

COMPENSATION NEWS

MONTHLY REPORT

Court of Appeal indicates new standard of interpretation of section 3208.3 (b) (1)

This is an appellate decision that was published.

This is a significant decision involving a claim for psychiatric injury involving harassment.

The applicant filed a workers' compensation claim alleging harassment. The applicant alleged that the supervisor and other employees had harassed her and persecuted her. The supervisor and other employees recalled conditions much differently than the applicant perceived them.

In this issue..

Verga v. WCAB, United Airlines

The applicant was the one that was allegedly rude and inflexible with other employees. There was testimony from multiple employees as to the applicant's behavior.

The case went to trial before a Workers' Compensation Judge (WCJ). The WCJ found the applicant did not meet the burden under Labor Code section 3208.3 in that these events were not "actual events of employment" that were the "predominant cause" of her problems. She was not the subject of harassment or persecution but brought the disdain of fellow workers on herself. The Workers' Compensation Appeals Board (WCAB) agreed on review.

The appellate court indicated that the applicant cannot recover under the facts of this case. They reviewed 3208.3 (b) (1) and (h). They indicated that "disdainful

reactions" of a supervisor and co-workers do not constitute "actual events of employment" in this fact pattern. There must be an "event", "something that takes place". It also must arise "out of the working relationship".

The Court reviewed the higher standard for compensability that was established by the legislature in adopting 3208 and will generally not allow the applicants perception standing alone.

=====
Editor: Harvey Brown
Firm: Samuelsen, Gonzalez,
Valenzuela and Brown
Address: 18881 Von
Karman # 250 Irvine 92612
Phone: 949 252-1300