



TRUGREEN LANDCARE V. WCAB (GOMEZ)(2010) – WRIT DENIED

75 CCC 385, Provided by Masako Ota of the Stockton Office

Denying a petition for reconsideration, the WCAB held that applicant's psychiatric injury was compensable under Labor Code Section 3208.3 since separate work events combined to create a predominant psyche injury. Specifically, the WCAB held that applicant's psyche injury consisted of 40% causation by way of applicant viewing a dead body on 11/29/05, 40% as a compensable consequence of pain from a 12/13/05 industrial orthopedic injury and 20% non-industrial causation. The holding was significant as it allowed for two separate industrial causes to combine and satisfy causation requirements under Labor Code Section 3208.3. Defendant's subsequent Petition for Writ of Review was denied by the Court of Appeal.

The facts in this claim reflect that applicant alleged a specific back injury on 12/13/05 with a compensable consequence psyche injury related to the orthopedic claim. Applicant alleged a separate cumulative trauma claim from the period of 11/29/05 to 4/18/06, which resulted from applicant seeing his co-workers' dead body and events that occurred thereafter.

The only medical expert, Dr. Greenzang, opined that 40% of applicant's resulting psyche disability was caused by symptoms of the orthopedic injury of 12/13/05. He further opined that an additional 40% of the psyche disability was caused by an emotional reaction when applicant saw his co-workers' dead body on 11/29/05. Lastly, Dr. Greenzang concluded that the remaining 20% was caused by non-industrial factors.

After a review of the evidence, the WCAB issued an FA&O which held that applicant had suffered a compensable psyche injury under Labor Code 3208.3 since events from work contributed to 80% of the injury, exceeding the requirement of predominate causation. The WCAB found that the injury consisted of two specific injuries to the psyche, dated 12/13/05 and 11/29/05.

Defendant filed a Petition of Reconsideration, wherein counsel argued that applicant did not meet the predominate causation threshold since each separate injury only consisted of only 40% causation. The Petition contended that the WCAB improperly merged the two separate injuries to create one continuous trauma.

In response, the WCAB recommended that reconsideration be denied. It noted that Labor Code Section 3208.3 states, "in order for a psychiatric injury to be compensable, an employee shall demonstrate that actual events of employment were predominate as to all causes of combined of the psychiatric injury." The WCAB reasoned that since it was undisputed that each specific injury resulted from applicant's employment, it followed that the predominate threshold for injury was met. The WCAB concluded that the percentages opined by Dr. Greenzang as to specific injury dates of 12/13/05 and 11/29/05 were relative only to apportionment and not the psyche injury itself.

To note, this case is to be distinguished from Sonoma **State University v. Hunton** (71 Cal. Comp. Cas 1059) in which the Court of Appeal annulled a decision by the WCAB to award psychiatric benefits for a "compensable portion" of applicant's psyche injury. In its holding, the Court of appeal found that it was against the legislative intent of creating a higher threshold for psyche injuries to award an applicant for a specific psychiatric diagnosis when the overall psyche injury was not predominately caused. This finding is still significant after the **Trugreen Landcare** as it addresses that a psychiatric injury must be taken as a whole. The **Trugreen**

Landcare decision takes the process one step further to show that separate dates of injuries can be incorporated into the determination.