

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation Appeals Board

ELLA SAHAKIAN

Plaintiff,

vs.

THE MAY DEPARTMENT STORES
COMPANY, Permissibly Self-Insured
Defendant

WCAB NO. LAO 0733454

FINDINGS and AWARD
AND
ORDER

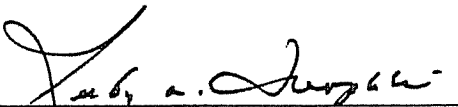
An application having been filed herein; both parties having appeared and the matter having been regularly submitted, the Honorable Ruby A. Theophile, Workers' Compensation Judge, Finds and Awards as follows:

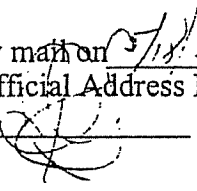
FINDINGS OF FACT

1. Applicant Ella Sahakian, born December 15, 1953, while employed on May 16, 1996 as a Sales Clerk by Robinson-May Department Store, PSI, Eagle Rock, California did not sustain injury arising out of and in the course of employment.
2. Applicant is not entitled to reimbursement of medical-legal costs.
3. All other issues have been rendered moot.

ORDER

IT IS ORDERED that applicant take nothing.


RUBY A. THEOPHILE
WORKERS' COMPENSATION JUDGE
05-15-00

Filed and served by mail on 5/18/00
all parties on the Official Address Record:
By: Hilda Sylvestre 

RECEIVED
MAY 18 2000
KENNETH L. PETERSON

State of California
Department of Industrial Relations
Workers' Compensation Appeals Board

WCAB NO. LAO 0733454

ELLA SAHAKIAN vs. THE MAY DEPARTMENT STORES COMPANY
INSURANCE CARRIER PSI
DATE OF INJURY: 12-15-53
WORKERS' COMPENSATION JUDGE: RUBY A. THEOPHILE

OPINION ON DECISION

The applicant worked for defendant as a Salesperson beginning April 16, 1990, for a period of approximately 5-6 weeks. On/Or about May 27, 1996 she was terminated after being questioned and/or accused of fraud. The applicant alleges industrial caused/exacerbated psychiatric injury resulting from the employer's accusation of fraud and the circumstances surrounding that accusation.

The fraud allegations involved a store credit card that had been issued to the applicant some years prior by defendant with a balance of \$1,600.00 that was outstanding, a customer/card holder allegation of fraud against the applicant, applicant's alleged use of a social security number reflecting three different names, and a purchase made on a fraudulent store credit card and returned by the applicant to the store requesting credit to an account in her name. The applicant maintained that the credit card in her name had been given to and used by her (adult)

1 sister and denied that the signature on the charges were hers. No explanation was offered for the
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3 other transactions.
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7 In spite of applicant's long-standing psychological problems and treatment, applicant
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9 asserted that she experienced an intensification of her symptoms as a result of the termination
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11 and the events leading to her termination, which she considered to be unjust accusations and
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13 treatment. Moreover, she claims related injuries of the neck and back, in addition to anxiety,
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15 depression, sleep disturbance and headaches.
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20 The applicant was unpersuasive with respect to all of the injury allegations and was not
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22 found to have offered credible testimony, when that testimony is evaluated against the credibility
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24 factors of Evidence Code 780 and her own deficient medical evidence.
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29 Under the current guidelines that have been in effect since the reform legislation, an
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31 employee must prove by a preponderance of the evidence predominant industrial causation for
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33 any psychological/stress claim; and further, the allegedly injured worker must have been
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35 employed by the defendant for a period of six months, in the absence of a sudden and traumatic
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37 experience giving rise to the injury claim. (Labor Code § 3208.3). Clearly, the applicant did not
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39 meet either threshold.
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44 The employers' right to undertake an investigation into applicant's perceived/suspected
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46 fraudulent activities in the workplace and its manner of doing so herein does not constitute as
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48 "sudden and extraordinary employment condition" so as to render inapplicable the six(6) months
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1 employment requirement. During the employer's investigating interview the applicant was told
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3 that she could leave on more than one occasion when she expressed her disenchantment and
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5 concerns about the accusation and nature of the interview. The fact that she felt constrained to
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7 do so does not invalidate the willingness on the part of the defendant to terminate the interview.
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12 Moreover, applicant's claim for compensation having been filed following her
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14 termination further serves to render her claim non-compensable in the absence of having
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16 demonstrated by a preponderance of the evidence that actual events of the employment were
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18 predominant as to all causes combined of the psychiatric injury, when combined with one or
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20 more of the conditions set forth in Labor Code § 3208.3 subdivision (e) (1-5).
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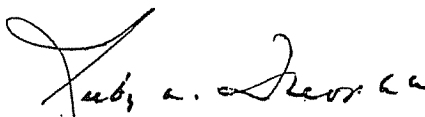
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25 Further, where as in the instant case, the applicant's psychiatric injury claim is premised
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27 on the employers' lawful, non-discriminatory, good faith personnel action, compensation shall be
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29 denied. (Labor Code § 3208.3 subdivision (h)).
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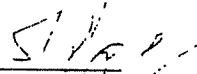
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34 None of the events and/or actions on the part of the employer to which applicant testified
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36 and/or offered evidence rises to the level a "sudden and extraordinary employment condition"
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38 contemplated by statute.
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42 As recently noted in the WCAB decision in Soledad Escalante v. St. John's Khits
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44 (4/27/00) (LAO 0757014, 757016, 764552), the WCAB states that "Labor Code §3208.3 was
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46 enacted as part of the Legislature's response to increased public concern about the high cost of
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48 workers' compensation coverage and the proliferation of workers' compensation cases with
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1 claims for psychiatric injuries (*Hansen v. Workers' Comp. Appeals Bd.* (1993) 18 Cal.
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3 APP. 4th. 1179 [58 Cal.Comp. Case 602, 604]). Indeed, the Legislature's express intent in
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5 enacting section 3208.3 was to establish a new and higher threshold of compensability for
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7 psychiatric injury....(Lab. Code §3208.3, subd. (c).) Moreover, the Legislature's apparent
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9 purpose in enacting subdivision (d) of section 3208.3 was to limit questionable claims for
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11 psychiatric injuries resulting from routine stress during the first six months of employment.
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13 (*Hansen v. Workers' Comp. Appeals Bd.*, *supra* 58 Cal.Comp. Cases at p.604 [emphasis added]; accord; *James v.*
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15 *Workers' Comp. Appeals Bd.* (1997) 55 Cal. App. 4th 1053 [62 Cal.Comp. Cases 757,759].). Given
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17 the employers' right to investigate suspected fraud on the part of its employees, the questioning
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19 of the applicant, the manner in which it was done and a request for her cooperation is, as in the
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21 case of Soledad Escalona, sufficiently routine as to not fall within the sudden and extraordinary
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23 employment condition exception of Labor Code § 3208.3, subdivision (d).
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30 Moreover, even if it were found to be so, based on the substantial and compelling medical
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32 report of Dr. Dennis A. Nehamen and the absence of any compelling and/or substantial contrary
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34 medical evidence offered by applicant, the events leading up to applicant's termination did not
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36 generate any additional depression over and above that which pre-existed her employment with
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38 defendant (4/24/97 rpt., pg.21).
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RUBY THEOPHILE
Workers' Compensation Judge
05-15-00

Served on 
On all parties of record
By Hilda Sylvestre 