



Significant Decision

No. 18-02

February 23, 2018

SCIF v. WCAB (GUZMAN)

IN THE COURT OF APPEAL, SIXTH DISTRICT (H044300)

FILED: JANUARY 30, 2018
PUBLICATION ORDER: FEBRUARY 23, 2018

An injured worker's personal experiences and observations have "little bearing" on whether the employment event causing injury was uncommon, unusual, and unexpected.

Significance: In order to prove psychiatric injury, an employee with less than six months of employment has the burden of proof to show that the injury was caused by a sudden and extraordinary employment condition under Labor Code §3208.3(d).

Facts: A laborer with 12 years of experience but less than six months at this employer used a handheld soil compactor on a 45° slope. The compactor hit a rock in the soil, causing it to kick up and fall on top of him, allegedly resulting in physical and psychiatric injury. At trial, the employee testified that he had never been injured by having a compactor fall on him, nor had he ever experienced or heard of such an incident before. Because the employer had gone out of business, the defense produced no witness testimony.

The WCJ and WCAB relied upon *Matea v. Workers' Comp. Appeals Bd.* (2006) [144 Cal.App.4th 1435] to find that an injured worker's uncontradicted testimony (*e.g.*, that he had never had this type of accident before nor heard of anyone else having this type of accident before) was sufficient to prove a sudden and extraordinary employment condition, "particularly in the absence of any evidence to the contrary." The defendant appealed, arguing that it was foreseeable that soil will contain rocks, that a compactor will recoil when contacting rocks, and that a construction worker will sustain injury under these circumstances.

Holding: The ruling (from the same District Court of Appeal that decided *Matea*) found that applicant had failed to meet his burden of proving that a psychiatric injury was caused by a sudden and extraordinary employment condition. Accordingly, the case was remanded with directions to the WCAB to deny the claim for psychiatric injury.

Discussion: The *Guzman* court examined three prior appellate cases that have addressed the "sudden and extraordinary" exception to the bar against psychiatric claims -- *Matea (supra)*, *Garcia* (2012) [204 Cal.App.4th 766], and *Dreher* (2016) [246 Cal.App.4th 1101]. Relying on these cases, the *Guzman* court opined that the psychiatric injury must be caused by something other than a regular and routine employment event, and that the employee bears the burden of showing that the event was uncommon, unusual, and occurred unexpectedly.

Applying this rule to the facts, the court found that applicant had the burden to prove that his psychiatric injury was not the result of a routine employment event that all employees might experience or expect within the first six months of their employment. Here, the employee did not provide any evidence establishing what regularly or routinely happens if a compactor hits a rock on a slope. “Consequently, his history of maintaining control of the compactor and being accident-free on flat surfaces, as well as his lack of awareness of a compactor falling on someone else, had little bearing on whether the event that occurred while he was on the slope, and that caused his injury, was uncommon, unusual, and unexpected.”

The decision emphasized that §3208.3 must be interpreted consistently with the legislative history and public policy goals showing that the statute was intended to limit claims for psychiatric benefits: “Any interpretation of the section that would lead to more or broader claims should be examined closely to avoid violating express legislative intent.”

Notably, and contrary to applicant’s position, the court found that the injury was not caused by the use of a compactor on a slope. Instead, as found by the WCJ, the injury was actually caused by the compactor striking a rock, which then caused the compactor to rise up in the air and fall on top of him. At oral argument, it was conceded that it was not unexpected that the soil would contain rocks, nor that the compactor might strike a rock. By focusing on the presence of a rock in the soil, rather than on the use of a compactor on a slope, the decision highlights the importance of identifying the particular factor in the chain of events that caused the psychiatric injury.

The *Guzman* decision was originally unpublished and therefore not citable in any subsequent litigation. CWCi made a formal request for publication, pointing out that *Matea* and *Garcia* were apparently in conflict as to whether an injured worker’s uncontradicted personal experiences and observations alone may support a finding of “sudden and extraordinary” employment conditions. The Court of Appeal agreed and issued a publication order, so this decision now represents citable and binding precedent on the issue.

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