

Manager/Supervisor Risk Management

#23– 1/26/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: WORKERS' COMPENSATION – GOOD FAITH PERSONNEL ACTION DEFENSE

The last topic dealt with AOE-COE issues and stood for the proposition that the work injury must be proximately caused by employment. When a worker becomes stressed due to certain interaction with management they can suffer a psychiatric injury that is obviously caused by employment, but the injury might not be compensable. The Labor Code provides that the employer can defeat a psychiatric injury claim by proving the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. These routine personnel actions (there is no definition in the Labor Code) can include disciplinary actions, work evaluations, transfers, demotions, layoffs, or terminations. In simple terms the employer can direct and hold an employee accountable without triggering a WC exposure even when the employee manifests a physical and/or emotional reaction.

To raise the defense the employer must prove that the action by management was:

- Done in subjective good faith (done with a good intent);
- In an objectively reasonable manner (done in a balanced manner);
- Must be non-discriminatory; (treated fairly) and
- The psychiatric injury must be substantially caused by the personnel action.

One of unique exposures that YCPARMIA has seen in this area involves the mandated investigations of a worker for harassment or retaliation. Even when the investigation finds the charges groundless, the good faith personnel action defense bars the payment of WC benefits for the parties involved.

This defense, however, does not make management bullet proof. Supervision by harassment, ridicule, and generally unprofessional conduct is not “a good faith personnel action.” Nor is supervision that is inconsistent with the employer’s policy manual necessarily done in good faith.

You can be certain that this type of workers’ compensation claim will result in an investigation. The management team responsible for the personnel action will be interviewed and asked to justify their decisions and actions. As in most employment exposures, the best way for the supervisor to establish good faith, reasonableness, and a non-discriminatory intent is to get buy-in from the management team and HR before any action is taken. This defense is very fact specific, and the ultimate decision as to whether it will be asserted falls on the claims examiner.

In summary a worker generally cannot use WC as a shield to influence or avoid the normal interactions of being supervised or managed by their employer. These situations can be considered part of the job, and as such the resulting upset usually does not rise to a compensable psychiatric injury.

Next topic: Workers’ Compensation – Psychiatric Injuries