

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

CASE NUMBER: ADJ8900038

LINWOOD BURNS

-vs.-

**ANTELOPE VALLEY
COMMUNITY COLLEGE
DISTRICT, permissibly self-
insured, administered by
KEENAN ASSOCIATES;**

**WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE: Christine Nelson**

DATE OF INJURY: 04/11/2012 through 04/11/2013

OPINION ON DECISION

Applicant claims to have sustained injury arising out of and occurring in the course of employment to his head, circulatory system, digestive system, nervous system and psyche while employed during the period 04/11/2012 through 04/11/2013 as a network manager by the Antelope Valley Community College District.

At the time of trial Applicant testified that during his early employment he had no problems with his supervisors. However, he indicates that when Mr. Madlock became his supervisor he felt that he was "targeted because of the attention that was placed on his work and on the work of his employees." He felt that he was being pushed out the door.

Applicant testified that while working for his new supervisor, Mr. Shaw, there was tension in the work place. Essentially he indicated that he began working in the maintenance area because of the tension in the office and that he felt he was being undermined by Mr. Shaw. Applicant under cross-examination indicated that he felt that his relationship with Mr. Shaw had some basis in race, however, when asked how he was targeted or felt that race was involve in his problems at work Applicant indicated that he couldn't answer that question.

Mr. Shaw, Applicant's last supervisor, testified at the time of trial that the Vice President of Administrative Services, Ms. Brewington, at the direction of the President, Jackie Fisher, spoke to

Mr. Shaw about Applicant's performance issues and concerns raised by Applicant's past supervisors. The witness indicates he reviewed Applicant's personnel file and met with Applicant to advise him that he was directed to review Applicant's personnel file and discuss suggestions for improvement with Applicant.

Mr. Shaw testified regarding the two write-ups he prepared regarding Applicant's job performance during the period he supervised the Applicant. Those write-ups are contained in joint Exhibit X, the excerpts from Applicant's personnel file. Those write-ups as well as the personnel file were reviewed by Dr. J. Stewart Meisner, the only reporting physician in this case. Dr. Meisner, a psychologist, had issued a report 07/05/2014 prior to reviewing Applicant's personnel file. After reviewing Applicant's personnel file the doctor opined that he changed his mind regarding the cause of Applicant's psychiatric claim. The doctor states,

“My review of the personnel file calls for changes of opinion regarding causation, apportionment and accuracy of information provided by Mr. BBBBBB.”

The doctor is referring to Applicant when he indicates Mr. BBBBBB. The doctor went on to state,

“In short, it is now my opinion that personnel actions were at least a substantial cause of the mental disorder, and that there is not substantial evidence that they were other than good faith.”

Although the doctor is not the decider of fact regarding whether the personnel actions were good faith, it is clear from reviewing his report of 07/07/2014 in total that the personnel file was in stark contrast to Applicant's portrayal of his treatment and experiences while employed by Defendant.

As indicated above, Dr. Meisner opined that actual events of employment were a substantial cause of Applicant's mental disorder. Thus there is competent medical evidence to establish the percentage of industrial causation as indicated in the reporting of Dr. Meisner. The personnel actions basically consist of the supervision of the Applicant and the three negative write-ups contained in his personal file. Applicant's prior supervisor, Mr. Madlock prepared a memo dated 04/27/2012 stating,

“The purpose of this memo is to document areas of concern regarding your work performance and provide you with clear, written

performance expectations for your continued employment. On 11/09/2011, I spoke with you regarding several performance issues. Despite that conversation you continue to perform below expectations in the areas of: 1. Leave reporting and adherence to established work schedules, 2. attendance and/or leadership in assigned meeting, and 3. taking ownership of and completing assigned tasks in a timely manner.”

Each section following the initial introduction in the memo discusses Applicant’s failure to comply with proper work performance requirements. Applicant was given suggestions to improve his performance regarding the three areas in which he needed improvement.

Mr. Shaw issued a memorandum of reprimand regarding Applicant’s work performance dated 03/28/2013. The memo indicates,

“This Memorandum of Reprimand is to document unprofessional conduct and negligence of duties by you, associated with the events of 14th, 15th & 20th of March 2013.”

The memo clearly states the reason for the reprimand, applicant taking a day off without proper authorization, and indicates that Mr. Shaw would meet with Applicant and set up a proactive approach to address further issues.

Mr. Shaw in a memo dated 04/09/2013 issued a memorandum of reprimand to document Applicant’s insubordination, unprofessional conduct and gross negligence in the performance of his duties on April 2, 2013.


Based on the testimony of Applicant’s supervisor, Mr. Shaw, the personnel records and the medical reporting of Dr. Meisner it is found that the personnel actions taken by the employer were good faith, lawful and non-discriminatory personnel actions.

Applicant was closely monitored by Mr. Shaw due to prior supervisor’s concerns about Mr. Burn’s job performance as evidenced by the reprimand submitted by Mr. Madlock and the job performance appraisals indicating degradation in Applicant’s performance on the job following his earlier job performance appraisals. Both Mr. Madlock and Mr. Shaw not only gave Applicant written reprimands but attempted to resolve his job performance problems as indicted in those memos of reprimand.

Based upon the medical opinion of Dr. Meisner, the credible testimony of Mr. Shaw and review of Applicant's personnel records, it is found that Applicant did not sustain injury arising out of or occurring in the course of employment to his head, circulatory system, digestive system, nervous system or to his psyche while employed during the period 04/11/2012 through 04/11/2013 as a network manager by the Antelope Valley Community College.

All other issues are moot.

DATE: 11/19/2015



Christine Nelson

WORKERS' COMPENSATION JUDGE

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

LINWOOD BURNS,
Applicant,

vs.

**ANTELOPE VALLEY COMMUNITY
COLLEGE DISTRICT; permissibly
self-insured, administered by
KEENAN & ASSOCIATES,**
Defendants.

Case No. ADJ8900038

ANAHEIM DISTRICT OFFICE

FINDINGS AND ORDER

LAW OFFICES OF JERRY A. JACOBSON & ASSOCIATES
BY: JERRY A. JACOBSON, ATTORNEY
ATTORNEY FOR THE APPLICANT

COLANTONI, COLLINS, MARREN, PHILLIPS & TULK, LLP
BY: ARTAI IRVANI, ATTORNEY
ATTORNEYS FOR DEFENDANTS

The above entitled matter having been heard and regularly submitted, the Honorable Christine Nelson, Workers' Compensation Judge, now decides as follows:

FINDINGS OF FACT

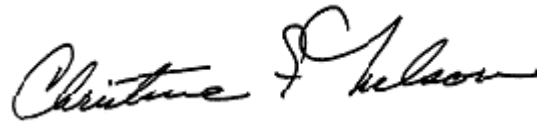
1. **LINWOOD BURNS**, born on 03/19/1959, while employed on during the period 04/11/2012 through 04/11/2013, as a network manager, at Lancaster California, by the **ANTELOPE VALLEY COMMUNITY COLLEGE, permissibly self-insured, administered by KEENAN & ASSOCIATES** for workers' compensation purposes, did not sustain injury arising out of or occurring in the course of employment to his head, circulatory system, digestive system, nervous system or to his psyche.

2. It is found that the personnel actions taken by the employer were good faith, lawful and non-discriminatory personnel actions.

ORDER

IT IS HEREBY ORDERED THAT Applicant take nothing further from the Defendant in case **ADJ8900038**.

DATE: 11/19/2015



Christine Nelson

WORKERS' COMPENSATION JUDGE

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ON: 11/19/2015

BY: *ccbyez*