

Applicant, Terminated from Employment, after Sustaining Work Injury, Fails to Meet 132a Burden

In *Loera v Northrop Grumman*, the applicant filed two admitted dates of injury which were resolved via Compromise and Release Agreement. The case proceeded to trial on the alleged Labor Code § 132a violation for discrimination and refusal to make reasonable accommodations after applicant's injuries. At the conclusion of trial, the Judge found the employer did not violate L.C. § 132a as applicant did not establish a prima facie case for discrimination. Applicant filed a Petition for Reconsideration.

In consideration of the established facts and evidence, the Judge looked to the California Supreme Court's *Dept. of Rehab* decision. The Court in *Dept. of Rehab* held, in order "[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 retain employment and the employer had a corresponding legal duty to accommodate the employment or work restrictions."

Based on the evidence, the Judge found applicant was not entitled to retain his employment following extensive absenteeism and the termination itself was not done as a result of the applicant having filed an injury. Specifically, the Judge outlined applicant had already received second and final warnings regarding unexcused absenteeism prior to his dates of injury and the termination process was underway but was put on hold due to applicant's medical leave of absence. The Judge found the employer's documented evidence did not establish discrimination against the applicant (due to his work injury) but showed a history of applicant's extensive unexcused absenteeism and knowledge of possible employment termination.

Additionally, the Judge outlined applicant's medical leave of absence was corrected to be an excused absence and was not the basis for his termination. This in conjunction with applicant demonstrating a chronic unwillingness to abide by company policy made applicant's termination non-retaliatory.

Upon Reconsideration, the WCAB incorporated the findings and opinion of the trial Judge. The WCAB clarified the definition of discrimination by highlighting the *Lauher* case, which concluded an employer does not necessarily engage in discrimination prohibited by L.C. § 132a because it requires an employee to shoulder some of the disadvantages of an industrial injury. The standard to establish a prima facie case for discrimination requires an applicant to show: (1) he or she suffered an industrial injury, (2) 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, (3) the applicant had a legal right to receive or retain their employment status and (4) the employer had a corresponding legal duty to provide or refrain from taking away that employment status.