAB* (1983) 34 Cal.3d 234

QME didn't opine re ability to participate in VR, take advantage of training opportunities, or find work

Not a vocational expert thus not qualified re VR options and whether 100% "disabled from working in the open labor market"

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alternative theory options?

2. *Milpitas Unified School Dist. v. WCAB (Guzman)* (2010) 187 Cal.App.4th 808

QME didn't:

- explain why WPI did not accurately reflect disability provide an alternative rating w/omt GAF scale explain why the rating "more accurately reflected" PD

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Thoughts…

- DCA wanted to avoid WCAB using 4662(b) to rely on "ad hoc decision making"
- may only rebut AMA/PDRS by
  1. proving EE is not amenable to rehab (*LeBoeuf*, *Ogilvie*, and *Dahl)* or
  2. challenging standard rating "w/in the four corners of AMA *Guides"* (*Guzman)*

doctors not qualified to opine re ability to participate in VR, take advantage of training opportunities, or find work from a vocational perspective

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not a vocational expert

Future holds…

…more VR "expert" bills
(be ready to fight!)

Med-Legal Expenses and payment

Khan v. Denny's Restaurant, 2021 Cal Work Comp PD Lexis 163

Facts: QME billed $11,250 along with P&I for a psyche med-legal exam. Parties stipulated that Defendant's EOR was untimely. QME's report was 113 pages and included about 45 pages of record review.

Khan

Holding: QME's report and invoice were substantial evidence that the billed amount was reasonable. Court held that this shifted the burden to Def to prove that billing was unreasonable and Defendant failed to satisfy burden of proof because it produced only speculation not evidence.

Khan

Take Away: To dispute a QME bill, come with more than speculative evidence. Come with bills from other comparable QMEs, physicians, etc to challenge QME billing. Also be aware of new CCR 9795 regulations where QMEs can bill $3.00/page beyond 200 pages. Work with opposition to reduce unnecessary pages in QME letters.

MPN treatment

***Witron v. Polymeric Technology Corp.* 2021 Cal Wrk. Comp. P.D. LEXIS 164**

Holding: Def's delay in responding to AA's request for PTP change did not constitute refusal of medical treatment that would allow applicant to treat outside of MPN.

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MPN treatment

Facts:

In Sept 2020, IW requested a change of PTP. Defendants failed to respond right away. IW argued denial of care based on failure to provide a change of PTP in February 2021. In February 2021, Defendants provided an MPN link and authorized and transferred the IW to a new MPN treater 3 weeks later.

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MPN treatment

Court held that IW failed to provide evidence of treatment or efforts to obtain treatment after Sept 2020 request. Court concluded that Defendant's delay in responding to applicant's letter in Sept 2020 was not substantial evidence of neglect or refusal of treatment. The 20-day time limit for a medical access assistant to schedule appointments per CCR 9767.5(g) applies only when scheduling appointments with a referral-based specialist, not to scheduling an initial appointment with a PTP.

Karla Gonzalez v. AC Transit, *York Risk Services*, 2021, Cal. Work. Comp. P.D. Lexis 71

Facts: IW sustained injuries to her right ankle in 12/10/2013 and 3/9/2017 while employed as a janitor for AC transit. She then wanted to have ankle surgery with a physician at NMCI medical clinic (outside of defendant's MPN) Physician requested surgery on 9/8/2020. Defendant's objected to treatment outside of Network as this physician was no longer part of the network.

Karla Gonzalez

Holding: WCAB affirmed trial judge's finding that applicant was entitled to completion of care outside defendant's medical provider network (MPN) consisting of right ankle surgery with doctors at NMCI medical clinic.

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Karla Gonzalez

Reason: WCAB rejected defendant's assertion that statutory provisions pertaining to terminated physician should apply in this matter, where defendant's late admission of liability for applicant's injuries and not doctor's change in status triggered events leading to the medical dispute.

Further LC 4616.2 and 8 Cal. Code Reg Section 9767.9(e)(4) provide for continuity of care when surgery has been recommended and documented by the provider to occur within 180 days from the MPN coverage effective date.

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Kenneth Rosenbrook v. Knight-Swift Transportations Holdings, INC.

PSI, administered by Gallagher Basset Services, Inc. 2021 CAl. Work.Comp. PD Lexis 16, 86 Cal. Comp. Cases 440

(Addresses tele health medical procedures)

Facts: Applicant resided in State of Washington. Defendants set QME internal exam in California and required applicant's in person evaluation. QME confirmed that he was willing and able to conduct telehealth eval of applicant's condition.

Kenneth Rosenbrook

Holding: Appeals Board affirmed trial judge decision that determined Def's refusal to allow telehealth exam was unreasonable per emergency regulations.

Insufficient evidence to conclude that in person evaluation could take place once the executive stay at home order was lifted.

Hodson v. Vacasa, LLC, 2021 CAl. Wrk. Comp. PD Lexis 170 (Appeals Board noteworthy panel decision)

Addresses the "synergistic effect and when to add impairments"

Facts: IW was cleaning snow off stairway, slipped and fell on ice, struck his head and injured multiple parts. He required surgery to his hands and knees and also had recurring cognitive and psyche complaints.

Treatment included 2 separate one month rehab stays

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Hodson v. Vacasa, LLC, 2021

- PQME evaluated IW ortho complains and found residual impairment to neck, back, knee, elbow in form of headaches.
- PQME Combined them on CVC to be 51% PD.
- PQME found that ortho disability of 51% should be ADDED to cognitive and psyche disabilities b/c the impairments caused ortho impairment and flare ups.
- PQME found 14% WPI for cognitive disability and psyche disability of 8% PD.

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Hodson v. Vacasa, LLC, 2021

Holding:

Trial judge followed PQME rec's and held that combined value of ortho should be added to combined value of cognitive and Psyche=95% WPI

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RECON!!

AA sought recon and contended that WCJ failed to properly combine cognitive and psyche impairments. Argued that QME recommended that the 2 Impairments be "added together b/c of their synergistic effect."

WCJ rescinded decision and amended ruling to add ortho, cognitive and psyche impairments = 100% PD.

DEFENDANTS RECON!!

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Hodson

Appellate court affirmed WCJ's decision.

Reasoned that QME report defines and explains synergestic effect of cognitive & psyche disabilities

Further found that there was a lack of overlap between cognitive and pysche impairments.

Therefore the addition method *not the combined method* was the most accurate reflection of overall disability.

Spence v City of LAADJ10987859 (10/5/21)

F: **foot injured in basketball tourney with others from LA Police Department**

EE testimony:

not encouraged/pressured to play
no negative consequences if didn't
no promotions/benefits for joining
participation on team & in tourney = voluntary

F: supervisor testimony:
basketball was listed in LAPD Manual, but conditions in this case didn't meet the manual's outline for when an athletic injury = "on duty"

WCJ says,

"AOE/COE"

WCAB says,

"No way...NOT aoe/coe!"ssss

Love & Kisses,

Razo, Lowe & Zalewski

Spence LOGIC

LC 3600(a)(9): no aoe if "Voluntary" Participation in any "off-duty" recreational social, or athletic activity not constituting part of the employee's "Work-related duties"

Except

Activities = "reasonable expectancy of", or "are expressly req'd", or "impliedly req'd" by the job

Activities = "reasonable expectancy of", or "are expressly required"

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Spence LOGIC Continued

Ezzy v. WCAB (1983) 48 CCC 611:

Does LC 3600(a)(9) apply?

2-prong test:

(1) whether EE **subjectively** believes participation is expected by ER, and

(2) whether that belief is **objectively** reasonable. (CASE ATTACHED BELOW)

In Spence, EE's testimony proved 1st prong not met

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Additional Takeaway

ERs can limit expressly limit scope of potential liability by designating and/or pre-approving athletic activities/fitness regimens

Harrison v. Canyon Springs Pools and Spas, Inc. 2021 Cal. Wrk. Comp. P.D. LEXIS 234.

- F: OACR settled CT ortho CR based, in part, on the parties' mistaken believe that:
    1. zero-dollar MSA did not have to be submitted to CMS for approval
    2. AME found no compensable injury (which formed premise of settlement agreement as result of C&R, CMS began charging EE for med treatment

def says, "You agreed to C&R. You're stuck with it"

Harrison

I: good cause to set aside OA?
H: yes**
R: <u>mutual</u> mistake

OACR may be set aside based on "fraud, duress, undue influence, incompetency, or mutual mistake" (Silva v. Industrial Accident Commission (1924) 68 Cal.App. 510)

**NOTE: EE=pro per…Relevant?!

EXCLUSIVE REMEDY BARS WRONGFUL TERMINATION CASE:

GARCIA v. POKER FLAT PROPERTY OWNERS ASSN.
CA3 (filed 10/20/2021) Third Appellate District of California

<u>FACTS:</u>
Plaintiff, a former office manager, sued her employer for wrongful termination and alleged she was terminated in retaliation for reporting sexual harassment and other violations to her Poker Flat Board members.

GARCIA v. POKER FLAT PROPERTY OWNERS ASSN.

The Employer maintained a boat launch on docks on lakes and charged association members to use these facilities. The employer was placed on administrative leave for instances of financial discrepancies and accounting errors. Her assistant took over in her absence. Her assistant got frustrated with the mounting work and made expletives on Facebook. Shortly thereafter the plaintiff was terminated.

GARCIA

Plaintiff sued for wrongful termination by Poker Flats, and defamation and intentional infliction of emotional distress.

GARCIA

HOLDING

The Trial Court granted summary judgement in Defendant's favor and concluded that the employer's basis for the plaintiff's termination was for a legitimate, non-retaliatory basis.

LEGITIMATE BASIS FOR TERMINATION

Garcia made several egregious financial errors. Plaintiff did not dispute these financial irregularities.

GARCIA

APPELLATE COURT: Claim barred by workers compensation's exclusivity rule and fail as a matter of law.

Appellate court affirmed trial court's dismissal

Held that Garcia's claim for wrongful termination and retaliation failed as a matter of law and the remaining IIED claim was barred by WC.

DEFAMATION AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM BARRED BY WC EXCLUSIVITY RULE

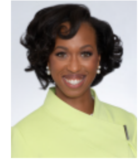
- "Defamation and IIED claim failed as a matter of law.
- Plaintiff failed to show evidence of employer's direct involvement in assistant's social media expletives.
- Also assistant was fired immediately.

Contact Us!

Donald Barthel, Esq.
B&B Sacramento
(916) 996-1263
dbarthel@bradfordbarthel.com

Tahmeena Ahmed, Esq.
B&B Woodland Hills
(818) 654-0411
tahmed@bradfordbarthel.com

Rosa Sanchez-Ervin, Esq.
B&B Ontario
(909) 476-0552
rsanchez-ervin@bradfordbarthel.com



Brittany Rothe-Kushel, Esq.
B&B Los Angeles
(310) 981-5004
brothekushel@bradfordbarthel.com

Julianna Crawford, Esq.
B&B Ventura
(805) 677-4808
jcrawford@bradfordbarthel.com