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PSYCHOLOGICAL INJURIES ARISING FROM LEGITIMATE PERSONNEL ACTIONS ARE NOT COMPENSABLE UNDER THE LONGSHORE AND HARBOR WORKERS COMPENSATION ACT.

The United States Court of Appeals for the Ninth Circuit holds that application of the *Marino-Sewell* doctrine is reasonable in determining that the Longshore and Harbor Workers Compensation Act does not recompense psychological injuries stemming from legitimate personnel decisions.

Jose Pedroza v. BRB; Director, Office of Workers Compensation Programs, *Et Al.*
2009 A.M.C. 2549

United States Court of Appeals for the Ninth Circuit
(Decided October 1, 2009).

Jose Pedroza (“Pedroza”) was an employee of National Steel and Shipbuilding Company. During Pedroza’s employment, he served as a load handler at a U.S. Naval base. The instant case concerns an incident that occurred on August 24, 1999, involving an explosion that occurred when Pedroza was loading and unloading materials. Pedroza subsequently claimed that he suffered psychological injuries as a result of the accident. The Ninth Circuit held that psychological injuries are not compensable under the Longshore and Harbor Workers’ Compensation Act (“LHWCA”) when resulting from legitimate personnel decisions by the employer.⁴²

The present case is an appeal from the findings of the Benefits Review Board (“BRB”) to the Ninth Circuit. Pedroza claimed that his psychological injuries stemmed from the explosion that occurred when he struck a live power cable while loading and unloading the USS Boxer. Although he did not initially seek medical treatment, Pedroza later sought treatment when his supervisor accused him of negligence in causing the accident. Pedroza then went on leave and sought medical treatment for anxiety and other related psychological problems stemming from the incident. Later, Pedroza took another medical leave and filed a worker’s compensation claim for the psychological injuries. During an administrative hearing, the medical evidence supported an evaluation that the underlying cause of the psychological problems was the disciplinary proceedings and not the accident. Moreover, the BRB also stated that these injuries were non-compensable, affirming the BRB in this decision and in *Marino v. Navy Exchange Service* and *Sewell v. Noncommissioned Officers Open Mess*.⁴³ In applying the doctrine of *Marino-Sewell* the BRB held that Pedroza’s injuries were the result of legitimate personnel actions and not the general working conditions covered by the LHWCA. Pedroza therefore appealed to the Ninth Circuit.

The Court looked to the legislative intent of the LHWCA to determine if this particular psychological injury was compensable. While a psychological injury is presumed to be compensable under §920 (a) of the LHWCA, the injured must have proved that an incident occurred which could have caused an existing psychological impairment.⁴⁴ Since the BRB’s decision followed two other related decisions which interpreted injury in a reasonable manner, the court saw no reason to disturb the BRB’s finding. Next, the Court looked to whether the *Marino-Sewell* doctrine would violate the LHWCA and allow Pedroza’s injuries to be compensable. *Marino-Sewell* allows for the compensation of psychological injuries if they are caused by general working conditions, not legitimate personnel decisions (such as the reduction in force in *Marino*). The Court not only upheld the *Marino-Sewell* doctrine, but explained that the balance between employer and employee concerns is especially

⁴² 33 U.S.C. 18

⁴³ *Marino v. Navy Exchange Service*, 20 B.R.B.S. 166 (1988); *Sewell v. Noncommissioned Officers Open Mess*, 32 B.R.B.S. 134 (1998).

⁴⁴ *OWCP v. Potomac Elec. Power Co.*, 607 F.2d 1378 (D.C. Cir. 1979).

important to protect given the intent when enacting the LHWCA.⁴⁵ Because the injuries resulted from a legitimate personnel action, the Court denied Padroza's petition.

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⁴⁵ *Morrison-Knudsen Constr. Co.*, 461 U.S. 635 (1983).