

SUDDEN AND EXTRAORDINARY EMPLOYMENT CONDITION

In the realm of claimed psychiatric injuries, the terms "sudden and extraordinary employment condition" [L.C.Sec. 3208.3(d)] and "sudden and extraordinary events of employment" [L.C.Sec. 3208.3(e)] have been around for several years.

What is "sudden", and what is "extraordinary"?

In a BPD dated June 14, 2006 in the case *Valdez v. WCAB*, the panel of Commissioners explained:

With regard to the Legislature's use of the word "**sudden**" in Section 3208.3(d), we need look no further than the plain meaning of the word, which is neither ambiguous nor susceptible to more than [sic] one reasonable interpretation. At least one dictionary defines "sudden" as "Happening **without warning; unforeseen**: Characterized by rapidity; **quick and swift**. Very quickly and unexpectedly; suddenly." (American Heritage Dict. (4th ed. 2000).) Thus, the word "sudden" contemplates a **temporal dimension** to the employment condition. A "sudden" event is one that occurs within in a short period of time.

The word "**extraordinary**" was not so easily defined. The panel continued:

Unlike the measure of time, which is a constant in all cases, determining what is "**extraordinary**" may vary **depending upon the circumstances** surrounding the employment condition, its foreseeable consequences, or both...

An "extraordinary employment condition" is one that is **not a regular and routine employment event that can be expected to occur with substantial frequency** in the working environment.

This construction of the word "extraordinary" is consistent with decisions of the Court of Appeal and the Appeals Board.

(Citation) "sudden and extraordinary employment conditions" (are) "**something other than normal, regular, or routine** exchanges between employees and the employer, in the context of either personnel actions or general comments or criticism on work practices of an employee."

In evaluating whether an employment condition is extraordinary, the foreseeable consequences of the of the condition may also be considered. In (citation) ... the Court noted its view that extraordinary conditions are "**the types of events which would naturally be expected to cause psychic disturbances even in a diligent and honest employee.**"

In a published opinion of November 21, 2006, the 6th DCA again discussed "sudden and extraordinary" events/conditions. To start with, the court stated:

"We believe that the Legislature intended "employment conditions" in subdivision(d) of section 3208.3 to mean the same thing as the "events of employment" condition in subdivision (e) of the same section. The Legislature simply intended section 3208.3, subdivision (d) as amended to limit claims for psychiatric injuries resulting from routine stress and routine injuries during the first six months of employment. (citation)."

The court researched Webster's Third International Dictionary (1993) for definitions of sudden (p. 2284) and extraordinary (p. 807). In particular, extraordinary was defined as: going beyond what is usual, regular, common, or customary; having little or no precedent and usually totally unexpected.

The court concluded:

"Therefore, if an employee carries his or her burden of showing by a preponderance of the evidence that the event or occurrence that caused the alleged psychiatric injury was something other than a regular and routine employment event or condition, that is, that the event was uncommon, unusual, and occurred unexpectedly, the injury may be compensable even if the employee was employed for less than 6 months."