

KEGEL, TOBIN & TRUCE
INTER - OFFICE MEMORANDUM

TO: ALL ATTORNEYS/CLIENTS

FROM: JOE TRUCE

DATE: December 5, 2002

RE: COURT OF APPEAL GRANTS OUR PETITION FOR WRIT OF REVIEW ON ISSUE OF GOOD FAITH PERSONNEL ACTION AND REVERSES WCAB AND JUDGE RUSSELL ZARRETT

Chuck Maki of our Ventura office has persuaded the Court of Appeal to not only grant a Petition for Writ of Review in the case of Northrop Grumman Corporation v. WCAB (Robert Graves) but has also successfully obtained a decision from the court finding that the action of Northrop in investigating racial discrimination charges brought against the applicant constituted a non-discriminatory good faith personnel action.

In this case Northrop commenced an investigation arising out of "allegations Mr. Graves engaged in racial discrimination during training of Northrop employees..."

In defending this case, Chuck presented testimony from Northrop supervisors and employees and as observed by the court, the investigation demonstrated that the applicant engaged in "disparate treatment" but it was not clear as to whether or not the "disparate treatment" was as the result of race or some other issue.

In reversing the Board and Judge Zarett, the court cited Labor Code §3208.3(h) which states:

"No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, non-discriminatory, good faith personnel action..."

The court went on to note:

"The legislature's good 'faith personnel action' exemption is meant to furnish an employer a degree of freedom in making its regular and routine personnel decisions (such as discipline, work evaluation, transfer, demotion, layoff, or termination). If a regular and routine personnel decision is made and carried out with subjective good faith and the employer's conduct meets the objective reasonable standard, Section 3208.3's exemption applies..."

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In finding that Mr. Graves had sustained a compensable psychiatric injury as the result of the investigation stemming from the charges of racial discrimination, Judge Zarett noted that the charges of racial prejudice were not proven by Northrop's investigation.

However, in noting that the actual results of the investigation were not determinative, the court stated as follows:

"However, as discussed above, an employer, faced with an accusation made by a co-worker that a supervisor has engaged in racial discrimination against a subordinate, has a legal obligation to investigate that claim..."

The court went on to state:

"That Northrop was later, after investigating the racial discrimination claim unable to substantiate the accusation did not remove the investigation from the realm of good faith employer personnel actions..."

In noting that Northrop as a major defense contractor has a legal obligation to investigate misconduct by a supervisor stated in relevant part as follows:

"...Suffice to note, investigating such misconduct by a supervisor employed by a defense contractor is altogether fitting and proper. The lives of American military personnel and those who serve with our coalition partners should not be endangered by inadequate training by a supervisor employed by a major defense contractor or falsification of documents..."

The court has now reversed the decision of the Board and Judge Zarett and has remanded the case "for further consideration consistent with the views expressed in this opinion..."

WJT:ab