

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD  
DIVISION OF WORKERS' COMPENSATION

TRE

ANTHONY FINLEY,

*Applicant,*

vs.

COCA-COLA,  
permissibly self-insured,  
administered by SEDGWICK CMS,

*Defendant,*

Case No(s): ADJ7836214

**FINDINGS AND ORDER**

**GORDON & GORDON**

By: Ian Gordon  
Attorney for Applicant

**BRADFORD & BARTHEL, LLP**

By: Tema A. Levine  
Attorney for Defendant(s)

Application having been filed herein, all parties having appeared and the above entitled matter having been heard and regularly submitted, the **Honorable Gail E. Rentzer**, Workers' Compensation Administrative Law Judge, finds and awards as follows:

**FINDING OF FACT**

1. Although applicant sustained injury to his psyche arising out of and in the course of employment, the defendant's affirmative defense of good faith personnel action bars the applicant's claim for compensation benefits pursuant to *Labor Code Section 3208.3 (h)*.

**ORDER**

It is ORDERED applicant take nothing by virtue of this claim.

All other issues are moot or remain off calendar.

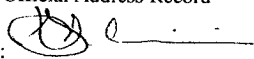
Dated: 01/12/2015



**Gail E. Rentzer**

Workers' Compensation Administrative Law Judge

Service by mail on parties as shown  
on Official Address Record

By:  01/12/2015  
T. Thompson-Williams

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD  
DIVISION OF WORKERS' COMPENSATION

CASE NUMBER: ADJ7836214

ANTHONY FINLEY vs. COCA-COLA, permissibly  
self-insured, administered by  
SEDGWICK, CMS,

DATE OF INJURY: 08/13/1979 TO 07/19/2011

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE: GAIL E. RENTZER

**OPINION ON DECISION**

**INJURY: AOE/COE**

Based upon applicant's testimony, the testimony of defense witnesses Grayson Adams and Mark Bruno and the medical reports of PQME Barbara Justice, M.D., dated December 18, 2013, January 22, 2013 and deposition of August 16, 2013, it is found that applicant did sustain injury to his psyche arising out of and occurring in the course of employment during the period August 31, 1979 to and including July 19, 2011. The claim is barred under the good faith personnel action defense under *Labor Code Section 3208.3(h)* as discussed below.

In the en banc case of *Rolda v Pitney Bowles, Inc.*, the appeals board enumerated a multilevel analysis for cases in which the employee claims a psychiatric injury and the defense of a lawful non-discriminately good faith personnel action has been raised by the defendant.

The Rolda decision looks at (1) Whether the alleged injury involved actual events of employment; (2) Whether competent medical evidence established percentage of industrial causation; (3) Whether the actual events were personnel actions that were lawful, non-discriminatory, and done in good faith and (4) Whether the personnel actions were a substantial cause (at least 35 to 40 %) of applicant's industrial injury.

**WHETHER THE ALLEGED INJURY INVOLVED ACTUAL EVENTS OF EMPLOYMENT**

The applicant testified that he worked for Coca Cola for 25 years, that his emotional problems started when new supervisor Grayson Adams came to work at Coca Cola. Applicant was a Forklift Operator for many years, one day he came to work and was

listed to work in trash and salvage. He was also written up for taking a too long lunch break. Applicant was also given disciplinary write ups. The defense witnesses also testified that these events occurred. Applicant felt harassed, targeted, discriminated against and picked on. These were actual events of employment.

**WHETHER COMPETENT MEDICAL EVIDENCE ESTABLISHED THE REQUIRED PERCENTAGE OF CAUSATION**

In PQME Barbara Justice, M.D., report of December 18, 2013 on page 4, she states, "With respect to AOE/COE causation, it was my opinion that the claimant's mental disorders were predominately caused (greater than 50%) by his allegations of harassment, discrimination and retaliation to which he was exposed beginning in 2005, during the claimed continuous trauma period of August 30, 1979 to April 19, 2011, while in the course of employment at Coca Cola."

**WHETHER THE ACTUAL EVENTS WERE PERSONNEL ACTIONS AND WHETHER THERE WERE LAWFUL, NON-DISCRIMINATORY AND DONE IN GOOD FAITH**

On November 3, 2014, Grayson Adams testified he works for Coca Cola and for the first six months he worked there he worked with applicant. On page 2, lines 13 to 17 of the Summary of Evidence, Mr. Grayson testified he was reorganizing the workforce because of business needs. In 2007 Mr. Adams reassigned applicant from the product line to work in trash and salvage, and later to the Recoup Department. Reassignment was made on business needs of Coca Cola and the skill set of the employee, anyone can be moved to a different job, reassignment is not based on how long a person has worked for the company.

In April 2011, there was an allegation that applicant took too long a lunch break. Mr. Adams spoke with applicant and wrote him up for it. Applicant thought this write up was unfair so Mr. Adams decided a conversation would correct the behavior and tore up the incident report.

Employees are on a point system, if they have 9 points they are written up, if they have 11 points they are suspended, 13 points result in termination. The point system is over a 365 day calendar. The applicant had accrued several write ups for taking too long a lunch, forgetting his time card and for taking too many absences. At trial on June 16,

2014, page 3, lines 10 to 12, applicant testified he was not angry about being written up because everyone with points gets written up.


**WHETHER THE PERSONNEL ACTIONS WERE A SUBSTANTIAL CAUSE (AT LEAST 35 TO 40%) OF APPLICANT'S INDUSTRIAL INJURY**

PQME Barbara Justice, M.D., states in her December 12, 18, 2013 report on page 4, "Of the claimant's permanent psychiatric impairment 100% was apportioned to the alleged harassment discrimination and retaliation."

It is found these actual events of employment were personnel actions and were lawful, non-discriminatory and in good faith.

Thus, the court is mandated to find that applicant's claim for Workers Compensation Benefits is barred based upon *Labor Code Section 3208.3(h)*.


Dated: 01/12/2015



**Gail E. Rentzer**

Workers' Compensation Administrative Law Judge

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