Appendix
A

STATE OF CALIFORNIA
Department of Industrial Relations
Division of Workers' Compensation
WORKERS' COMPENSATION APPEALS BOARD

Faizah Dean

Applicant,

vs.

Southern California Edison

Defendants

Case No. ADJ8009847; ADJ8386217 ADJ8386217

Petition for Reconsideration

A decision was filed in the above-entitled case on 01-14-2020

The Applicant, Petitioner, is aggrieved by said decision and hereby petitions for reconsideration upon the following grounds: (strike out items not applicable)

3. The evidence does not justify the findings of fact.

~~4. Petitioner has discovered new evidence material to him which he could not with reasonable diligence~~ have discovered and produced at the hearing.

5. The findings of fact do not support the order, decision or award.

In support of the above, petitioner gives the following details, including a statement of facts upon which petitioner relies and a discussion of the law applicable thereto:

See attached Petition for Reconsideration and ~~the~~ burden of proofs against the defendant. who provided voluntary benefits, Continuous action

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WORKERS COMPENSATION APPEALS BOARD

Facts February 15, 2010 through Present

California Labor Code Section 132a

ADJ8009847, ADJ8386217, ADJ8386218

Faizah Dean, Applicant

PETITION FOR RECONSIDERATION

vs.

Southern California Edison, Defendant

Disputed	Summary of Facts
Present	Erik Emery is an employer representative and witness. Erik Emery is defendant.
	Applicant was employed by Southern California Edison beginning July 13, 2009 through November 14, 2010
	The complaint is a continuous action.
	The evidence does not justify the finding of facts.
	Petitioner discovered new evidence material.
	The findings of fact do not support the order, decision or award.
	I disagree with the findings of facts 1 through 7 because of the following :
	Labor Code §§§ 3357, 3351, 3600. Threshold Issue. The question of whether an employment relationship was in existence at the time of an alleged employee's injury is a basic jurisdictional inquiry. To be compensated, an employment relationship must have arisen out of an in the course of "employment". Safeway Stores, inc. v WCAB (Pointer), 104 CA 3D 528, 45 CC 410 (1980). Finding of Facts 1: Disputed. Joint Findings and Orders dated 12/13/2017, page 10, paragraph i (beginning with "However..." and ending with "Par Electric).
	California Labor Code §3357. Applicant Faizah Dean was employed by Par Electric (a contractor of NECA) November 18, 2010 (11/18/10). Traditionally, an employment contract may be oral or in writing; the usual elements " are (1) consent of the parties, (2) consideration for the services rendered, and (3) control by the employer over the employee." Finding of Fact 1:Disputed#2 There was no employment on 11/14/2010. The applicant was no longer paid and told to leave. Laid off orTerminated.
	2/4/2014 United States District Court judgement. Four years after the applicant was terminated, the defendant was part of a judgement in the United States District Court February 4, 2014 that concluded that the employee assistance program was a medical exam. The employee assistance program (herein as "medical exam") was job related and business necessity; however, the employment was terminated at the time of the medical evaluation. Conclusion; the "medical exam" was not business necessity because it was a "Voluntary Benefit" furnished to a non-employee and filing of a claim form is unnecessary, it was not business necessity; after the applicant was terminated. (SOE). E-U.S. District Court Judgement.
	Continuous Action. Effect of filing Application. Voluntary Benefits. Nature and purpose of Statue of limitation: My claim form was filed 2/1/2013 after filing with the board of psychology for a copy of my medical record from Psychotherapist Joan Frances under the Holman Group whom was subject to the defendant paid comprehensive evaluation of QME Dr. Victoria Khrul in October 2013 after I selected QME panel and appointment In Pro Per illegally. I objected to another evaluation because of the continuous action by the defendant was evidence that the action was illegal. By filing the federal compliant against Southern California Edison in December 2012, and subsequently adding defendant IBEW Local 47 and multiple other employers related to the employee assistance program (medical exam). In 2014, the U.S. District Court Judge Micheal W. Fitzgerald determined that the employee assistance program was job related and business necessity and it started at Southern California Edison and continued. There was not any employment at the time of the medical exam for business necessity rule to be effective. The employment assistance program (EAP) would have had to have taken place during the course of employment. However, it was again a voluntary benefit called and employee assistance program. The court determined that the Union was not the employer but the Employment Development Department determined that the IBEW Local 47 was the employer. The law would not allow the court to use the EDD determination in any other tribunal. The Holman Group was related to Southern California Edison and the IBEW Local 47 benefits. The contractors employee assistance program was under the Lineco Benefits Plan for Union member. Labor Code section 5404 through 5412. Effect of Filing Application, Statue of limitation: It is the filing of an application for adjudication of claim, not the filing of a claim form, that establishes the Appeals Board's jurisdiction and commences proceedings for collection of benefits. The issue is the date of the discrimination beginning and ending. The timeline of the violation of the Workers Compensation Public Policy is continuous. Voluntary Benefits commenced, delayed, and denied (after the applicant was terminated). The filing of the proceeding
	Medical Evidence-Kaiser Work Status Report dated 6/23/2010. Finally, the court stated that the employee need not show. That the employer's agents consciously or deliberately set out to prevent or delay the employee's filing of a claim. Rather, the employer's violation, through its negligence. of its duty to provide a claim form and notice of potential eligibility when it learns that an industrial injury has occurred or is being asserted, resulting in the employee's prejudicial reliance, is sufficient to give rise to estoppel.

	Amendment. The caption. The defendant did not deny the claim until five years after it was filed. The defendant did not respond to the compliant filed in 2/1/2013 within twenty days. No response was filed. The United States District Court Judgement dated 2/4/2014 was a judgement made for failure to respond within the time allowed. The court considered it consent to granting the motion in favor of the defendant. An order may be a judgement. The defendant did not respond. The applicant counsel In Pro Per Amended the Caption only. The case numbers were added because the defendant denied the Work Status Report that was cause of action for Voluntary Workers Compensation Benefits with date of injury 02/15/2010, Notice of Delay dated 8/30/2010, and Denial dated 11/19/10. The body of the complaint did not change from 2013 to Present. 02/15/2010 through 11/19/2010 was far greater than 90 days. If it was about eight (8) months after having knowledge of a date of injury that the company denied the Voluntary Workers Compensation Benefits and five days after terminating the applicants employment.
	No Authentication. The employer representative "Erik Emery" (SOE 2015 through SOE 2020) testified that he was not there. If he was not there then he does not know what happened on that day and everything else he was just making up. I also argued that the Findings of Facts and Employer Representative is not reliable and the documents were not signed. Because of this the defendant and the employer representative was not there, give personal testimony, and represents the defendant Southern California Edison, the document could not be authenticated by the defendant or witness
	Defendant Notes : Keith Dobson said that he did not approve of them removing Dean from the apprenticeship except for safety. August 17, 2010 the company personnel suspended the applicant without just cause (Complaint page 2, line 5-28 and page 3, line1-28, and page 4, line 1-6.), then agreed to reinstated her for cause and gave her a performance action plan. The company gave dean a performance action plans for 60 days on 8/19/2010, back pay for the suspension, and terminated her for poor performance as an apprentice lineman. E-
	Performance Action Plans are not discipline rather a training tool to help apprentices. Apprenticeship policy states that the performance action plan was prematurely issued because the apprentice lineman program was for six months not four months. The 60/60 Program is a four month apprenticeship program unfamiliar to the applicant and differs by the apprenticeship policy. An apprentice can not get more than 26 B's on monthly logs. A performance Action plan is to have the signatures of the foreman. Byron Redd and Erik Emery did not follow the policy. When an non emergency work related incident occurs the company is to take the employ to designated doctors and activate the workers compensation policy. Byron Redd and Erik Emery did not follow the Company policy. (SOE:#)
	OSHA Violation filed 01/05/11. The company violated the policy of OSHA by not providing portable toilet facilities. Suspended without Just Cause and reinstate with a performance action plan between 8/17/10 through 8/19/10. Performance Action Plan for 60 days to improve on performance (30 days then another 30 days). Before the first 30 days the defendant removed the applicant from her job. She was denied rebidding for Apprentice Lineman. It was against company apprentice lineman policy to not allow the applicant to rebid, whether voluntarily or involuntarily removed from the apprenticeship. Finally, the company terminated the applicant or laid her off (60 days non-paid leave is not discipline it is illegal). The applicant was no longer working for the company after 11/13/2010. She went the the union hiring hall and began work with Par Electric 11/18/2010.
	Timeline of the discrimination began 02/15/2010 (when the company gave notice of delay of the Voluntary Workers Compensation Benefits for a date of injury 2/15/10) California Labor Code §132a discrimination began 2/15/10 through 12/13/17 (when the company denied the voluntary Workers Compensation Benefits on 12/13/17).
	Unfair Trial and Subpoena Duce tecum: The applicant noted to the court that there were multiple documents with the same dates. The court allowed the defense counsel to use documents that was not admitted during the trial to question the witness. I objected but the court allowed this to continue. The defendants evidence was admitted after the discovery period had begun. The court admitted evidence by the defendant in its order after the discovery period had run. I filed a Subpoena Duce Tecum after the defendant failed to provide the burden of proof.
	All Summary of Evidence, Exhibits from the prior cases subject of the Joint Findings and Order dated 12/13/2017 and 1/14/2020 to be included with the timeline, disputed: finding of fact, and Summary of Facts.
11/14/2010	
All Summary of Evidence, Exhibits from the prior cases subject of the Joint Findings and Order dated 12/13/2017 and 1/14/2020 to be included with the timeline, disputed: finding of fact, and Summary of Facts.	Findings of Facts 1, 2, and 3: Disputed. Employees knowledge of compensable injury. In general, and employee is not charged with knowledge that his or her disability is job-related without medical advice to that effect, unless the nature of the disability and the employees' training, intelligence, and qualifications are such that he or she should have recognized the relationship between the known adverse factors involved in his or her employment and his or her disability. Chambers v. W.C.A.B. (1968) 69 Cal. 2d 556-559, 72 Cal. Retro. 51, 446 P 2d 531, 33 Cal. Comp. Cases 722. The employee was not chargeable with know edge.
All Summary of Evidence, Exhibits from the prior cases subject of the Joint Findings and Order dated 12/13/2017 and 1/14/2020 to be included with the timeline, disputed: finding of fact, and Summary of Facts.	Findings of Fact #4 Waiver of Statue, Estoppel to Plead Statue. Statue of Limitation: Disputed. McDaniel v W.C.A.B. (1900) 218 Ca. app 3D 1011, 1017, 267 Cal. Raptor, 440, 55 Cal. Comp. Estoppel to plead the statue. When the employer's conduct is such as to lead the employee, in reliance on this conduct, to postpone the filing of a claim with the Appeals Board until after the statutory period has run, the employer may be estopped from raising the defense of the statue of limitations. For example, the employer may be stopped from pleading the statue when the employer had *voluntarily furnished benefits* to the employee, since such conduct suggests that the filing of a formal claim is unnecessary. E-Kaiser Records, E- Kaiser Work Status Report 8/23/10, E- Notice of Delay 8/30/10. E-Denial 11/19/10. However, when the employer raised the statue of limitations as a defense in its answer and declaration of readiness to proceed but did not pursue the issue at trial, in an unpublished opinion the defense was considered to be abandoned by the employer and could not be relied upon by the Appeal Board to reject the employee's claim. Guild v. W.C.A.B. (1999) 64 Cal. Coop. Cases 175, 178.

All Summary of Evidence, Exhibits from the prior cases subject of the Joint Findings and Order dated 12/13/2017 and 1/14/2020 to be included with the timeline, disputed: finding of fact, and Summary of Facts.	Findings of Fact #5: Disputed. The applicant was not employed by Southern California Edison after 11/13/2010. Prior to her termination 11/14/2010, the applicant worked under the direct supervision of Erik Emery and Byron Redd in the Foothill District, Fontana Service Center in Fontana, CA for defendant Southern California Edison between May 24, 2010 through November 14, 2010 as an Apprentice Lineman (without knowledge of any prior step completion prior to coming to service center as it was a union job. Erik Emery (herein as "Defendant") does not know anything about the union collective bargaining agreement). (SOE) Erik Emery was designated the employer representative. (SOE) 1. Applicant was employed by the defendant Southern California Edison in the Foothill District at the Fontana Service Center. 2. Applicant was discharged 11/14/2010. The Kaiser Medical Report dated 8/23/2010 was a substantial motivating reason for Applicant Faizah Dean's discharge; the discharge caused her harm. Southern California Edison evaluated her for a reasonable accommodation (SOE), voluntarily furnished workers compensation benefits to the applicant based on the Kaiser Medical Work Status Report, delayed her Workers Compensation Benefits August 30, 2010, terminated her employment on November 14, 2010 (11/14/10), then denied her Workers Compensation benefits on November 19, 2010. Four years after the applicant was terminated, the defendant was part of a Judgement in the United States District Court from December 2012 to February 4, 2014 that concluded that the employee assistance program was a medical exam. The employee assistance program (herein as "medical exam") was job related and business necessity; however, the employment was terminated at the time of the medical evaluation. Conclusion; the "medical exam" was not business necessity because it was a "Voluntary Benefit" after the applicant was terminated (SOE).
All Summary of Evidence, Exhibits from the prior cases subject of the Joint Findings and Order dated 12/13/2017 and 1/14/2020 to be included with the timeline, disputed: finding of fact, and Summary of Facts.	Findings of Facts#6: Disputed. E-HH, KK, and the Petition to Reorder Erik Emery for Impeachment with evidence. These were subject to an argument over the petition to recall and reorder Erik Emery as an employer representative and witness for purposes of impeachment. The impeachment of the witness for inconsistent statements and insert evidence was important in determining the difference between the company and personal testimony. Erik Emery was allowed to give personal testimony. This was an unfair trial. He can make up what ever he wants. The threats hoid issue is did the defendant violate public policy Cal. Lab. Code § 132a. In the previous trial on the same cases and facts the witness on the witness list was Erik Emery. Erik Emery sat in trial and the applicant counsel "objected". The grounds for the applicants counsel's objection is that the defendant Erik Emery employer representative for Southern California Edison was on the witness list prior to proceeding with trail. Then at the end of the trial he testified as a witness and affirmed he was an employee and employer representative in cross examination. The new evidence explains why the Voluntary Workers Compensation Benefits was denied and continuous action against the applicant after termination on 11/14/2010. It explains that the defendant did not meet the burden of proof. The court was informed that their were two documents with the same date and different information. One document was an exiting interview, and the second document was not an exiting interview. The court asked the witness Erik Emery "employer representative" what is an exiting interview? Erik Emery said "he was not there!" The two documents were not signed by the witness and he was not there, so impeachment and inclusion of new evidence was needed to clarify the confusion between the defendant, employer representative, and witness personal testimony. It sounds like the defendant was not there. It is assumed that the company knows if its employee was no longer employed or no longer in the service of Southern California Edison. On 11/14/10 to present all action taken was discriminatory, adverse, and denied her the benefits of the workers Compensation policy.
All Summary of Evidence, Exhibits from the prior cases subject of the Joint Findings and Order dated 12/13/2017 and 1/14/2020 to be included with the timeline, disputed: finding of fact, and Summary of Facts.	Findings of Fact #6 Disputed. 1.The defendant, witness, hearing employer representative, and designated employer representative Erik Emery sat in the hearing in the previous trial after I objected. Objection was based on that fact the the hearing employer representative Erik Emery and designated employer representative was a witness on the witness list. 2. The designated employer representative was a witness on the witness list in the bifurcated case for violation of Workers Compensation Policy Cal. Lab. Code § 132a. The defendant committed a crime. The defendant did not follow the Apprentice Lineman Program, Company, Workers Compensation, and OSHA policy, procedures, rules, and violated safety. Evidence = E. E-Defendant Notes
All Summary of Evidence, Exhibits from the prior cases subject of the Joint Findings and Order dated 12/13/2017 and 1/14/2020 to be included with the timeline, disputed: finding of fact, and Summary of Facts.	Voluntary benefits, Waiver of Statue, Estoppel to Plead Statue. Findings of Fact#7: Disputed Failure to deny Liability within 90 days (Lab C §5402). Failure to provide a claim form to the employee within 24 hours. The burden of proof shifted to the defendant. The employee seeking the benefit of the Lab C § 5402(b) presumption must be prepared to prove that the claim form was filed with the employer, that the employer received it. The defendant did not provide this evidence. Honeywell v WCAB (Wegner) (2005) 35 C4th 24, 70 CCC 97. The California Supreme Court held that the 90-day period began running before the claim form was filed, it placed strict limits on establishing such an estoppel. Six days after the defendant received the work status report, the defendant voluntarily gave the applicant workers compensation benefits on or about August 30, 2010 (The work status report is the claim form). After receiving the applicants Medical work status report the defendant delayed the Workers Compensation benefits on August 30, 2010. On August 30, 2010 the defendant had knowledge that the applicant had a possible work related injury because of the Kaiser Medical Work Status Report. 77 days after having knowledge of a possible work related injury, the defendant terminated the applicant on 11/14/2010. The evidence shows a work status report and Notice of Delay of Voluntary Workers Compensation Benefits, Denial of Voluntary Workers Compensation benefits. E-Kaiser Records, E- Kaiser Work Status Report, E-Notice of Delay, E-Denial. The court permitted the defendant to bring evidence after the trial began and discovery was closed for its burden of proof, then denied my Subpoena duces tecum after the defendant failed to meet the burden of proof, the court denied part of my petition to impeach and new evidence against the defendant, employer representative, and witness Erick Emery (SOE) (SOE). Kim v. Kona's USA Distribution, Inc (2014) 226 Cal App.4th 1336, 1351 [172 Cal. retro.3D 686]: "An action for wrongful termination in violation of public policy 'can only be asserted against and employer." There was no employment after 11/13/10. There was a Kaiser Medical Work Status Report dated 8/23/10 received by the employer on 8/24/2010. Prior to the applicant's termination 11/14/10 and Denial of Voluntary Benefits 11/19/10. McDaniel v W.C.A.B. (1990) 218 Ca. app 3D 1011, 1017, 267 Cal. Raptor. 440, 55 Cal. Comp. Estoppel to plead the statue. When the employer's conduct is such as to lead the employee, in reliance on this conduct, to postpone the filing of a claim with the Appeals Board until after the statutory period has run, the employer may bee stopped from raising the defense of the statue of limitations. For example, the employer may be stopped from pleading the statue when the employer had voluntarily furnished benefits t the employee, since such conduct suggests that the filing of a formal claim is unnecessary. E-Kaiser Records, E- Kaiser Work Status Report, E- Notice of Delay, E-Denial. Waiver of Statue. Findings of Facts#7: The running of the statue of limitations is an affirmative defense, and may be waived. Failure to present the defense of the running of the statue prior to the submission of the *cause for decision* is a *sufficient waiver*, as is the furnishing of compensation benefits after the statutory period has run, thus reviving the claim. United States F. & G. Co. V. I.A. C (Avila) (1925) 195 Cal. 577, 234 P. 369. When there is no evidence that an employer withdrew the defense after it was pleaded in the answer to the employee's application for adjudication, the court of appeal in an unpublished opinion held that the fact that the settlement conference summary and the trial issue sheet did not mention the statue of limitations as a defense did not constitute a waiver. However, when the employe raised the statue of limitations as a defense in its answer and declaration of readiness to proceed but did not pursue the issue at trial, in an unpublished opinion the defense was considered t be abandoned by the employer and could not be relied upon by the Appeal Board to reject the employee's claim. McDaniel v. W.C.A.B. (1990) 218 Cal. App. 3D 1011, 1017, 267 Cal. Raptor. 440, 55 Cal. Comp. Guild v W.C.A.B (1999) 64 Cal. Comp. Cases 175, 178.
May 24, 2010	
	Weekend off
May 21, 2010	

All Summary of Evidence, Exhibits from the prior cases subject of the Joint Findings and Order dated 12/13/2017 and 1/14/2020 to be included with the timeline, disputed: finding of fact, and Summary of Facts.	Applicant Faizah Dean was transferred to Chino Training Center and reported at the Chino Training Center located in Chino, CA for defendant and employer Southern California Edison for lineman training between May 3, 2010 through May 21, 2010. The applicant went to the service center on May 21, 2010 to introduce her self to Byron Redd and familiarize herself. Finding of Findings of Facts#: Disputed. There was not any performance problems reported from Southern California Edison Chino Training Center to reporting Foothill Service Center located in Fontana, California on or before May 24, 2010.
May 3, 2010	
May 2, 2010	
All Summary of Evidence, Exhibits from the prior cases subject of the Joint Findings and Order dated 12/13/2017 and 1/14/2020 to be included with the timeline, disputed: finding of fact, and Summary of Facts.	Applicant was hired as a Union Apprentice Lineman and Groundman A-3. She worked from July 13, 2009 through May 2, 2010 at the Wildomar Service Center.
July 13, 2009	

Attorney/In Pro Per: Faizah Dean

Date:

WHEREFORE, Petitioner requests that reconsideration be granted; that further proceedings be had; and that decision be made to give petitioner all the benefits to which he is entitled under the Labor Code of the State of California, including the relief requested herein.

Faizah Dean
Attorney for Petitioner

Faizah Dean
Petitioner

STATE OF CALIFORNIA)
) vs. Southern California Edison, Company
County of Riverside)

I, the undersigned, say that I am (the petitioner) Faizah Dean

in the above-entitled action. I have read the foregoing petition for reconsideration and know the contents thereof, and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 3, 2020 at Riverside California.

Faizah Dean
Petitioner

NOTE: If verification is by attorney or officer of a corporation it must comply with Section 446 Code of Civil Procedure.)

Copy mailed to: Karlzen Hutchenson 3655 Torrance Blvd STE 240 TORRANCE CA 90503
Torrence WCAB 3737 Main Street Suite 300 Riverside, CA 92501-3337
SCE: P.O. Box 5038 Rosemead, CA 91770

Date of Mailing: February 3, 2014

* By Faizah Dean
(Signature)

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FEB 03 2020
CA
DWC/WCAB

DWC/WCAB FORM 45 (Page 2) (REV. 4-14)

Proof of Service by Mail

I declare that:

I am (resident of / employed in) the county of Riverside, California.

I am over the age of eighteen years, my (business / residence) address is:

9209 Magnolia Ave #1
Riverside, CA 92504

On 02/03/14, I served the attached Petition for Reconsideration on the parties listed below in said case, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully paid, in the United State mail at Riverside addressed as follows:

WCAB	3737 Main Street, Suite 300 Riverside, CA 92501-3337
Southern California Edison	P.O. Box 5038 Rosemead CA 91770 ADJ8009847, ADJ8396217
Kahzen Hutchinson, Torrance	3655 Torrance Blvd Ste 240 Torrance, CA 90503

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on

(date) 02/03/2020, at Riverside, California.

Type or print name Faizah Dean

Signature

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board
CASE NO.: ADJ8009847 (MF); ADJ8386217

FAIZAH DEAN v.	**SOUTHERN CALIFORNIA EDISON PERMISSIBLY SELF-INSURED**
WORKERS' COMPENSATION JUDGE:	**ROBERT B. HILL**
DATE OF INJURY:	**2/15/2010; 7/13/2009 to 11/12/2010**

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

Applicant, in pro per, has filed a timely and verified Petition for Reconsideration challenging the Joint Findings and Order of 1/14/2020.

Petitioner seeks reconsideration on the following grounds:

1. The evidence does not justify the findings of fact;
2. The findings of fact do not support the Order, Decision, or Award.

II

CONTENTIONS

Applicant's selected format for her Petition is unique, and the points of contention are difficult to interpret. However, the court understands her points to be as follows:

1. It is the defendant's burden of proof to establish that discrimination did not exist as defined by Labor Code Section 132a;

2. That her cases are to be viewed as "continuous" based on the defendant's voluntary provision of benefits, for which there would not be a bar based on the statute of limitations;
3. While not set forth in the initial portion of her pleadings, she has discovered "new evidence material";
4. While admitting to employment with this defendant employer from 7/13/2009 through 11/14/2010, there is a threshold issue of employment.

As of this date, a response has not been received from the defendant.

III

FACTS

Faizah Dean, born 9/19/1975, as a lineman, occupational group number 380, at various locations in California, while employed by Southern California Edison, permissibly self-insured, claims the following:

- ADJ8009847 (MF)-claimed to have sustained injury on 2/15/2010 to her back.
- ADJ8386217-during the period 9/15/2009 to 9/15/2010 (later amended to 7/13/2009 to 11/12/2010) claimed to have sustained injury to her internal system, vaginal areas, blurred vision, reproductive organs, psyche and back.

The companion case ADJ8386218 was dismissed as being duplicative in part of the current case ADJ8386217, and the parts of body in ADJ8386217 otherwise amended as set forth above (see Minutes of Hearing 4/6/2015).

A joint Findings and Order as to the two active cases issued on 12/13/2017, finding that the applicant did not sustain injuries as alleged, and further reserving jurisdiction of the parties' respective petition for costs/sanctions. Applicant sought reconsideration, with the Opinion and Order Denying Petition for Reconsideration issued 2/22/2018. The applicant then sought a Petition for Writ of Review. The Order Denying Petition for Writ of Review issued 6/14/2018 (see EAMS Document No. 67577705).

Currently at issue is the applicant's allegation that her (now) former employer Southern California Edison violated the provisions of Labor Code Section 132a.

The original Petition under Labor Code Section 132a was dated 9/28/2012, though not filed by the applicant until 2/1/2013 (see EAMS Doc ID 46601014). At the time of Trial on 6/25/2018, it was noted by the court that the amended "Application for Discrimination Benefits Pursuant to Labor Code Section 132(a)" dated 5/1/2018 (and filed that same date) was lacking the required verification as required under Rule 10450(e). The court also noted that Labor Code Section 132a(4) itself referred to the requirement of filing of a "petition" to commence proceedings. Further noting that the failure to comply with the verification requirement constituted a valid ground for summarily dismissing or denying such petition, the court further noted the holding in the significant panel decision Torres v. Contra Costa Schools Insurance (2014) 79 CCC 1181; 2014 Cal. Wrk. Comp LEXIS 111 (in dealing with IMR Appeals requiring such verification) that the applicant should be afforded a reasonable amount of time to cure this defect. As such, this case was ordered off calendar and the applicant given until the end of work day 7/16/2018 (thereby allowing 20 days) to file such verification (see Minutes of Hearing 6/25/2018).

Such verification was filed 6/25/2018 (see EAMS Document ID 67450592.)

The amended Application raises the following as alleged employer's violation of Labor Code Section 132a:

1. That on 8/17/2010 she was suspended with "just cause", and that she believed the treatment toward her was based on "gender difference after she was suspended with cause". [Page 2, line 6]. Further, that based on the collective bargaining agreement between this employer and her union IBEW Local No. 47, that her employment is not "at will" and that her termination can be only "for cause". [Page 12, lines 7 through 9].
2. That on 8/19/2010, a meeting was conducted to include herself, and the company's Eric Emery, Byron Redd, and Tyrone Chamois to review the Performance Action Plan and Reinstatement Letter [Page 2, line 22]. During this meeting, and in the reinstatement letter, work issues to include insubordinate behavior, safety rule violations and tardiness were not. [Page 3, line 10].
3. That on 8/24/2010, and after seeking a doctor's advice on 8/23/2010, she reported her injuries to her supervisor and spoke to him about her back pain, eye strain, and vaginal swelling and irritations associated with the unsanitary condition in the filed when working using toilet bag systems. [Page 3, lines 15 through 23 and later page 7, lines 6 through 8]. Further, she asked for better accommodations in the field, that her lower back pain seemed aggravated by her use of the line boots to do groundwork, and that she reported blurred vision and heavy pressure and related symptoms [Page 3, line 26, through page 4, line 6].
4. That later that day, she met with the employer's investigator Keith Dobson about investigating gender discrimination in the department, and later on 9/9/2010 she

reported to Dobson that Robert Delgado, identified as the son of Ron Delgado (identified as president of IBEW Local No. 47 SCE Troubleman) telling her "I need to go back to "marry maids and do some housework." [Page 4, lines 9 through 17.]

5. That on 9/15/2012 (2010?) she was removed from the apprentice program [Page 4, line 20].
6. That on 11/13/2010 there was an exit interview which included herself, the manager of the Department Erik Emery and Ron Delgado of the union. [Page 5, lines 1 through 3].
7. That she was removed from the apprenticeship program after having met with Dobson on 9/9/2010 "about gender discrimination in the policies and procedures of the apprenticeship program." [Page 5, lines 5 through 9].
8. That she was not allowed to rebid for the apprenticeship program in spite of the fact that she had seniority and was qualified as a Groundman A, and that she was otherwise blocked from bidding and placed on non-paid leave. [Page 5, lines 10 through 21].
9. That she then bidded for the position of Groundman A-3 but was not offered this position in spite of the fact that she was qualified. [Page 5, lines 23 through 26].
10. That was offered a lower paying job as meter reader although it was 70 miles from her home, and the reduction in pay was not sufficient to cover he personal expenses [page 5, line 27 through page 6, line 3].
11. That she was rejected from the planner job "because of seniority". [Page 6, line 4].
12. That on 1/7/2011 she was e-mail information about the scheduling and confirmation of the Substation Apprentice Test on 1/13/2011, which she "thought was odd" and

she was terminated on that date. [Page 5, lines 5 through 7], and that on 1/11/2011 Emery had e-mailed her not to come in for the test which coincided with the employer's having received the CalOSHA complaint [page 5, lines 10 through 13].

13. That she believes that her not being allowed to take the apprentice test was retaliation for the filing of the CalOSHA complaint, SCE internal investigation, discrimination in employment and worker's compensation, and wrongful discharge in violation of public policy. [Page 7, lines 3 through 5].
14. That on 2/27/2011 she was terminated from her subsequent employment Par Electric (an IBEW contractor). [Page 5, line 21].
15. That the employer should be estopped based on its conduct from raising the defense of the statute of limitations.

At the time of Trial on 9/27/2018, the applicant testified. The court advised on the record the requirements of Rule 10447, and that the presentation of the case would be limited as to the allegations as set forth in the Amended Petition filed 5/1/2018, the defendant's Answer filed 5/21/2018, and the applicant's replies of 7/3/2018 and 7/5/2018.

During the morning session, the applicant confirmed that here employer was first made aware of her claim on 8/24/2010, with the presentation of the work status report from Kaiser dated 8/23/2010. Much of the direct examination at this point was the court's direction, to cover the pertinent portions of her Petition as outlined above, and to determine the basis for her contentions that the employer's actions were in relation to her workers' compensation claim (or intent to file such a claim). Up to this point, and based on what she described as part of "deductive reasoning", several events were outlined which actually predated the employer's notice to include her suspension on 8/17/2010 and reinstatement on 8/19/2019. Her testimony

at times was rambling and not cohesive at her contentions, and at times referred to other acts of perceived discrimination (e.g. gender discrimination), or to parties not named in this action (e.g. her union IBEW #47 and subsequent employer Par Electric).

This matter was continued to 11/1/2018, to allow her to present her additional testimony and to proceed with the testimony of the witness Eric Emery.

> The proceedings on 11/1/2018 commenced with the applicant's continuing testimony, which immediately became contentious between the parties and unfocused as to the applicant's contentions as set forth in her amended Petition. After review with the parties and on the court's own motion, defense witness Eric Emery was called out of order to establish key dates and actions undertaken by the employer, in an effort to provide more structure as to the presentation of the case.

him a copy of her physician's work status report. The employer interpreted this as the reporting of a claim of injury of on or about 2/15/2010, for which a claim was set up, a delay issued followed by a denial.

In his testimony, Emery recounted the events leading up to a meeting of 9/10/2010, at which time the applicant was suspended (with pay) from the lineman apprentice program due to performance issues, primarily documented in the daily logs for which both the applicant retained the original and the employer retained a copy. This included such issues as the purported improper set up of equipment and tardiness. This resulted in her being placed in the 60-60 plan, with the first 60 days to include a performance improvement plan, during which time she was placed in a groundsman position at the pay scale for the lineman apprentice step 1. However, based on the failure to improve, the applicant was terminated from the program on 11/14/2010 (a later notice would refer to 11/15/2010), at which time she was placed on unpaid

leave with access to company facilities for purposes of looking for job postings within the company. At one point, Emery had offered the position of meter reader in Yucca Valley, with his noting that her class "A" license would allow her to operate the heavier equipment and increase her mobility within the company. However, she declined this offer indicated she was then employed by Par Electric.

As direct examination of this witness was not completed, the matter was continued to 12/5/2018. Due to the unavailability of a court reporter, the matter was continued to 1/2/2019, later continued to 2/21/2019 due to the unavailability of a court reporter.

At the time of Trial on 2/21/2019, continuing testimony of the witness Eric Emery was heard.

His testimony focused on the applicant's participation in the apprentice lineman program in 2010 (noting that previously she had held the position of a groundsman). Further noting that this program consisted of six steps, the applicant did not complete a single step leading up to her removal from the program on 9/15/2010 for unsafe work practices and failure to follow directions. A meeting was conducted which included the applicant, the witness, the manager Byron Redd and the union shop steward (this witness would later testify that there was a list maintained of such stewards, and the actual selection for the meeting was made by the employer on a random basis as to which steward was available). At the time, the applicant was placed on a "60/60" program, in which for sixty days she would be allowed to bid for another position within the company for which she was qualified, and during which time she remained on a paid status based on her salary level upon entering the lineman program), followed by another 60 days in which she retained the right to bid but on an unpaid status. This program was part of the employer's policy. At the end of the first 60 days, he had become aware that

the position of a meter-reader had become available in Yucca Valley, which he relayed to the applicant who declined consideration of this position as she was then employed by another company. Originally, the second 60 days on unpaid status was to have ended 1/12/2011, but was extended to 1/20/2011 at which time she was terminated for failure to secure a new position. At the time of the original removal from the apprentice program he was unaware of her prior claim as outlined in the Kaiser work status report of 8/24/2010, nor at any time did she indicate that her inability to participate in the program was related to that alleged injury.

This witness testified in a truthful and credible manner, and confirmed the employer's policies and their application to this employee in a non-discriminatory manner.

At the time of Trial on 4/29/2019, the defendant waived further examination of the witness Eric Emery.

Defense witness Byron Redd was called, who testified that he was the applicant's supervisor for a period of time in 2010. In terms of the apprentice program in issue, he testified that he himself had participated in that program from 1994 through 1997. He further testified that prior to the applicant's entry into the program, an action plan had been prepared due to the applicant's unsatisfactory job performance (Defendant's Exhibit "V"). He also confirmed that he had been aware of the applicant's workers' compensation claim on 8/24/2010 when he was presented with the medical status report of Dr. Dinh dated 8/23/2010 (Applicant's Exhibit "20"), and that at the time of that meeting she had been provided the workers' compensation claim packet pursuant to company policy. Noting that she had been accommodated pursuant to Dr. Dinh's recommendation, and was not required to wear the "climbing boots" referred to in his report that were aggravating her condition, he also confirmed that she was not treated any differently than other employees.

During the afternoon session, the defendant completed direct examination of this witness. At this point, applicant moved to re-open the record and submit additional evidence so as to impeach and/or rebut the testimony of witnesses Emery and Redd. To allow the applicant time to formalize her motion into a Petition, to include a designation of those portions of the proposed additional record to support her contentions, the matter was continued to 7/1/2019.

The matter proceeded to Trial on 7/1/2019. The applicant initially advised that her Petition to Re-open the Record had been mailed 6/28/2019, although had not yet been received. The applicant's cross-examination then proceeded of Byron Redd, which continued to be a highly contentious matter between the parties.

Critical to his testimony was the Kaiser medical note dated 8/23/2010 outlining certain work restrictions was received on 8/24/2010. Prior to that time, an initial write up had occurred as to the applicant's participation in the lineman apprenticeship program on 7/15/2010, which was followed by the actual removal from the program on 9/15/2010. His testimony also included a distinction between a "repeat" program (where the removed apprentice is allowed to bid for a position within the company, and at a later time re-apply for the apprenticeship program) and the "60/60" program, where the employed is allowed to look for other work within the company while on paid status for 60 days, followed by another 60 days on unpaid status while this search continued. In these circumstances, the employee is not allow to re-apply for the apprenticeship program. During the course of his cross-examination, the applicant presented several documents which purportedly attempted to show that the actions undertaken from the apprenticeship program, but this witness continued to testify in a truthful and consistent matter that the company policies had been followed, to included her placement on the "60/60" program.

As this witness (as well Eric Emery) had been taken out of order to allow the establishing of key time points as part of the applicant's allegations, the matter was continued to 8/7/2019 to allow the applicant's continuing direct examination and consideration of her Petition to Re-open the Record.

The parties re-appeared for Trial on 8/7/2019. These proceedings were delayed due to the appearance of new defense counsel, and the lack of a properly executed Substitution of Attorneys.

While the defendant initially posed an objection to the WCAB jurisdiction over the pending Labor Code Section 132a action as the previously issued Findings and Award pertaining to the case-in-chief issues did not reserve jurisdiction, it was determined that the Labor Code Section 132a issue was actually bifurcated by Order of Judge Robin Woolsey (the prior assigned MSC judge) on 1/5/2015, and thus the objection with withdrawn.

After further review with the parties, several documents were located in EAMS which could not previously be located, to include the following:

1. Petition to Re-Order defense witness Eric Emory (misdated 9/28/2019) [EAMS Document ID 705390211).
2. Defendant's Objection dated 7/25/2019 [EAMS Document ID 29821995].
3. Applicant's Objection to Order Quashing SDT dated 10/28/2018 [EAMS Document ID 68566621].

Due to the delay in proceedings, and the applicant's request to file a second Petition to Re-Order defense witness Byron-Redd (she was given until 9/2/2019 to do so), the matter was continued to 9/9/2019.

Prior to the re-scheduled Trial date, filed her Petition to Reorder Erik Emery dated 9/3/2019 [EAMS Document ID 71032972]; at the time of Trial the defendant confirmed their receipt of this document on 9/6/2019, and were given until 9/23/2019 for purposes of filing their response. (At the time of Trial, this was included in the disposition and the defendant Ordered to have this witness available on an on-call basis for the continued Trial date of 10/24/2019).

A full day of the applicant's direct examination proceeded on 9/9/2019. In her testimony, the applicant referred to a number of purported irregularities on the part of the employer in implementing its policy and procedure manual, not only with her regularly assigned position of groundsman A-3 but also as a lineman apprentice. She would also testify as to several purported unsafe conditions which were relayed to both the Occupational Safety and Health Administration (OSHA) as well as the Department of Fair Employment and Housing. She would also dispute the handling of her removal from the apprentice program as well as her ultimate termination from this employer, and her distrust of her union IBEW #47 (and particularly its president Ron Delgado). However, noteworthy is that while she identified several potential areas of concern with this employer, nothing was established in this testimony to establish discrimination under Labor Code Section 132a, with these concerns more appropriate falling under the jurisdiction of other governmental agencies.

So as to allow the completion of her direct testimony and the defendant's cross-examination, and to allow the court to rule on her motion to re-open the record for additional witness testimony, the matter was continued to 10/24/2019.

At the time of Trial on 10/24/2019, the applicant's testimony was completed. This included her acknowledgement of her removal from the apprenticeship program, the original

60 days given to find another job within the company, followed by another 60 days of unpaid leave. She also acknowledged the ruling by the U.S. District Court granting the defendants' Motion for Summary Judgement (which included this employer), and the finding that the employer's actions were neither retaliatory nor discriminatory, based on her poor performance, although she would indicate on re-cross-examination that this was in the context of her OSHA complaint only. She would continue to argue that the original claimed date of injury of 2/15/2010 was incorrect, but would roughly coincide with her reporting of her claimed work-related problems. As to the defense of the statute of limitations, she would acknowledge that her filing of her Petition under Labor Code Section 132a not being filed until 2/1/2013, she responded that she had several other legal actions pending at the time including the U.S. District Court, OSHA and FEHA, and as the result did not focus on this issue, but through her continuing discovery and investigation of the corollary legal actions determined that she should proceed with this action.

The applicant's Petition to Re-open the Testimony of Eric Emery was granted and the matter continued to 12/12/2019.

At the time of Trial on 12/12/2019, continuing cross-examination of the witness Emery continuing. When it became apparent that the line of questioning was unfocused and outside the scope of proper cross-examination, the court intervened. Based on his testimony, he understood that in the prior proceedings on this matter he had had dual roles, both as a potential witness and employer designated representative. He also testified that he had only a "vague recollection" of two documents dated 11/12/2010 and 1/20/2011, to which the applicant objected on the basis of lack of authentication. He would also testify that in providing the

applicant her workers' compensation packet, that he had acted within company policy as set forth in the Accident Prevention Manual Revised October 2007 (Applicant's Exhibit "27").

After offering the parties an opportunity to submit post-Trial Briefs, which the parties declined, the case stood submitted for decision. Subsequently, the Joint Findings and Order issued 1/14/2020 for which the applicant seeks Reconsideration.

IV

DISCUSSION

Several key issues presented at Trial were addressed in the Opinion on Decision (Labor Code Section 5313), with decisions reached as follows:

DEFENDANT'S PETITION TO QUASH SUBPOENA DUCES TECUM, ORDER AND APPLICANT'S OBJECTION THERETO AND MOTION TO SET ASIDE ORDER:

This matter was the subject of the Mandatory Settlement Conference set for 5/1/2018 (EAMS Doc ID 66926604), at which time it was set for Trial on the issue of the applicant amended Petition dated 5/1/2018. This case then proceeded to its initial Trial of 6/25/2018. It was after the initial Trial that the applicant Subpoena Duces Tecum issued on 10/25/2018, as set forth in the defendant's Motion to Quash dated 10/25/2018 (EAMS Doc ID 27638111), and the applicant's objection filed 11/16/2018 (EAMS Doc ID 68701859.)

The question here is whether the applicant has sustained her burden of proof in establishing good cause for reopening of discovery after the MSC and after the initiation of Trial pursuant to Labor Code Section 5502(e)(3). While the applicant has submitted the validity of a number of documents offered by the defendant as exhibits, nothing is set forth in

said Petition so as to establish such good cause to reopen the record, and thus the Order Quashing SDT dated 10/26/2018 (EAMS Doc ID 68495158) will remain.

ADMISSION OF EXHIBITS:

The applicant had raised the validity of exhibits of letters dated 11/12/2010 (Defendant's Exhibit "HH") and 1/20/2011 (Defendant's Exhibit "KK"). Noting such documents were unsigned and otherwise unauthenticated, and the testimony of witness Emery that he has only a "vague memory" of such documents, they were excluded. Otherwise, Defendant's Exhibits "S" through "GG", "II", and "JJ" were taken into evidence.

STATUTE OF LIMITATIONS:

Labor Code Section 132a(4) provides as follows:

"Proceedings for increased compensation as provided in paragraph (1), or for reinstatement and reimbursement for lost wages and work benefits, are to be instituted by filing an appropriate petition with the appeals board, but these proceedings may not be commenced more than one year from the discriminatory act or date of termination of the employee. The appeals board is vested with full power, authority, and jurisdiction to try and determine finally all matters specified in this section subject only to judicial review, except that the appeals board shall have no jurisdiction to try and determine a misdemeanor charge. The appeals board may refer and any worker may complain of suspected violations of the criminal misdemeanor provisions of this section

to the Division of Labor Standards Enforcement, or directly to the office of the public prosecutor."

The applicant's original Petition under Labor Code Section 132a, while dated 9/28/2012, was not filed until 2/1/2013 (EAMS Doc ID 46601014). This was followed by the filing of the amended Petition and subsequently verified Petition 6/26/2018 (EAMS Doc ID 6740592). A review of the amended Petition, more detailed in its listing of alleged misconduct by the employer commences with events on 8/17/2010 and ending 2/27/2011 with her termination from the subsequent employer Park Electric (which arguably has nothing to do with discriminatory misconduct by her employer Southern California Edison. Even if the latter were construed as part of such misconduct, the filing of the Petition under Labor Code Section 132a on 2/1/2013 would be outside the prescribed one statute of limitation under Labor Code Section 132a(4), and thus would be barred. The court further considered the original filing of the Application for Adjudication of Claim in ADJ8009847 (MF) (EAMS Doc ID 39397567) and ADJ8386217 (EAMS Doc ID 39387657), noting that neither referenced discriminatory conduct pursuant to Labor Code Section 132a. Thus, it was found that this action is outside the prescribed one year statute of limitations pursuant to Labor Code Section 132a(4), and thus barred.

EMPLOYER'S ALLEGED VIOLATION OF LABOR CODE SECTION 132a:

Labor Code Section 132a provides:

"It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.

(1) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee's compensation shall be increased by one-half, but in no event more than ten thousand dollars ($10,000), together with costs and expenses not in excess of two hundred fifty dollars ($250). Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(2) Any insurer that advises, directs, or threatens an insured under penalty of cancellation or a raise in premium or for any other reason, to discharge an employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and subject to the increased compensation and costs provided in paragraph (1).

(3) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because the employee testified or made known his or her intentions to testify in another employee's case before the appeals board, is guilty of a misdemeanor, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(4) Any insurer that advises, directs, or threatens an insured employer under penalty of cancellation or a raise in premium or for any other reason, to discharge or in any manner discriminate against an employee because the employee testified or made

known his or her intention to testify in another employee's case before the appeals board, is guilty of a misdemeanor.

Rule 10447 further provides as follows:

"Any person seeking to initiate proceedings under Labor Code Section 132a other than prosecution for misdemeanor must file a petition therefor setting forth specifically and in detail the nature of each violation alleged and facts relied on to show the same, and the relief sought. Each alleged violation must be separately pleaded so that the adverse party or parties and the Workers' Compensation Appeals Board may be fully advised of the specific basis upon which the charge is founded.

The Workers' Compensation Appeals Board may refer, or any worker may complain of, suspected violations of the criminal misdemeanor provisions of Labor Code Section 132a to the Division of Labor Standards Enforcement or directly to the Office of the Public Prosecutor."

As was noted in Judson Steel Corporation v. WCAB (Maese) (1978, 43 CCC 1205, "(Labor Code Section 132a) did not compel an employer to ignore the realities of doing business by reemploying unqualified employees or employees for whom positions are no longer available.

In reviewing the full record, to include the pleadings, witness testimony, and admitted exhibits, the court noted that a number of allegations were made as against in the employer in the form of unfair labor practices, violation of collective bargaining agreement(s), and other

discriminatory basis to include race and gender. However, the threshold considered was whether the employer engaged in discriminatory conduct on the basis of the applicant having filed (or made known an intent to file) a workers' compensation claim. None of the submitted evidence would establish such a conclusion under Labor Code Section 132a. In fact, the employer's actions as against this employee were considered in different tribunals in the context of other alleged misconduct, with the finding that the employer had either acted appropriately or had not acted inappropriately.

Thus, in the event that the statute of limitations was not considered a bar, it was found that the applicant had not sustained her burden of proof to establish discriminatory conduct under Labor Code Section 132a.

The court is not clear as to the applicant's contention that these are "continuous" actions for which there should be no bar as to the statute of limitations. The statute is quite clear, and based on her description of alleged discriminatory acts her original Petition as filed under Labor Code Section 132a (noting that an amended Petition was filed to include the required verification), said original Petition was untimely. However, the court further considered its findings on an alternative finding that the statute of limitations was not a bar, leading to the next point.

While the applicant contends that it is the defendant's burden of proof to disprove discriminatory acts under Labor Code Section 132a, the court finds nothing in the statutory, regulatory or case law to support this contention. And as noted in the Opinion, while the applicant had a number of alleged issues with her employer, none were found to fit within the category of discriminatory acts within the meaning of the statute.

SERVICE:

CA MED MANAGEMENT MONTEBELLO. US Mail
EAGLE EYE IMAGING FONTANA. US Mail
EDD SDI SAN BERNARDINO. US Mail
FAIZAH DEAN. US Mail
GOLDSTAR FINANCIAL SANTA FE SPRINGS. US Mail
KARLZEN HUTCHINSON TORRANCE. US Mail
ORACLE MED COLLECTIONS POMONA. US Mail
PASEO PHARMACY. US Mail
SOUTHERN CAL EDISON ROSEMEAD. US Mail
VERBATIM RX PHARMACY POMONA. US Mail

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FAIZAH DEAN, *Applicant,* **vs.** **SOUTHERN CALIFORNIA EDISON; Permissibly Self-Insured,** *Defendants.*	**Case Nos.** **ADJ8009847** **ADJ8386217** **ADJ8386218** **(Riverside District Office)** **OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION**

Reconsideration has been sought with regard to the decision filed on January 14, 2020.

Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration will be granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

For the foregoing reasons,

IT IS ORDERED that Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that pending the issuance of a Decision After Reconsideration in the above case, all further correspondence, objections, motions, requests and communications *relating to the petition* shall be filed only with the Office of the Commissioners of the Workers' Compensation Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102) or its Post Office Box address (P.O. Box 429459, San Francisco, CA 94142-9459), and shall *not* be submitted to the district office from which the WCJ's decision issued or to any other district office of the Workers' Compensation Appeals Board, and shall *not* be e-filed in the Electronic Adjudication Management System (EAMS). Any documents relating to the petition for reconsideration lodged in violation of this order shall neither be accepted for filing nor deemed filed.

All trial level documents not related to the petition for reconsideration shall continue to be e-filed through EAMS or, to the extent permitted by the Rules of the Administrative Director, filed in paper form.[1] If, however, a proposed settlement is being filed, the petitioner for reconsideration should promptly notify the Appeals Board because a WCJ cannot act on a settlement while a case is pending before the Appeals Board on a grant of reconsideration. (Cal. Code Regs., tit. 8, former § 10859, now § 10961 (eff. Jan. 1, 2020).)

WORKERS' COMPENSATION APPEALS BOARD

CHAIR

/s/ KATHERINE ZALEWSKI

I CONCUR,

/s/ DEIDRA E. LOWE

/s/ JOSÉ H. RAZO

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD

FAIZAH DEAN
KARLZEN HUTCHINSON

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[1] Such trial level documents include, but are not limited to, declarations of readiness, lien claims, trial level petitions (e.g., petitions for penalties, deposition attorney's fees), stipulations with request for award, compromise and release agreements, etc.)

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FAIZAH DEAN, *Applicant,* vs. **SOUTHERN CALIFORNIA EDISON; Permissibly Self-Insured,** *Defendants.*	**Case Nos.** **ADJ8009847** **ADJ8386217** **ADJ8386218** **(Riverside District Office)** **OPINION AND DECISION AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Applicant in pro per seeks reconsideration of the Joint Findings and Order (F&O) issued on January 14, 2020, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that applicant's Labor Code Section 132a[1] petition is barred by the statute of limitations, that applicant otherwise failed to present evidence sufficient to establish her prima facie claim, that there is no good cause to set aside the October 28, 2018 order quashing applicant's subpoena duces tecum, and that defendant's exhibits HH and KK are not admissible into evidence. The WCJ ordered in pertinent part that applicant take nothing on her claim, that her motion to set aside the order quashing subpoena be denied, and that exhibits HH and KK are excluded from evidence.

Applicant contends that the WCJ erred on the grounds that the statute of limitations was tolled or inapplicable because the alleged discriminatory conduct was "continuous." Applicant further contends that defendant failed to meet its alleged burden of proof that it did not engage in discriminatory conduct. Applicant also asserts that the WCJ erred by declining to set aside the order quashing applicant's subpoena duces tecum and by admitting exhibits HH and KK into evidence.

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

We received an Answer from defendant.

The WCJ filed a Report and Recommendation on Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will affirm the F&O.

FACTUAL BACKGROUND

On February 1, 2013, applicant filed a petition for increased benefits pursuant to section 132a. (132a Petition, February 1, 2013.)[2]

The record in EAMS reveals that the WCJ admitted the following exhibits into evidence: Notice of Failure to Resolve Grievance, October 4, 2010; Reporter's Transcript of Proceedings, Grievance No. 11-01-23397, September 28, 2011; OSHA Order Granting Party Status, April 9, 2013; OSHA Decision of February 20, 2014; Complaint for Violation of Civil Rights (case number EDCV12-01435); and Decision of USDC, February 4, 2014. (Exhibit 19, Notice of Failure to Resolve Grievance, October 4, 2010; Ex. 12, Reporter's Transcript of Proceedings, Grievance No. 11-01-23397, September 28, 2011; Ex. O, OSHA Order Granting Party Status, April 9, 2013; Ex. 16, OSHA Decision of February 20, 2014; Ex. M, Complaint for Violation of Civil Rights, March 14, 2013; Ex. 21, Decision of USDC, February 4, 2014.)

The Notice of Failure to Resolve Grievance appears on defendant's letterhead and asserts that applicant filed a grievance contesting her September 15, 2010 removal from the apprentice lineman position and seeking reinstatement and compensation for lost income. (Ex. 19, Notice of Failure to Resolve Grievance, October 4, 2010.)

The Transcript of Proceedings memorializes an arbitration held on September 28, 2011, on the issues of whether defendant wrongfully removed applicant from the apprentice lineman position and terminated her employment. (Ex. 12, Reporter's Transcript of Proceedings, Grievance No. 11-01-23397, September 28, 2011, pp. 1, 5.)

[2] The petition is available in EAMS in case number ADJ8386217.

The OSHA Decision contains a letter dated January 26, 2012 from an OSHA representative to applicant acknowledging its January 5, 2011 receipt of applicant's complaint of defendant's alleged health and safety violations and advising that OSHA cited defendant for failing to provide workers with acceptable toilet facilities. (Ex. 16, OSHA Decision of February 20, 2014, pp. 10-11.)

The OSHA Order Granting Party Status indicates that defendant appealed the OSHA citation and the matter was resolved on November 8, 2012, subject to a petition for reconsideration. (Ex. O, OSHA Order Granting Party Status, April 9, 2013, p. 1.)

The Complaint for Violation of Civil Rights contains various pleadings in a civil action brought by applicant against, among others, defendant herein, and is described with more specificity below. The first pleading in the exhibit is labeled "First Amended Complaint," case number EDCV12-01435, and filed-stamped December 21, 2012. (Ex. M, Complaint for Violation of Civil Rights, March 14, 2013, p. 1.)

The Decision of USDC constitutes the minutes of the February 4, 2014 proceedings in the U.S. District Court, Central District of California, case number EDCV12-01435, and includes the following:

> On March 14, 2013, Plaintiff Faizah Nailah Dean filed a Second Amended Complaint . . . [alleging] several claims against SCE [defendant Southern California Edison]: (1) a "hybrid" claim, pursuant to 29 U.S.C. § 185, for . . . SCE's breach of a collective bargaining agreement . . . (2) a claim for wrongful termination based on sex and race, in violation of Title VII of the Civil Rights Act of 1964; (3) a claim for wrongful discharge in violation of California Labor Code § 6310(b); and (4) a claim for violation of the Americans with Disabilities Act ("ADA":), 42 U.S.C. § 12101, et seq. . . .
>
> . . .
>
> On May 1, 2013, the Court dismissed all of these claims, except the third claim for retaliation in violation of California Labor Code § 6310. . . . On January 3, 2014, SCE filed the SCE Motion, which seeks summary adjudication of the § 6310 retaliation claim.
>
> . . .
>
> Because these Motions dispose of all remaining claims in this action, this action is DISMISSED with prejudice.
>
> (Ex. 21, Decision of USDC, February 4, 2014, pp. 1-8.)

On December 13, 2017, the WCJ issued the following joint findings of fact:

> 1. [Applicant] . . . as a lineman, occupational group number 380, at various locations in California, while employed by Southern California Edison, did not sustain injury of 2/15/2010 to her back [ADJ8009847(MF)], or during the period 9/15/2009 to 9/15/2010 (later amended to 7/13/2009 to 11/12/2010) to her internal system, vaginal areas, blurred vision, reproductive organs, psyche and back [ADJ8386217].
>
> 2. The parties' respective petitions for costs/sanctions are reserved.
>
> 3. All other issues are moot.
>
> (Joint Findings and Order, December 13, 2017, p. 1.)

Also on December 13, 2017, the WCJ ordered that the parties' respective petitions for costs or sanctions be reserved and that applicant take nothing with respect to her injury claims. (*Id.*)

On January 5, 2018, applicant filed a petition for reconsideration. (Petition for Reconsideration, January 5, 2018.)

On February 22, 2018, we denied reconsideration. (Opinion and Order Denying Petition for Reconsideration, February 11, 2018.)

On May 1, 2018, applicant filed an amended petition for increased benefits pursuant to section 132a. (132a Petition, May 1, 2018.) The amended petition alleges that defendant terminated applicant's employment on January 13, 2011. (*Id.*, p. 6:6-7.)

On June 14, 2018, the Court of Appeal issued an order denying applicant's petition for writ of review of our order denying reconsideration. (Order Denying Petition for Writ of Review, June 14, 2018.)

On September 27, 2018, the matter proceeded to trial as to the issues of whether defendant discriminated against applicant in violation of section 132a and whether applicant's section 132a was barred by the statute of limitations. (Amended Minutes of Hearing and Summary of Evidence, September 27, 2018, p. 2:14-18.)

Also on September 27, 2018, applicant objected to the admission of defendant's exhibits T through KK into evidence and the WCJ declined their admission as of that date. (*Id.*, p. 5:20-21.)

At trial, applicant testified that defendant suspended her on August 17, 2010, that defendant reinstated her on August 19, 2010, and that defendant was not aware of her industrial injury claim until she presented her physician's August 23, 2010 work status report dated on August 24, 2010. (*Id.*, p. 6:7-16.)

Applicant further testified that she was removed from defendant's lineman apprenticeship program on September 15, 2010, and believes defendant's adverse action was in part the result of her worker' compensation claim. (*Id.*, p. 6:20-21.) She was placed on unpaid leave on November 13, 2010, her union agreed to her January 20, 2011 termination, and she was later informed that she consented to the termination by signing her last paycheck. (*Id*, pp. 7:38-42, 8:19-26.)

On November 1, 2018, the matter proceeded to continued trial, and one of applicant's supervisors, Eric Emery, testified that defendant had issues with applicant's job performance, including safety issues based upon reports from approximately seven foremen. (Minutes of Hearing and Summary of Evidence, November 1, 2018, pp. 5:13-17, 6:6-12.)[3] These issues were the subject of a review held at a meeting with applicant on July 15, 2010. (*Id.*, p. 6:14.)

Defendant held a second meeting with applicant on August 15, 2010, and determined that applicant's performance during the preceding thirty days had not improved. (*Id.*, p. 6:19-21.) Applicant was placed on another thirty day action plan and notified that she would be subject to removal from the lineman apprentice program if she failed to improve. (*Id.*, p. 6:23-26.) Defendant removed applicant from the apprentice lineman program on September 25, 2010 for poor work scores, failing to follow guidelines, and safety violations. (*Id.*, p. 6:31-33.) Applicant was placed on defendant's 60-60 program, providing that she would continue as a paid employee for sixty days so that she could seek another position with defendant, but would not be permitted to return as an apprentice lineman. (*Id.*, p. 6:44-7:2.) Following the first sixty days, applicant was placed on unpaid leave and permitted continued access to company facilities for the purpose of securing a job. (*Id.*, p. 7:5-9.) On January 20, 2011, defendant terminated applicant because she had not secured a job within the latter sixty-day period. (*Id.*, p. 7:24-27.)

The matter proceeded to continued trial on February 21, 2019, April 29, 2019, October 24, 2019, and December 12, 2019. (Minutes of Hearing and Summary of Evidence, February 21, 2019; Minutes of Hearing and Summary of Evidence and Order to Appear, April 29, 2019; Minutes of Hearing and Summary of Evidence, October 24, 2019; Minutes of Hearing and Summary of Evidence, December 12, 2019.)[4]

On April 29, 2019, another of applicant's supervisors, Byron Redd, testified that defendant imposed an action plan upon applicant on July 15, 2010, based upon the low grades she had received

[3] The Minutes of Hearing and Summary of Evidence are available in EAMS under case number ADJ8386217.

[4] The minutes of these proceedings are available in EAMS under case number ADJ8386217.

from the foremen overseeing her work. (Minutes of Hearing and Summary of Evidence and Order to Appear, April 29, 2019, p. 6:5-9.) Applicant was told that if her performance did not improve the action plan would be extended another thirty days. (*Id.*)

Mr. Redd further testified that defendant suspended applicant on August 17, 2010. for failing to follow directives and safety documents and reinstated her two days later with an extension of the action plan; however, applicant continued to receive low scores and to show problems with safety issues and job knowledge. (*Id.*, p. 6:10-24.) Within a week of her suspension, applicant presented the August 23, 2010 medical report in which she claimed industrial injury. (*Id.*, p. 6:24.)

On October 24, 2019, applicant testified that she filed her original section 132a petition on February 1, 2013. (Minutes of Hearing and Summary of Evidence, October 24, 2019, pp. 6:31, 7:29-30.) She further testified that the claims she raised against defendant in federal court were connected to those raised before the WCAB and OSHA. (*Id.*, p. 4:23-5:4.) The federal court action included a wrongful termination claim against defendant. (*Id.*, p. 6:33-34.) The reason that she did not oppose defendant's motion for summary judgment of her federal court action was that she had other legal actions pending and felt overwhelmed. (*Id.*, p. 6:43-45.) She brought claims against defendant in various venues, including OSHA, EEOC, and the U.S. District Court. (*Id.*, p. 7:29-32.) She would redirect how she was proceeding legally as she received new information. (*Id.*, p. 7:32-33.) She "landed" in this action between her U.S. District Court action and OSHA actions. (*Id.*, p. 7:43-44.)

In the Report, the WCJ writes:

> The original Petition under Labor Code Section 132a was dated 9/28/2012, though not filed by the applicant until 2/1/2013 (see EAMS Doc ID 46601014). At the time of Trial on 6/25/2018, it was noted by the court that the amended "Application for Discrimination Benefits Pursuant to Labor Code Section 132(a)" dated 5/1/2018 (and filed that same date) was lacking the required verification as required under Rule 10450(e). The court . . . afforded [applicant] a reasonable amount of time to cure this defect. As such, this case was ordered off calendar and the applicant given until the end of work day 7/16/2018 (thereby allowing 20 days) to file such verification (see Minutes of Hearing 6/25/2018).
>
> Such verification was filed 6/25/2018 (see EAMS Document ID 67450592.) (Report, p. 3.)
>
> At the time of Trial on 9/27/2018, the applicant testified. . . .
>
> [to] several events . . . which actually predated the employer's notice [of her claim] . . . includ[ing] her suspension on 8/17/2010 and reinstatement on 8/19/201[0]. Her

testimony at times . . . referred to other acts of perceived discrimination (e.g. gender discrimination), or to parties not named in this action (e.g. her union IBEW #47 and subsequent employer Par Electric).

. . .

[Mr.] Emery recounted the events leading up to a meeting of 9/10/2010, at which time the applicant was suspended (with pay) from the lineman apprentice program due to performance issues, primarily documented in the daily logs for which both the applicant retained the original and the employer retained a copy. This included such issues as the purported improper set up of equipment and tardiness. This resulted in her being placed in the 60-60 plan, with the first 60 days to include a performance improvement plan, during which time she was placed in a groundsman position at the pay scale for the lineman apprentice step 1. However, based on the failure to improve, the applicant was terminated from the program on 11/14/2010 (a later notice would refer to 11/15/2010), at which time she was placed on unpaid leave with access to company facilities for purposes of looking for job postings within the company.
(Report, pp. 6-8.)

This matter was the subject of the Mandatory Settlement Conference set for 5/1/2018 (EAMS Doc ID 66926604), at which time it was set for Trial on the issue of the applicant['s] amended Petition dated 5/1/2018. This case then proceeded to its initial Trial of 6/25/2018. It was after the initial Trial that the applicant['s] Subpoena Duces Tecum issued on 10/25/2018, as set forth in the defendant's Motion to Quash dated 10/25/2018 (EAMS Doc ID 27638111), and the applicant's objection filed 11/16/2018 (EAMS Doc ID 68701859.)

The question here is whether the applicant has sustained her burden of proof in establishing good cause for reopening of discovery after the MSC and after the initiation of Trial pursuant to Labor Code Section 5502(e)(3). While the applicant has submitted the [issue of the] validity of a number of documents offered by the defendant as exhibits, nothing is set forth in said Petition so as to establish such good cause to reopen the record, and thus the Order Quashing SDT dated 10/26/2018 (EAMS Doc ID 68495158) will remain.

. . .

The applicant had raised the [issue of the] validity of exhibits of letters dated 11/12/2010 (Defendant's Exhibit "HH") and 1/20/2011 (Defendant's Exhibit "KK"). Noting such documents were unsigned and otherwise unauthenticated, and the testimony of witness Emery that he has only a "vague memory" of such documents, they were excluded.
(Report, pp. 14-15.)

A review of the amended Petition, more detailed in its listing of alleged misconduct by the employer commences with events on 8/17/2010 and ending 2/27/2011 with [applicant's] termination from the subsequent employer Park [sic] Electric . . . Even if [defendant] were construed as part of such misconduct, the filing of the Petition under Labor Code Section 132a on 2/1/2013 would be outside the prescribed one [year] statute of limitation . . . and thus would be barred.
(Report, p. 16.)

The court is not clear as to the applicant's contention that these are "continuous" actions for which there should be no bar as to the statute of limitations. . . .

/ / /

/ / /

> While the applicant contends that it is the defendant's burden of proof to disprove discriminatory acts under Labor Code Section 132a, the court finds nothing in the statutory, regulatory or case law to support this contention.
> (Report, p. 19.)

DISCUSSION

Before examining the merits of the Petition, we note that it was filed without verification. A petition for reconsideration must be "verified upon oath in the manner required for verified pleadings in a court of record." (§ 5902; Cal. Code Regs., tit. 8, § 10510.3.) If a petition for reconsideration is filed without verification, it is subject to dismissal if the petitioner has been given notice of the defect and fails to cure it. (*Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 [Appeals Board significant panel decision].)

Here, the record discloses that applicant cured her failure to file a verification by filing a verification on June 25, 2018. (Report, p. 3.) The Petition is therefore no longer subject to dismissal for lack of verification.

However, WCAB Rule 10205.12(a) provides in pertinent part that all documents filed with the WCAB must have margins of at least 1 inch, be without typed or handwritten text in any margin, be printed in font of at least 12 points, and be double or one-and-one-half spaced. (Cal. Code Regs., tit. 8, § 10205.12(a)(2)(5)(11). Here, the Petition contains margins of less than 1 inch, handwritten text in margins, and single-spaced text in font of less than 12 points. We therefore admonish applicant for failing to follow the rules of pleading and advise her that should she fail to follow these rules in the future she may be subject to sanctions. (§ 5813; Cal. Code Regs., tit. 8, § 10561, now § 10421 (eff. Jan. 1, 2020).)

Turning to the merits of the Petition, we observe that section 132a provides in pertinent part:

> Proceedings for increased compensation as provided in paragraph (1), or for reinstatement and reimbursement for lost wages and work benefits, are to be instituted by filing an appropriate petition with the appeals board, but these proceedings may not be commenced more than one year from the discriminatory act or date of termination of the employee. . . .

Hence, in order to be timely, a section 132a petition must be filed within one year of the last alleged discriminatory act or termination. (See *County of Los Angeles v. Workers' Comp. Appeals Bd.*

(*Dulan*) (2000) 65 Cal.Comp.Cases 166 (writ den.).) The running of the statute of limitations is an affirmative defense and the burden of proving that the application for adjudication is untimely lies with defendant. (§§ 5409, 5705.)

In this case, both applicant and Mr. Emery testified that defendant terminated applicant's employment on January 20, 2011. (Amended Minutes of Hearing and Summary of Evidence, September 27, 2018, pp. 7:38-42, 8:19-26; Minutes of Hearing and Summary of Evidence, November 1, 2018, p. 7:24-27.) Inasmuch as more than one year elapsed between applicant's January 20, 2011 termination and the February 1, 2013 filing of the original section 132a petition, the petition is barred absent tolling of the limitations period.[5]

As explained in *Brome v. California Highway Patrol* (2020) 44 Cal.App.5th 786:

> The equitable tolling doctrine operates to "'suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness.'" (citations.) Equitable tolling reflects "'a general policy which favors relieving [a] plaintiff from the bar of a limitations statute when, possessing several legal remedies he, reasonably and in good faith, pursues one.'" (citations.) The doctrine encourages the resolution of meritorious claims while avoiding unnecessary litigation and alleviating the burden of pursuing multiple remedies at once.
> (*Brome v. California Highway Patrol*, *supra*, at pp. 794-795.)

In *Elkins v. Derby* (1974) 12 Cal.3d 410 [39 Cal.Comp.Cases 624], the Supreme Court held that the limitations period for a personal injury action could be tolled where the plaintiff had sought a workers' compensation remedy against the defendant, was determined by the finder of fact not to have been the defendant's employee at the time of injury, and filed a personal injury action after the determination became final on a date outside of the limitations period. The Court reasoned that the timely filing of the workers' compensation claim had apprised the defendant of the basis of the personal injury claim and thus enabled the defendant to timely assemble a legal defense. (See *Elkins*, *supra*, at pp. 417–418.)

/ / /

[5] We note that applicant does not allege the occurrence of any misconduct on the part of any person or entity within one year of the February 1, 2013 filing of her section 132a petition, including the alleged February 27, 2011 termination of her employment with non-party Pak Electric. (Report, p. 16.)

In *McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, the Supreme Court found that equitable tolling requires a showing of three elements: (1) timely notice to the defendant; (2) lack of prejudice to the defendant; and (3) reasonable and good faith conduct on the part of the complainant. (See *McDonald, supra,* at p. 102.) The element of timely notice requires that the "filing of the first claim . . . alert the defendant in the second claim of the need to begin investigating the facts which form the basis for the second claim." (*McDonald, supra,* at p. 102, fn. 2; see also *Elkins, supra,* at pp. 412, 417-418.) The element of lack of prejudice to the defendant requires a showing that the facts of the claims are identical or at least similar enough so that the defendant's investigation of the first claim will put it in a position to fairly defend the second. (See *McDonald, supra,* 45 Cal.4th at p. 102, fn. 2.)

Here, the record demonstrates that applicant pursued legal remedies relating to defendant's conduct surrounding her removal from the apprentice lineman position and the termination of her employment. She filed a union grievance against defendant in approximately late September 2010 alleging that she was wrongfully removed from the apprentice lineman position and that she was entitled to remedies of reinstatement and compensation for lost income. (Ex. 19, Notice of Failure to Resolve Grievance, October 4, 2010.) She filed another grievance alleging that defendant wrongfully terminated her employment—and the two grievance claims proceeded through at least September 28, 2011. (Ex. 12, Reporter's Transcript of Proceedings, Grievance No. 11-01-23397, September 28, 2011, p. 5:1-13.)

Applicant filed an OSHA complaint on January 5, 2011, alleging defendant violated health and safety regulations applicable to her position as an apprentice lineman and the matter proceeded until at least November 8, 2012. (Ex. O, OSHA Order Granting Party Status, April 9, 2013, pp. 10-11; Ex. 16, OSHA Decision of February 20, 2014, p. 1.)

Applicant filed a complaint labeled "first amended complaint" in U.S. District Court on February 21, 2012, alleging various wrongful employment termination theories against defendant.[6] (Ex. M,

[6] We note that although the complaint is labeled "first amended," we are unable to discern whether or on what date the action was initiated by the filing of an original complaint.

Complaint for Violation of Civil Rights, March 14, 2013, p. 1.) This matter continued until February 4, 2014. (Ex. 21, Decision of USDC, February 4, 2014, pp. 1-8.)

Additionally, applicant testified that the U.S. District Court proceeding was connected to her workers' compensation and OSHA allegations in that it included a wrongful termination claim. (Minutes of Hearing and Summary of Evidence, October 24, 2019, pp. 4:23-5:4, 6:33-34.) She testified that the reason her claims proceeded through various venues, including OSHA, EEOC, and the U.S. District Court, was that she would alter direction after she received new information, with the result that she filed her section 132a claim in 2013.[7] (*Id.*, p. 7:29-44.)

Notwithstanding this documentary and testimonial evidence that applicant reasonably pursued other legal remedies following her removal from the apprentice lineman position and employment termination before filing the section 132a petition, the evidence before us fails to demonstrate that (1) applicant's pursuit of these remedies provided timely notice to the defendant of the basis of her section 132a petition and (2) defendant was not prejudiced by the delayed filing of the petition.

Specifically, there is no evidence that applicant's union grievances alerted defendant of the need to investigate alleged discriminatory conduct surrounding applicant's workers' compensation claim or contained allegations sufficiently similar to those of the section 132a petition for defendant to be in a position to fairly defend against the section 132a claim. Rather, the union grievances concerned defendant's conduct surrounding disciplinary actions taken against applicant, including a July 15, 2010 formal review of applicant's job performance, the August 17, 2010 suspension of applicant from her position, the September 15, 2010 removal of applicant from her position, and the January 20, 2011 termination of applicant's employment. Significantly, none of this alleged conduct was connected to applicant's worker's compensation claim; nor could the disciplinary review and suspension have been allegedly connected to the claim because they preceded defendant's notice of the claim. (Minutes of Hearing and Summary of Evidence, November 1, 2018, pp. 5:13-17, 6:6-14; Report, p. 6; Ex. 19, Notice of Failure to Resolve Grievance, October 4, 2010.)

[7] We are unable to discern evidence in the record showing whether or when applicant filed a claim with the EEOC.

Similarly, applicant's January 5, 2011 OSHA complaint also failed to alert defendant of the need to investigate the parties' conduct surrounding applicant's workers' compensation claim and contains allegations not sufficiently similar to the section 132a claim to put defendant in a position to defend against it. Rather, the OSHA complaint alleged that defendant failed to comply with health and safety regulations generally applicable to the lineman position—and not discriminatory conduct related to applicant or her workers' compensation claim. (Ex. O, OSHA Order Granting Party Status, April 9, 2013, pp. 10-11; Ex. 16, OSHA Decision of February 20, 2014, p. 1.)

Furthermore, applicant's February 21, 2012 civil complaint was filed outside the one-year period following her January 20, 2011 termination, and thus cannot serve as a basis for tolling the statutory period. (Ex. M, Complaint for Violation of Civil Rights, March 14, 2013, p. 1.) Though the complaint was labeled as a first amended complaint and applicant testified that she pursued a legal remedy with the EEOC, there is no evidence in the record that applicant filed an earlier complaint in case number EDCV12-01435 or submitted a claim with the EEOC before the February 21, 2012 filing of the complaint. (*Id.*; Minutes of Hearing and Summary of Evidence, October 24, 2019, p. 7:29-44.) Additionally, had applicant filed an earlier complaint or submitted an administrative claim, there is no evidence that such a complaint or claim would have alerted defendant of the need to investigate the parties' conduct surrounding applicant's workers' compensation claim in a manner sufficient to avoid prejudice from the delayed filing of the section 132a petition.[8]

Accordingly, we conclude that the evidence in the record before us is insufficient to toll the limitations period applicable to the section 132a petition.

Turning to applicant's argument that defendant holds the burden of proof that it did not discriminate against her, we observe that under section 132a, "[i]t is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment." Section 132a protects an employee from retaliation or discrimination by an employer

[8] The filing of an administrative claim, like the filing of a civil complaint, may afford a defendant notice of the claims against it so that it may gather and preserve evidence and thereby be shown to have avoided prejudice under the doctrine of equitable tolling. (See *Elkins v. Derby, supra*, at pp. 414, 417-418.)

because of an exercise of workers' compensation rights. (*City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143 [63 Cal.Comp.Cases 944] (*Moorpark*); *Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658 [43 Cal.Comp.Cases 1205]; *Department of Rehabilitation v. Workers' Comp. Appeals Bd. (Lauher)* (2003) 30 Cal.4th 1281, 1298-1299 [68 Cal.Comp.Cases 831]; *Smith v. Workers' Comp Appeals Bd.* (1984) 152 Cal.App.3d 1104, 1109 [49 Cal.Comp.Cases 212] (*Smith*); see *Usher v. American Airlines, Inc.* (1993) 20 Cal.App.4th 1520, 1526 [58 Cal.Comp.Cases 813].)

Section 132a provides in pertinent part:

> Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim...or an application for adjudication, or because the employee has received a rating, award, or settlement...testified or made known his or her intention to testify in another employee's case... is guilty of a misdemeanor and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits . . .

This section has been "interpreted liberally to achieve the goal of preventing discrimination against workers injured on the job," while not compelling an employer to "ignore the realities of doing business by 'reemploying' unqualified employees or employees for whom positions are no longer available." (*Lauher, supra*, 30 Cal.4th at pp. 1298-1299 [citations omitted].)

In *Lauher*, the Supreme Court clarified its definition for "discrimination," noting that in its previous decisions in *Smith, supra* and *Barns v. Workers' Comp. Appeals Bd.* (1989) 216 Cal.App.3d 524, the Court held that an employer's action which caused detriment to the employee because of an industrial injury was sufficient to show a violation of the statute. (*Lauher, supra,* 30 Cal.4th at p. 1299 quoting [1 Hanna, Cal. Law of Employee Injuries and Workers' Compensation (rev. 2d ed., Peterson et al. edits, 2002)], § 10.11[1], p. 10-20 ["[t]he critical question is whether the employer's action caused detriment to an industrially injured employee"]; see *Barns, supra*, 216 Cal.App.3d at p. 531.)

The *Lauher* court noted with approval the Court of Appeal's finding that the formulation enunciated in *Smith v. Workers' Comp. Appeals Bd.* (1984) 152 Cal.App.3rd 1104, and adopted by *Barns* to establish a prima facie case was "analytically incomplete:"

> The court explained that, although Lauher had clearly suffered a detriment by having to use his accumulated sick leave and vacation time for his visits to see Dr. Houts, he never established he 'had a legal right to receive TDI [temporary disability indemnity] and retain his accrued sick leave and vacation time, and that [his employer] had a

> corresponding legal duty to pay TDI and refrain from docking the sick leave and vacation time.' Thus, said the court, '[t]o meet the burden of presenting a prima facie claim of unlawful discrimination in violation of section 132a, it is insufficient that the industrially injured worker show only that . . . he or she suffered some adverse result as a consequence of some action or inaction by the employer that was triggered by the industrial injury. *The claimant must also show that he or she had a legal right to receive or retain the deprived benefit or status, and the employer had a corresponding legal duty to provide or refrain from taking away that benefit or status.*'" (*Lauher, supra*, 30 Cal.4th at pp. 1299-1300, italics added.)

The Court further agreed with the Court of Appeal that "[an] employer thus does not necessarily engage in 'discrimination' prohibited by section 132a merely because it requires an employee to shoulder some of the disadvantages of his industrial injury. By prohibiting 'discrimination' in section 132a, we assume that the Legislature meant to prohibit treating injured employees differently, making them subject to disadvantages not visited on other employees because the employee was injured or had made a claim." (*Lauher, supra* at p. 1300.)

As the *Lauher* court determined in the first part of its decision, the employee was no longer entitled to temporary disability indemnity (TDI) because his condition was permanent and stationary. (*Lauher, supra* at p. 1297.) Therefore, even though the employee's use of sick and vacation leave was for medical treatment and time off due to his industrial disability, because he was not entitled to TDI, the employee was treated in the same way as non-industrially disabled workers who were also required to use sick and vacation leave for medical treatment and time off due to a disability. Because the employee in *Lauher* was on the same legal footing as non-industrially injured employees with respect to this issue, he could not show a legal right to TDI, and therefore could have only established a prima facie case for discrimination if he had been "singled out for disadvantageous treatment." (*Id.* at p. 1301; *Accord, Gelson's Markets, Inc. v. Workers' Comp. Appeals Bd.* (2009), 74 Cal.Comp.Cases 1313, *County of San Luis Obispo v. Workers' Comp. Appeals Bd.* (2005)133 Cal.App.4th 641 *(Martinez)*; Compare with *San Diego Transit, PSI, Hazelrigg Risk Management Services, Administrator, Petitioners v. Workers' Compensation Appeals Board* (2006) 71 Cal.Comp.Cases 445 (*Calloway*) [writ den.; defendant violated section 132a by refusing to return applicant to her bus driver position after she was released to work by her PTP, another treating physician and an AME.]).)

Based on its specific application to the facts of *Lauher*, we view the Court's phrase "singled out for disadvantageous treatment" to be an *application* of the broader standard adopted by *Lauher*—that, in addition to showing that he or she suffered an industrial injury and that he or she suffered some adverse consequences as a result of some action or inaction by the employer that was triggered by the industrial injury, an applicant "must also show that he or she had a legal right to receive or retain the deprived benefit or status, and the employer had a corresponding legal duty to provide or refrain from taking away that benefit or status." (*Lauher*, *supra* at p. 1300.) Stated another way, an employee must show they were subject to "disadvantages not visited on other employees because they were injured. . . ." (*Id.*)[9] Because the employee in *Lauher* was not deprived of a legal right to TDI, and therefore could not show he was treated differently than other employees with respect to his alleged detriment, he could not establish a prima facie case of discrimination.[10]

Accordingly, we concur with the opinion of the WCJ, as expressed in the Report, that there is no legal basis for applicant's contention that defendant holds the burden to establish that it did not discriminate against her in violation of section 132a. (Report, p. 19.) We also agree with the reasoning of the WCJ, as expressed in the Report, that applicant failed to meet her burden of proving her prima facie section 132a claim because her testimony asserted that defendant's alleged discriminatory conduct occurred before defendant knew or could have known of her alleged injury and workers' compensation claim. (Report, p. 6.) Moreover, as explained in the Report, Mr. Emery testified that the disciplinary actions defendant initiated weeks before applicant presented her workers' compensation claim ultimately resulted in applicant's removal from her position and termination of employment. (Report, pp. 7-8.) Thus, based upon applicant's failure to present evidence sufficient to show that her removal from her position and termination of employment constituted disadvantages not visited upon other employees

[9] *Accord, St. John Knits v. Workers' Comp. Appeals Bd.*, 2019 Cal. Wrk. Comp. LEXIS 75 [writ den.; the Court of Appeals found no reasonable grounds to review a WCAB finding of section 132a discrimination based upon substantial evidence of defendant employer's subjection of industrially-injured employee to disadvantages not visited on other employees.]

[10] We also note that the particular standard denoted by the phrase "singled out" does not literally apply where the detriment affects injured workers as a class, although the broader standard would apply. (*Anderson*, *supra* at pp. 1377-1378.)

because they were injured, we are unable to discern merit to her contention that the WCJ erred by finding that defendant did not violate section 132a.

Turning to applicant's contention that the WCJ erroneously failed to set aside his order quashing applicant's subpoena duces tecum, we concur with the reasoning of the WCJ, as expressed in the Report, that the record lacks evidence demonstrating good cause for reopening discovery after commencement of trial herein. (Report, p. 14.) Further, the Petition fails to explain how the order quashing the subpoena could have harmed applicant's legal ability to prove her section 132a claim. Accordingly, we discern no merit to applicant's contention that the WCJ erred by declining to set aside the order quashing the subpoena.

We next address applicant's contention that the WCJ erroneously admitted defendant's exhibits HH and KK. Here, as the WCJ explained in the Report, applicant is incorrect that the exhibits were admitted into evidence. (Report, p. 15; see also Amended Minutes of Hearing and Summary of Evidence, September 27, 2018, p. 5:20-21.) To the contrary, the record reveals that the WCJ determined that exhibits HH and KK lacked authentication and should not be admitted. (*Id.*) We therefore discern no merit to applicant's contention that the WCJ erred by admitting exhibits HH and KK.

Accordingly, we will affirm the F&O.

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For the foregoing reasons.

IT IS ORDERED, as the Decision After Reconsideration, that the Joint Findings and Order issued on January 14, 2020 are **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 22, 2020

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

FAIZAH DEAN
KARLZEN HUTCHINSON

SRO/oo

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. CS

Appendix B

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

FAIZAH DEAN,

Applicant,

vs.

SO CAL EDISON;
SOUTHERN CAL EDISON ROSEMEAD;

Defendants.

Case No. ADJ8009847 (MF); ADJ8386217

JOINT
FINDINGS AND ORDER

The above entitled matter having been heard and regularly submitted, the Honorable Robert Hill, Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1. Faizah Dean, born 9/19/1975, as a lineman, occupational group number 380, at various locations in California, while employed by Southern California Edison, permissibly self-insured, claims the following in connection with her Application for Discrimination Benefits Pursuant to Labor Code Section 132a, originally filed 2/1/2013, and later amended 5/1/2018 with subsequent verification:
    a. ADJ8009847 (MF)-claimed to have sustained injury on 2/15/2010 to her back.
    b. ADJ8386217-during the period 9/15/2009 to 9/15/2010 (later amended to 7/13/2009 to 11/12/2010) claimed to have sustained injury to her internal system, vaginal areas, blurred vision, reproductive organs, psyche and back.
2. Said cases were the prior subject of the Joint Findings and Order dated 12/13/2017.
3. The companion case ADJ8386218 was dismissed as being duplicative in part of the current case ADJ8386217, and the parts of body in ADJ8386217 otherwise amended as set forth above (see Minutes of Hearing 4/6/2015).

4. The Application for Discrimination Benefits Pursuant to Labor Code Section 132a, originally filed 2/1/2013, and later amended 5/1/2018 with subsequent verification is barred by the Statute of Limitations pursuant to Labor Code Section 132a(4).
5. The applicant has otherwise failed to sustain her burden of proof that the employer engaged in discriminatory acts as otherwise set forth in Labor Code Section 132a.
6. Defendant's Exhibits "HH" and "KK" are unauthenticated and are excluded from Evidence.
7. The applicant has failed in her burden of proof to establish good cause to set aside the Order of 10/28/2018 quashing the subpoena duces tecum.

ORDERS

a. Defendant's Exhibits "S" through GG", "II" and "JJ" are taken into evidence.

b. Defendant's Exhibits "HH" and "KK" are excluded from evidence.

c. The applicant's objection and motions to set aside the Order of 10/28/2018 quashing the subpoena duces tecum is denied.

d. Applicant shall take nothing by her Application for Discrimination for Benefits Pursuant to Labor Code Section 132a originally filed 2/1/2013, and later amended on 5/1/2018 to include subsequent verification.

DATE: 1/14/2020

Robert Hill
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served by mail on all parties listed on the Official Address record on the above date.
BY: G.Garcia ON: 01/14/2020

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FAIZAH DEAN

ADJ8009847

OPINION ON DECISION

[Labor Code Section 5313]

Faizah Dean, born 9/19/1975, as a lineman, occupational group number 380, at various locations in California, while employed by Southern California Edison, permissibly self-insured, claims the following:

c. ADJ8009847 (MF)-claimed to have sustained injury on 2/15/2010 to her back.

d. ADJ8386217-during the period 9/15/2009 to 9/15/2010 (later amended to 7/13/2009 to 11/12/2010) claimed to have sustained injury to her internal system, vaginal areas, blurred vision, reproductive organs, psyche and back.

The companion case ADJ8386218 was dismissed as being duplicative in part of the current case ADJ8386217, and the parts of body in ADJ8386217 otherwise amended as set forth above (see Minutes of Hearing 4/6/2015).

A joint Findings and Order as to the two active cases issued on 12/13/2017, finding that the applicant did not sustain injuries as alleged, and further reserving jurisdiction of the parties' respective petition for costs/sanctions. Applicant sought reconsideration, with the Opinion and Order Denying Petition for Reconsideration issued 2/22/2018. The applicant then sought a Petition for Writ of Review. The Order Denying Petition for Writ of Review issued 6/14/2018 (see EAMS Document No. 67577705).

Currently at issue is the applicant's allegation that her (now) former employer Southern California Edison violated the provisions of Labor Code Section 132a.

The original Petition under Labor Code Section 132a was dated 9/28/2012, though not filed by the applicant until 2/1/2013 (see EAMS Doc ID 46601014). At the time of Trial on 6/25/2018, it was noted by the court that the amended "Application for Discrimination Benefits Pursuant to Labor Code Section 132(a)" dated 5/1/2018 (and filed that same date) was lacking the required verification as required under Rule 10450(e). The court also noted that Labor Code Section 132a(4) itself referred to the requirement of filing of a "petition" to commence proceedings. Further noting that the failure to comply with the verification requirement constituted a valid ground for summarily dismissing or denying such petition, the court further noted the holding in the significant panel decision Torres v. Contra Costa Schools Insurance (2014) 79 CCC 1181; 2014 Cal. Wrk. Comp LEXIS 111 (in dealing with IMR Appeals requiring such verification) that the applicant should be afforded a reasonable amount of time to cure this defect. As such, this case was ordered off calendar and the applicant given until the end of work day 7/16/2018 (thereby allowing 20 days) to file such verification (see Minutes of Hearing 6/25/2018).

Such verification was filed 6/25/2018 (see EAMS Document ID 67450592.)

The amended Application raises the following as alleged employer's violation of Labor Code Section 132a:

1. That on 8/17/2010 she was suspended with "just cause", and that she believed the treatment toward her was based on "gender difference after she was suspended with cause". [Page 2, line 6]. Further, that based on the collective bargaining agreement between this employer and her union IBEW Local No. 47, that her employment is not "at will" and that her termination can be only "for cause". [Page 12, lines 7 through 9].

2. That on 8/19/2010, a meeting was conducted to include herself, and the company's Eric Emery, Byron Redd, and Tyrone Chamois to review the Performance Action Plan and Reinstatement Letter [Page 2, line 22]. During this meeting, and in the reinstatement letter, work issues to include insubordinate behavior, safety rule violations and tardiness were not. [Page 3, line 10].
3. That on 8/24/2010, and after seeking a doctor's advice on 8/23/2010, she reported her injuries to her supervisor and spoke to him about her back pain, eye strain, and vaginal swelling and irritations associated with the unsanitary condition in the filed when working using toilet bag systems. [Page 3, lines 15 through 23 and later page 7, lines 6 through 8]. Further, she asked for better accommodations in the field, that her lower back pain seemed aggravated by her use of the line boots to do groundwork, and that she reported blurred vision and heavy pressure and related symptoms [Page 3, line 26, through page 4, line 6].
4. That later that day, she met with the employer's investigator Keith Dobson about investigating gender discrimination in the department, and later on 9/9/2010 she reported to Dobson that Robert Delgado, identified as the son of Ron Delgado (identified as president of IBEW Local No. 47/SCE Troubleman) telling her "I need to go back to "marry maids and do some housework." [Page 4, lines 9 through 17.]
5. That on 9/15/2012 (2010?) she was removed from the apprentice program [Page 4, line 20].
6. That on 11/13/2010 there was an exit interview which included herself, the manager of the Department Erik Emery and Ron Delgado of the union. [Page 5, lines 1 through 3].

7. That she was removed from the apprenticeship program after having met with Dobson on 9/9/2010 "about gender discrimination in the policies and procedures of the apprenticeship program." [Page 5, lines 5 through 9].
8. That she was not allowed to rebid for the apprenticeship program in spite of the fact that she had seniority and was qualified as a Groundman A, and that she was otherwise blocked from bidding and placed on non-paid leave. [Page 5, lines 10 through 21].
9. That she then bidded for the position of Groundman A-3 but was not offered this position in spite of the fact that she was qualified. [Page 5. lines 23 through 26].
10. That was offered a lower paying job as meter reader although it was 70 miles from her home, and the reduction in pay was not sufficient to cover he personal expenses [page 5, line 27 through page 6, line 3].
11. That she was rejected from the planner job "because of seniority". [Page 6, line 4].
12. That on 1/7/2011 she was e-mail information about the scheduling and confirmation of the Substation Apprentice Test on 1/13/2011, which she "thought was odd" and she was terminated on that date. [Page 5, lines 5 through 7], and that on 1/11/2011 Emery had e-mailed her not to come in for the test which coincided with the employer's having received the CalOSHA complaint [page 5, lines 10 through 13].
13. That she believes that her not being allowed to take the apprentice test was retaliation for the filing of the CalOSHA complaint, SCE internal investigation, discrimination in employment and worker's compensation, and wrongful discharge in violation of public policy. [Page 7, lines 3 through 5].

14. That on 2/27/2011 she was terminated from her subsequent employment Par Electric (an IBEW contractor). [Page 5, line 21].

15. That the employer should be estopped based on its conduct from raising the defense of the statute of limitations.

At the time of Trial on 9/27/2018, the applicant testified. The court advised on the record the requirements of Rule 10447, and that the presentation of the case would be limited as to the allegations as set forth in the Amended Petition filed 5/1/2018, the defendant's Answer filed 5/21/2018, and the applicant's replies of 7/3/2018 and 7/5/2018.

During the morning session, the applicant confirmed that here employer was first made aware of her claim on 8/24/2010, with the presentation of the work status report from Kaiser dated 8/23/2010. Much of the direct examination at this point was the court's direction, to cover the pertinent portions of her Petition as outlined above, and to determine the basis for her contentions that the employer's actions were in relation to her workers' compensation claim (or intent to file such a claim). Up to this point, and based on what she described as part of "deductive reasoning", several events were outlined which actually predated the employer's notice to include her suspension on 8/17/2010 and reinstatement on 8/19/2019. Her testimony at times was rambling and not cohesive at her contentions, and at times referred to other acts of perceived discrimination (e.g. gender discrimination), or to parties not named in this action (e.g. her union IBEW #47 and subsequent employer Par Electric).

This matter was continued to 11/1/2018, to allow her to present her additional testimony and to proceed with the testimony of the witness Eric Emery.

The proceedings on 11/1/2018 commenced with the applicant's continuing testimony, which immediately became contentious between the parties and unfocused as to the

applicant's contentions as set forth in her amended Petition. After review with the parties and on the court's own motion, defense witness Eric Emery was called out of order to establish key dates and actions undertaken by the employer, in an effort to provide more structure as to the presentation of the case.

During this time, the applicant was assured that she would be entitled to cross-examine this witness, and then to continue with her own presentation of her case. At one point during the proceedings, the applicant made a general suggestion (without specifics) that the court was biased. The court reiterated that with the completion of this witness' testimony to include her cross-examination, that she could proceed with the presentation of this case. The court would note that from the latter point of the morning session through a portion of the afternoon session, her direct examination became rambling. It was at this point that the court intervened, and utilized witness Emery's testimony to develop record making every effort to protect the due process of both sides.

Her limited direct examination indicated that the summary of her testimony from 9/27/2018 (page 6, line 11) required clarification, in that she did not provide a claim form (DWC-1) at the time of her meeting with Emery on 8/24/2010, but rather that she had provided him a copy of her physician's work status report. The employer interpreted this as the reporting of a claim of injury of on or about 2/15/2010, for which a claim was set up, a delay issued followed by a denial.

In his testimony, Emery recounted the events leading up to a meeting of 9/10/2010, at which time the applicant was suspended (with pay) from the lineman apprentice program due to performance issues, primarily documented in the daily logs for which both the applicant retained the original and the employer retained a copy. This included such issues as the

purported improper set up of equipment and tardiness. This resulted in her being placed in the 60-60 plan, with the first 60 days to include a performance improvement plan, during which time she was placed in a groundsman position at the pay scale for the lineman apprentice step 1. However, based on the failure to improve, the applicant was terminated from the program on 11/14/2010 (a later notice would refer to 11/15/2010), at which time she was placed on unpaid leave with access to company facilities for purposes of looking for job postings within the company. At one point, Emery had offered the position of meter reader in Yucca Valley, with his noting that her class "A" license would allow her to operate the heavier equipment and increase her mobility within the company. However, she declined this offer indicated she was then employed by Par Electric.

As direct examination of this witness was not completed, the matter was continued to 12/5/2018. Due to the unavailability of a court reporter, the matter was continued to 1/2/2019, later continued to 2/21/2019 due to the unavailability of a court reporter.

At the time of Trial on 2/21/2019, continuing testimony of the witness Eric Emery was heard.

His testimony focused on the applicant's participation in the apprentice lineman program in 2010 (noting that previously she had held the position of a groundsman). Further noting that this program consisted of six steps, the applicant did not complete a single step leading up to her removal from the program on 9/15/2010 for unsafe work practices and failure to follow directions. A meeting was conducted which included the applicant, the witness, the manager Byron Redd and the union shop steward (this witness would later testify that there was a list maintained of such stewards, and the actual selection for the meeting was made by the employer on a random basis as to which steward was available). At the time, the applicant was

placed on a "60/60" program, in which for sixty days she would be allowed to bid for another position within the company for which she was qualified, and during which time she remained on a paid status based on her salary level upon entering the lineman program), followed by another 60 days in which she retained the right to bid but on an unpaid status. This program was part of the employer's policy. At the end of the first 60 days, he had become aware that the position of a meter-reader had become available in Yucca Valley, which he relayed to the applicant who declined consideration of this position as she was then employed by another company. Originally, the second 60 days on unpaid status was to have ended 1/12/2011, but was extended to 1/20/2011 at which time she was terminated for failure to secure a new position. At the time of the original removal from the apprentice program he was unaware of her prior claim as outlined in the Kaiser work status report of 8/24/2010, nor at any time did she indicate that her inability to participate in the program was related to that alleged injury.

This witness testified in a truthful and credible manner, and confirmed the employer's policies and their application to this employee in a non-discriminatory manner.

At the time of Trial on 4/29/2019, the defendant waived further examination of the witness Eric Emery.

Defense witness Byron Redd was called, who testified that he was the applicant's supervisor for a period of time in 2010. In terms of the apprentice program in issue, he testified that he himself had participated in that program from 1994 through 1997. He further testified that prior to the applicant's entry into the program, an action plan had been prepared due to the applicant's unsatisfactory job performance (Defendant's Exhibit "V"). He also confirmed that he had been aware of the applicant's workers' compensation claim on 8/24/2010 when he was presented with the medical status report of Dr. Dinh dated 8/23/2010

(Applicant's Exhibit "20"), and that at the time of that meeting she had been provided the workers' compensation claim packet pursuant to company policy. Noting that she had been accommodated pursuant to Dr. Dinh's recommendation, and was not required to wear the "climbing boots" referred to in his report that were aggravating her condition, he also confirmed that she was not treated any differently than other employees.

During the afternoon session, the defendant completed direct examination of this witness. At this point, applicant moved to re-open the record and submit additional evidence so as to impeach and/or rebut the testimony of witnesses Emery and Redd. To allow the applicant time to formalize her motion into a Petition, to include a designation of those portions of the proposed additional record to support her contentions, the matter was continued to 7/1/2019.

The matter proceeded to Trial on 7/1/2019. The applicant initially advised that her Petition to Re-open the Record had been mailed 6/28/2019, although had not yet been received. The applicant's cross-examination then proceeded of Byron Redd, which continued to be a highly contentious matter between the parties.

Critical to his testimony was the Kaiser medical note dated 8/23/2010 outlining certain work restrictions was received on 8/24/2010. Prior to that time, an initial write up had occurred as to the applicant's participation in the lineman apprenticeship program on 7/15/2010, which was followed by the actual removal from the program on 9/15/2010. His testimony also included a distinction between a "repeat" program (where the removed apprentice is allowed to bid for a position within the company, and at a later time re-apply for the apprenticeship program) and the "60/60" program, where the employed is allowed to look for other work within the company while on paid status for 60 days, followed by another 60 days on unpaid status while this search continued. In these circumstances, the employee is not

allow to re-apply for the apprenticeship program. During the course of his cross-examination, the applicant presented several documents which purportedly attempted to show that the actions undertaken from the apprenticeship program, but this witness continued to testify in a truthful and consistent matter that the company policies had been followed, to included her placement on the "60/60" program.

As this witness (as well Eric Emery) had been taken out of order to allow the establishing of key time points as part of the applicant's allegations, the matter was continued to 8/7/2019 to allow the applicant's continuing direct examination and consideration of her Petition to Re-open the Record.

The parties re-appeared for Trial on 8/7/2019. These proceedings were delayed due to the appearance of new defense counsel, and the lack of a properly executed Substitution of Attorneys.

While the defendant initially posed an objection to the WCAB jurisdiction over the pending Labor Code Section 132a action as the previously issued Findings and Award pertaining to the case-in-chief issues did not reserve jurisdiction, it was determined that the Labor Code Section 132a issue was actually bifurcated by Order of Judge Robin Woolsey (the prior assigned MSC judge) on 1/5/2015, and thus the objection with withdrawn.

After further review with the parties, several documents were located in EAMS which could not previously be located, to include the following:

1. Petition to Re-Order defense witness Eric Emory (misdated 9/28/2019) [EAMS Document ID 7053902111).
2. Defendant's Objection dated 7/25/2019 [EAMS Document ID 29821995].

3. Applicant's Objection to Order Quashing SDT dated 10/28/2018 [EAMS Document ID 68566621].

Due to the delay in proceedings, and the applicant's request to file a second Petition to Re-Order defense witness Byron Redd (she was given until 9/2/2019 to do so), the matter was continued to 9/9/2019.

Prior to the re-scheduled Trial date, filed her Petition to Reorder Erik Emery dated 9/3/2019 [EAMS Document ID 71032972]; at the time of Trial the defendant confirmed their receipt of this document on 9/6/2019, and were given until 9/23/2019 for purposes of filing their response. (At the time of Trial, this was included in the disposition and the defendant Ordered to have this witness available on an on-call basis for the continued Trial date of 10/24/2019).

A full day of the applicant's direct examination proceeded on 9/9/2019. In her testimony, the applicant referred to a number of purported irregularities on the part of the employer in implementing its policy and procedure manual, not only with her regularly assigned position of groundsman A-3 but also as a lineman apprentice. She would also testify as to several purported unsafe conditions which were relayed to both the Occupational Safety and Health Administration (OSHA) as well as the Department of Fair Employment and Housing. She would also dispute the handling of her removal from the apprentice program as well as her ultimate termination from this employer, and her distrust of her union IBEW #47 (and particularly its president Ron Delgado). However, noteworthy is that while she identified several potential areas of concern with this employer, nothing was established in this testimony to establish discrimination under Labor Code Section 132a, with these concerns more appropriate falling under the jurisdiction of other governmental agencies.

So as to allow the completion of her direct testimony and the defendant's cross-examination, and to allow the court to rule on her motion to re-open the record for additional witness testimony, the matter was continued to 10/24/2019.

At the time of Trial on 10/24/2019, the applicant's testimony was completed. This included her acknowledgement of her removal from the apprenticeship program, the original 60 days given to find another job within the company, followed by another 60 days of unpaid leave. She also acknowledged the ruling by the U.S. District Court granting the defendants' Motion for Summary Judgement (which included this employer), and the finding that the employer's actions were neither retaliatory nor discriminatory, based on her poor performance, although she would indicate on re-cross-examination that this was in the context of her OSHA complaint only. She would continue to argue that the original claimed date of injury of 2/15/2010 was incorrect, but would roughly coincide with her reporting of her claimed work-related problems. As to the defense of the statute of limitations, she would acknowledge that her filing of her Petition under Labor Code Section 132a not being filed until 2/1/2013, she responded that she had several other legal actions pending at the time including the U.S. District Court, OSHA and FEHA, and as the result did not focus on this issue, but through her continuing discovery and investigation of the corollary legal actions determined that she should proceed with this action.

The applicant's Petition to Re-open the Testimony of Eric Emery was granted and the matter continued to 12/12/2019.

At the time of Trial on 12/12/2019, continuing cross-examination of the witness Emery continuing. When it became apparent that the line of questioning was unfocused and outside the scope of proper cross-examination, the court intervened. Based on his testimony, he

understood that in the prior proceedings on this matter he had had dual roles, both as a potential witness and employer designated representative. He also testified that he had only a "vague recollection" of two documents dated 11/12/2010 and 1/20/2011, to which the applicant objected on the basis of lack of authentication. He would also testify that in providing the applicant her workers' compensation packet, that he had acted within company policy as set forth in the Accident Prevention Manual Revised October 2007 (Applicant's Exhibit "27").

After offering the parties an opportunity to submit post-Trial Briefs, which the parties declined, the case stood submitted for decision.

DEFENDANT'S PETITION TO QUASH SUBPOENA DUCES TECUM, ORDER AND APPLICANT'S OBJECTION THERETO AND MOTION TO SET ASIDE ORDER:

This matter was the subject of the Mandatory Settlement Conference set for 5/1/2018 (EAMS Doc ID 66926604), at which time it was set for Trial on the issue of the applicant amended Petition dated 5/1/2018. This case then proceeded to its initial Trial of 6/25/2018. It was after the initial Trial that the applicant Subpoena Duces Tecum issued on 10/25/2018, as set forth in the defendant's Motion to Quash dated 10/25/2018 (EAMS Doc ID 27638111), and the applicant's objection filed 11/16/2018 (EAMS Doc ID 68701859.)

The question here is whether the applicant has sustained her burden of proof in establishing good cause for reopening of discovery after the MSC and after the initiation of Trial pursuant to Labor Code Section 5502(e)(3). While the applicant has submitted the validity of a number of documents offered by the defendant as exhibits, nothing is set forth in

said Petition so as to establish such good cause to reopen the record, and thus the Order Quashing SDT dated 10/26/2018 (EAMS Doc ID 68495158) will remain.

ADMISSION OF EXHIBITS:

The applicant has raised the validity of exhibits of letters dated 11/12/2010 (Defendant's Exhibit "HH") and 1/20/2011 (Defendant's Exhibit "KK"). Noting such documents are unsigned and otherwise unauthenticated, and the testimony of witness Emery that he has only a "vague memory" of such documents, they will be excluded. Otherwise, Defendant's Exhibits "S" through "GG", "II", and "JJ" will be taken into evidence.

STATUTE OF LIMITATIONS:

Labor Code Section 132a(4) provides as follows:

"*Proceedings for increased compensation as provided in paragraph (1), or for reinstatement and reimbursement for lost wages and work benefits, are to be instituted by filing an appropriate petition with the appeals board, but these proceedings may not be commenced more than one year from the discriminatory act or date of termination of the employee. The appeals board is vested with full power, authority, and jurisdiction to try and determine finally all matters specified in this section subject only to judicial review, except that the appeals board shall have no jurisdiction to try and determine a misdemeanor charge. The appeals board may refer and any worker may complain of suspected violations of the criminal misdemeanor provisions of this section*

to the Division of Labor Standards Enforcement, or directly to the office of the public prosecutor."

The applicant's original Petition under Labor Code Section 132a, while dated 9/28/2012, was not filed until 2/1/2013 (EAMS Doc ID 46601014). This was followed by the filing of the amended Petition and subsequently verified Petition 6/26/2018 (EAMS Doc ID 6740592). A review of the amended Petition, more detailed in its listing of alleged misconduct by the employer commences with events on 8/17/2010 and ending 2/27/2011 with her termination from the subsequent employer Park Electric (which arguably has nothing to do with discriminatory misconduct by her employer Southern California Edison. Even if the latter were construed as part of such misconduct, the filing of the Petition under Labor Code Section 132a on 2/1/2013 would be outside the prescribed one statute of limitation under Labor Code Section 132a(4), and thus would be barred. The court has also considered the original filing of the Application for Adjudication of Claim in ADJ8009847 (MF) (EAMS Doc ID 39397567) and ADJ8386217 (EAMS Doc ID 39387657), noting that neither references discriminatory conduct pursuant to Labor Code Section 132a. Thus, it shall be found that this action is outside the prescribed one year statute of limitations pursuant to Labor Code Section 132a(4), and thus is barred.

EMPLOYER'S ALLEGED VIOLATION OF LABOR CODE SECTION 132a:

Labor Code Section 132a provides:

"It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.

(1) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee's compensation shall be increased by one-half, but in no event more than ten thousand dollars ($10,000), together with costs and expenses not in excess of two hundred fifty dollars ($250). Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(2) Any insurer that advises, directs, or threatens an insured under penalty of cancellation or a raise in premium or for any other reason, to discharge an employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and subject to the increased compensation and costs provided in paragraph (1).

(3) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because the employee testified or made known his or her intentions to testify in another employee's case before the appeals board, is guilty of a misdemeanor, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(4) Any insurer that advises, directs, or threatens an insured employer under penalty of cancellation or a raise in premium or for any other reason, to discharge or in any manner discriminate against an employee because the employee testified or made known his or her intention to testify in another employee's case before the appeals board, is guilty of a misdemeanor.

Rule 10447 further provides as follows:

"Any person seeking to initiate proceedings under Labor Code Section 132a other than prosecution for misdemeanor must file a petition therefor setting forth specifically and in detail the nature of each violation alleged and facts relied on to show the same, and the relief sought. Each alleged violation must be separately pleaded so that the adverse party or parties and the Workers' Compensation Appeals Board may be fully advised of the specific basis upon which the charge is founded.

The Workers' Compensation Appeals Board may refer, or any worker may complain of, suspected violations of the criminal misdemeanor provisions of Labor Code Section 132a to the Division of Labor Standards Enforcement or directly to the Office of the Public Prosecutor."

As was noted in Judson Steel Corporation v. WCAB (Maese) (1978, 43 CCC 1205, "(Labor Code Section 132a) does not compel an employer to ignore the realities of doing business by reemploying unqualified employees or employees for whom positions are no longer available.

In reviewing the full record, to include the pleadings, witness testimony, and admitted exhibits, the court notes that a number of allegations are made as against in the employer in the form of unfair labor practices, violation of collective bargaining agreement(s), and other discriminatory basis to include race and gender. **However, the threshold to consider is whether the employer engaged in discriminatory conduct on the basis of the applicant having filed (or made known an intent to file) a workers' compensation claim.** None of the submitted evidence would establish such a conclusion under Labor Code Section 132a. In fact, the employer's actions as against this employee were considered in different tribunals in the context of other alleged misconduct, with the finding that the employer had either acted appropriately or had not acted inappropriately.

Thus, in the event that the statute of limitations is not considered a bar, it shall be found that the applicant has not sustained her burden of proof to establish discriminatory conduct under Labor Code Section 132a.

DATE: 01/14/2020

Kurt B. Lee

Robert Hill

WORKERS' COMPENSATION

ADMINISTRATIVE LAW JUDGE

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PASEO PHARMACY, US Mail; SO CAL EDISON, US Mail

SOUTHERN CAL EDISON ROSEMEAD, US Mail

VERBATIM RX PHARMACY POMONA, US Mail

Appendix C

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

FAIZAH DEAN,
Petitioner,
v.
WORKERS' COMPENSATION APPEALS BOARD and SOUTHERN CALIFORNIA EDISON,
Respondents.

E075615

(WCAB Nos. ADJ8009847, ADJ8386217 & ADJ8386218)

THE COURT

The petition for writ of review is DENIED.

MENETREZ
Acting P. J.

Panel: Menetrez
Slough
Miller

cc: See attached list

Court of Appeal, Fourth Appellate District, Division Two - No. E075615

S265459

IN THE SUPREME COURT OF CALIFORNIA

En Banc

FAIZAH DEAN, Petitioner,

v.

WORKER'S COMPENSATION APPEALS BOARD and SOUTHERN CALIFORNIA EDISON, Respondents.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

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Faizah Dean v. WCAB and Southern California Edison

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Appendix D

Faizah Nailah Dean
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STATE OF CALIFORNIA

WORKERS' COMPENSATION APPEALS BOARD

FAIZAH DEAN, an individual,

Applicant,

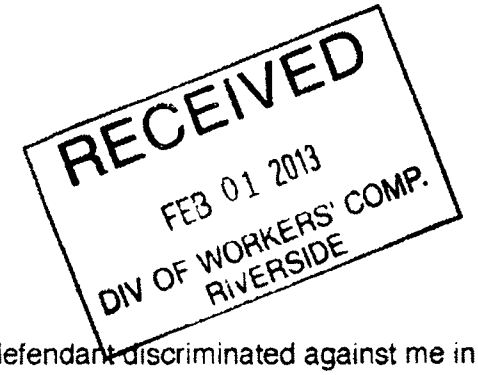
vs.

SOUTHERN CALIFORNIA EDISON, a California Corporation;

Employer

WCAB No. 8386217

APPLICATION FOR DISCRIMINATION BENEFITS PURSUANT TO LABOR CODE SECTION 132(a)



I feel I am entitled to these benefits because the defendant discriminated against me in workers compensation, and my employment with defendant Southern California Edison was terminated without "just cause" and in violation of Labor Code Section 132(a). This is wrongful termination motivated by the violation of the public policy. The violation of public policy was a non-compliant equipment the defendants provided for all its employees but had an adverse affect on me as a female when used in the field as a toilet. The bag and bucket toilet is believed to be the cause of bacteria entering her vagina, cause abnormally heavy discharge, swelling, and irritation to the female employee Faizah Dean to the extent that she had to request a doctor, sought a doctor, and asked for better accommodations for working in the

field. It is believed by the grieved employee Faizah Dean that the irritation to her private area would not have happened if she was provided a safe and healthy restroom facility with adequate water and soap, and towels or if the company had provided clean portable toilets for all.

Suspended without "Just Cause"

On August 17, 2010 I was suspended without cause. I was placed on investigatory suspension until they found out. Present was Tyrone Chamois and Byron Redd as two Supervisors and David Baker. Why did SCE suspend me without cause? Why didn't David Baker inform me of my rights? Faizah Dean reported gender discrimination to the company because she believed the treatment toward her was based on her gender difference after she was suspended without cause.

Ethics and Compliance Hotline

I called Ethics and Compliance Hotline and spoke with Patrick Shipwash and Deborah Groves about discrimination in the company. An case was initiated in my claim at 4:30pm.

Investigatory Suspension Day One

Faizah N. Dean was told to call in every day at 7:00 am, until they complete their investigation and find out why they are suspending her. Why did the company suspend me without cause?

On August 18, 2010 I called in at 7 am and spoke with Byron Redd. He told me they had not found out anything yet, but I will get my pay back. Why did Byron Redd say that he had not found out on the second day? Why did he tell me I was going to get my pay back?

On August 19, 2010 I called in to Byron Redd and was ordered to come in at 9:00am. On this day I arrived to SCE Foothill Service Center in Fontana, CA. I was instructed to report to Eric Emery office for the meeting. Present were Eric Emery, Byron Redd, and Tyrone Chamois. They read the Performance Action Plan to me, and Reinstatement Letter for failure to follow directives which lead to safety rule violations. See exhibit _____, _____. I disagreed with the allegations because I did not violate the safety rules and I was willing and able to follow their directives.

Performance Action Plan

" Your action plan is being extended for another 30 days. You will need to demonstrate sustained improvement in all areas mentioned above. You will need to reduce your below scores significantly before you will be able to progress to your next step. Over this period of time we will review your progress with all appropriate Foreman. If you take corrective action to improve your safety focus and improve your knowledge, you should be able to progress to the next step in your apprenticeship. If you do not demonstrate immediate and sustained improvement in the next 30 days you will have this action plan extended for another 30 days.

Reinstatment Letter

"Ms. Dean, your insubordinate behavior, safety rule violations, and tardiness will not be tolerated. You must make immediate and sustained improvement. Failure to improve and sustain your performance in these areas will result in further disciplinary action.

From August 20, 2010 through August 24, 2010 I worked with various crews.

Doctors visit Kaiser Permenente

August 23, 2010 I sought a doctor's advice, because I wanted to improve my work performance. I began with the symptoms I would have from time to time that I ignored a lot of the time because I was not sure if it was sore muscles or tired from working long hours. I was not sure if I had a vision problem or a need for better nutrition. I was not sure so I sought a doctor to guide me in good health.

August 24, 2010 I reported my injuries to my supervisor and spoke to him about workers compensation about my back pain, eye strain, and vaginal swelling and irritation associated with the unsanitary condition in the field when working using the bag toilet systems.

First, I asked for better accommodations in the field because of the vaginal problems I was having to use the restroom outside in the belly of the line trucks because there were not other options for me as a female. He did not respond.

Second, I reported that I had pain in my lower back around my butt the seem to exasperate with the wear of the lineboots to do groundwork, and long periods of sitting in hard

chairs seem to bother it too. I asked if I could bring two pair of work boots to work. He okay me to bring two pair of shoes to work.

Third, I reported that I to get blurred vision after heavy pressure, stress and or strain comes around my temples and around my eyes of my face. I had some prescription glasses but it does not seem to be a eye vision problem. It can be distracting and make it difficult to focus.

Ethic and Compliance Investigator

Intro

At 11:30 am I met with SCE investigator Keith Dobson about investigating the gender discrimination in the department. He introduced him self and asked about it. I told him the their was discrimination in the policies and procedures of the apprenticeship program. He told me he was going to speak to Chino Training Center then to management and he would return.

Investigative Meeting with Management, Me, and Keith Dobson

September 9, 2010, I met with Keith Dobson about the investigation. I told him about Ron Delgado's Son Telling me "I need to go back to marry maids and do some house work. " I first warned him that the Ron Delgado is the IBEW47 President/SCE Troubleman and Robert Delgado is his son.

On September 13, 2010 I worked.

On September 14, I went to the doctor to have my knee x-rayed. I called the day off.

On September 15, 2012, I reported to work. I performed my daily stretch routine. We had a crew meeting. I was asked to report to Byron Redd. I was removed from the apprenticeship program. Present was Byron Redd, Eric Emery, and Tyrone Chamois. I told Tyrone Chamois I did not want his services. He was a conflict of interest.

A few days later, Ron Delgado came to represent me in my removal from the program. I met and conferred with him in private. He would always tell me. Your not going to get your job back. I believe that Ron Delgado has the power to make sure I don't get my job back.

Pre-Exiting Interview to Non-Paid leave

November 13, 2010

On November 13, 2010, Present was New Manager of the Department, Eric Emery, Faizah Dean and Ron Delgado IBEW47 President represented me in my exiting interview. He told me, " If I had not contacted the Human Resource department, he could have helped me. "

Overview

The defendant removed me from the apprenticeship after having a meeting with management on September 9, 2010 with investigator Keith Dobson about gender discrimination in the policies and procedures of the apprenticeship program. Keith Dobson finalized his investigation stating that their was no discrimination in employment and closed the case after I was placed on Non-paid leave.

Southern California Edison the defendant did not allow me to rebid the apprenticeship and stated in the policies and procedures when an apprentice is voluntarily or involuntarily removed from the apprenticeship can rebid. I had senority and was qualified as a Groundman A. I entered as a Groundman A-3 qualified by prior training and experience through and approved Southern California Edison training facility, but the defendants did not allow me to bid online after I was placed on Non-paid leave, and rejected any bids for Groundman A-3, or Apprentice Lineman. When I was removed from the Apprenticeship, I was not removed because I could not climb. The Apprenticeship place me in a Groundman position (Groundman A-3) My training or certification had not expiration and there was nothing in the policies or procedures to prevent me from rebidding. The Bidding system would not allow me to place any bids for jobs after November 14, 2010. I was blocked from bidding. I was placed on non-paid leave.

Groundman A-3

I bidded for Groundman A-3 and I was told that the Chino Training Center was sending a list of names of people who could not take the jobs. (I will only give the name of the person if necessary to protect them.) I was qualified for the job.

Meter Reader

I was offered a lower paying job as a meter reader over a 70 miles away from my home paying half of what I was making and not enough to pay for child care, rental agreement, and

travel and expenses associated with the job. I called the Yucca Valley Service Center to investigate the job. The job was going to end or phase out in four months. The job paid about 15.00 per hour or half of my current pay. I could not drive that far. I declined.

I was rejected for the planner job I bided on because of senority.

On January 7, 2011, Eric Emery emailed me information about scheduling and confirming a Substation Apprentice Test on January 13, 2011. I thought that was a weird message considering I was fired on that date. I was also working for **Par Electric**.

I WAS OFFERED THE SUBSTATION APPRENTICE TEST ON A DAY I WAS ALREADY TERMINATED FROM THE COMPANY.

January 13, 2011

On January 11, 2011, Eric Emery emailed me to not come in as stated in the letter. (On January 11, 2011 SCE received the CalOSHA complaint.) When I spoke with him over the phone he said he did not know why.

Hank Colt called me on January 11, 2011 and asked me if I was going to take the Substation Apprentice Test. I told Hank that I needed two weeks to study. He hung up.

RON DELGADO CALLED ME BETWEEN JANUARY 14, 2011 THROUGH JANUARY 20, 2011

Ron Delgaldo told me I did not have to come in if they are not going to give you a job. You already have a job. He said he was going to talk to SCE. He never spoke to me again. I did not come in on January 20, 2011 for my exiting interview, so I could keep my job.

On January 27, 2011, I was terminated from (IBEW47 Contractor) **Par Electric**. (On January 27, 2011, Cal OSHA in San Bernardino, CA received SCE response to my complaint about the Brief relief bags and disposable johns.)

Summary

The defendant wrote a written contract to terminate me on January 12, 2011. I bidded for a Substation Apprentice Job that had a test date of January 13, 2011. Since the contract stated that it was pending a successful transfer or Bid opportunity, at the end of the 2nd 60 day period your employment will be terminated ending on January 12, 2011. I believed there was

no need to study for a test that I would not be eligible for because the test date was beyond the 60/60 plan.

I believe I was not afforded a fair opportunity to take the test and was retaliated against for OSHA complaint, SCE Internal Investigation, discriminated against in employment, andworkers compensation, and wrongful discharge in violation of public policy.

This Application for discrimination benefits pursuant to Labor Code Section 132 (a) began August 24, 2010 after I reported my injuries to my supervisor, through September 15, 2010. On this day, I reported my injuries to my supervisor, Byron Redd. I asked for better accommodations in the field because I had abnormal swelling inside of my vagina and irritation in my private area after using the "Disposable John" and bucket as a toilet facility outside working in the field on the 4KV Cut Over. This was not the first symptom I had. This was the second symptom. (The first symptom I had was very abnormally heavy secretion. I was concerned and made an appointment to have a pap smear. I was scheduled in May 2010 at Kaiser, Wildomar, CA. The results were good except they found bacteria and classified it as abnormal.)

Southern California Edison did not accept my claim until after I was terminated. See exhibit for exact date. I was denied because there was not medical evidence. Although I had medical evidence acquired prior. I believe the defense to plead the statue of limitation may be estopped by negligence, misrepresentation, by record, by conduct.

PERMITTING DANGEROURS CONDITIONS TO CONTINUE

U.S. Warren v. Hudson Pulp & Paper Corp

Mere inaction

Althogh a person is responsible for the foreseeable consequences of his or her inaction as well as action, and although inaction, as well as action, may constitute negligence, mere inaction does not constitute negligence in the absence of aduty to act. A failure to act in a particular manner, whether characterized as negligence as a matter of law or as common law

nefligence, gives rise to no legal liability unless the party claiming a breach of duty can show that his or her claim is within the scope of such duty.

The question is why did the defendant make a decision to not include the other injuries?

First Written Agreement made August 19, 2010

The defendants created a written agreement stating: "Failure to improve and sustain your performance in these areas (insubordinate behavior, tardies, and safety rule violations) will result in further disciplinary action."

Second Written Agreement made August 19, 2010

The defendant also created another written agreement stating If you do not demonstrate immediate and sustain improvement in the next 30 days you will have this action plan extended for another thirty days.

What did Ms. Dean do to be removed from the SCE Apprentice Lineman Apprenticeship between August 19, 2010 through September 15, 2010 which was the cause for the termination?

Mrs. Dean was removed from the Apprenticeship Program September 15, 2010.

"This letter is to inform you that you have been removed from the Apprentice Lineman Program due to multiple occasions of rule violations, unsafe work practices, failure to follow directives and failure to meet minimum requirements of the Apprentice Lineman Program."

What did Ms. Dean do to be removed from SCE on January 20, 2011which was the cause for the termination?

I did not have access to the company bids and transfers as well the non-represented jobs. The company access was blocked every time I tried to submit a bid through the online system it would not accept any bids after I was places on non-paid leave. I was a Groundman A-3 the company sent a list of names of people to reject. I applied for Groundman A-3 jobs and the company intentionally denied me the job. I had a right to rebid. I was a Groundman A-3, after the company removed me from the apprenticeship I was a Groundman A-3 by my qualifications and training with no expiration. It is like having a degree.

Labor Code Section 132 (a)

It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.

(1) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee's compensation shall be increased by one-half, but in no event more than ten thousand dollars ($10,000), together with costs and expenses not in excess of two hundred fifty dollars ($250). Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

1. The employee need not show that the employer's agents consciously or deliberately set out to prevent or delay the employee's filling of a claim. Rather the employer's violation, through it negligence, of its duty to provide a claim form and notice of potential eligibility when it learns that an industrial injury has occurred or is being asserted, resulting in the employee's prejudicial reliance, is sufficient to give rise to estoppel. If the employer does not reject liability within this 90 day period, the injury is presumed compensable under the compensation law, and this presumption is rebuttable. (Honeywell v. W.C. A. B. [Wagner] [2005] 35 Cal. 4th 24, 37-38, 24 Cal. Rptr. 3d 179, 105 P. 3d 544, 70 Cal. Comp. Cases 97).

The employer was required to provide the employee with specific notices, including written information, explaining the time limits for filling a claim, and that the employer's failure to provide the proper notice tolled the statue of limitations.

(Santa Barbara county v. W.C. A. B. [Santos] [2009] 75 Cal. Comp. Cases 56, 58-59 [writ denied]).

Estoppel to Plead Statute

When the employer's conduct is such as to lead the employee, in reliance on this conduct, to postpone the filing of a claim with the Appeals Board until after the statutory period has run, the employer may be estopped from raising the defense of the statute of limitations. [Kaiser Foundation Hospitals v. W.C.A.B. (Webb) (1977) 19 Cal. 3d 329, 333-334, 137 Cal. Rptr. 878, 562 P.2d 1037, 42 Cal. Comp. Cases 302]

Employee's Knowledge of Compensable Injury

In general, an employee is not charged with knowledge that his or her disability is job-related without medical advice to that effect, unless that nature of the disability and the employee's training, intelligence, and qualifications are such that the or she should have recognized the relationship between the known adverse factors involved in his or jher employment and his or her disability. [Chambers v. W.C.A.B. (1968) 69 Cal. 2d 556, 557-559, 72 Cal. Rptr. 651, 446 P.2d 531,v 33 Cal. Comp. Cases 722

Employers are required to give any employee who is a victim of a crime that occurred on the employment premises written notices that the employee is eligible for workers compensation for any injuries, including psychiatric injuries, that may have resulted from the crime.

[**Crime** is the breaking of rules or laws for which some governing authority (via mechanisms such as legal systems) can ultimately prescribe a conviction. Crimes may also result in cautions, rehabilitation or be unenforced.]

The notice must be provided, either personally or by first class mail, within one working day of crime's occurrence or within one working day of the date tht the employer reasonably should have known of the crime. Labor Code § 3553

When the employer has the requisite knowledge but fails to notify the employee in writing either (1) that the employee may be entitled to compensation benefits, or (2) that the employer is denying the employee's right to any compensation benefits [Lab. Code § 5405(a); see § 24.03[1], above] is tolled until such notification is given to the employee or until the

employee receives actual knowledge that he or she may be entitled to benefits under the workers compensation.

As I see it the statue of limitation to was tolled and may be grounds for pleading estoppel against the defendants for a defense of statue of limitations.

Explain what happened during your employment that contributed to your injury or illness?

Explain what happened after you reported your injury to management?

It is illegal for your employer to punish or fire you for having a job injury or illness, for filling a claim, or testifying in another person's workers compensation case [Labor Code Section 132(a)] If proven the applicant my receive lost wages, job reinstatement, increased benefits, and costs and expenses up to limits set by the state.

I had a protected activity. I did not know SCE was in violation of OSHA until around January 25, 2011 (see OSHA Exhibit). I did not know I was entitled to Workers Compensation benefits after I was terminated. My supervisor ignored my report of my injury to my vaginal area and did not inform me of my right to Workers Compensation.

The company denied and refused me medical after asking them to reopen my claim for my vaginal injury.

Southern California gave all of their employees in my field unsafe and unhealthy equipment to use in the field. The company knew their product use could be a criminal offense. The males used brief relief bags designed for males to use in the field. These are portable urinals designed to make it easy and convenient for male to use the restroom while working, but there was nothing available for me.

The Department of Industrial Relations Retaliation and Discrimination Unit determined that I had a protected activity and it violated the Public Policy (Occupation Safety and Health).

JURISDICTION

The Workers Compensation Judge has the jurisdiction of Labor Code Section 2922 and subject to the exclusive jurisdiction over workers compensation claim in violation of these section Palmer v. Roadway Exp., Inc., N.D. Cal.1987, 664 F. Supp. 458.

It is the discretion of the court (Labor Code Section 2922 (5). Under written employment contracts and under this section, an employer and an employee are free to depart from the statutory presumption of at-will employment and specify that the employee will be terminated only for good cause, either by an express, or an implied, contractual agreement. Stillwell v. Salvation Army (App. 4 Dist. 2008) 84 Cal. Rptr.3d 111, 167 Cal.App.4th 360. Labor and Employment (Key 33).

JUST CAUSE CLAUSE

It is presumed to be "at will". However, an employee handbook may create an agreement that termination will only be "for cause".

International Brotherhood of Electrical Workers Local 47

IBEW47 and SCE Collective Bargaining Agreement

Article VI

Management Prerogatives

A. The Company has and will retain the right and power to manage the plant and direct the working forces, including the right to hire, to suspend, or discharge for just cause, to promote, demote, and transfer its employees, subject to the provisions of this Agreement. Any claim that the Company has exercised such right and power contrary to the provisions of this Agreement. Any claim that the Company has exercised such right and power contrary to the provisions of this Agreement may be taken up as a grievance and to arbitration, except that the provisions of Article IV, Article V, and of this Article VI shall not apply to the discharge of any employee during the first six (6) months of the employment of any employee. The Company agrees to discuss with the Union any claim that any employee has been dismissed in violation of Article I, Section B, of this amended Agreement.

The defendant SOUTHERN CALIFORNIA EDISON, retaliated against me for complaining about the affects of a non-compliant product in the field and denied me workers compensation after reporting injury during the use of the field equipment.

The Defendant, SOUTHERN CALIFORNIA EDISON continued to employ me after the termination date of January 12, 2011.
January 25, 2012, SOUTHERN CALIFORNIA EDISON was issued four citations from the OSHA about safety and health issues in the field.

No treatment was rendered, order, or offered no workers compensation claim was filed before I was terminated. Southern California Edison has continued to discriminate against me in employment with its contractors. They kept sending the papers back.

Respectfully submitted,

September 28, 2012

Applicant (Pro per)

Additional material from this filing is available in the Clerk's Office.