

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

ANTHONY BENNETT, *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF CORRECTIONS
AND REHABILITATION;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ9738543
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, except for the recommendation that we deny reconsideration, we will grant reconsideration, amend the WCJ's decision for the reasons noted below, and otherwise affirm the September 28, 2021 Findings of Fact and Order. We amend the decision solely to clarify that, under Labor Code Section 5101(b), the present value of a life pension shall be made in accordance with the Commutation Instructions contained in Section 10169, and shall be based on the actuarial data. (Cal. Code Regs., tit. 8, § 10169.1(a).)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the September 28, 2021 Findings of Fact and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the September 28, 2021 Findings of Fact and Order is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

* * *

ORDER

Applicant shall have the remaining balance of his Award, in the above matter, commuted to its current value, pursuant to Labor Code section 5101(b) and Cal. Code Regs., tit. 8, § 10169.1, and paid to applicant, less a reasonable attorney's fee of \$1,000.00, in an amount to be adjusted by the parties, with jurisdiction reserved at the trial level if there is any dispute.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

MARGUERITE SWEENEY, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 20, 2021

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**ANTHONY BENNETT
ADAMS, FERRONE & FERRONE
STATE COMPENSATION INSURANCE FUND**

PAG/abs

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Defendant filed a timely, verified Petition for Reconsideration (Defendant's Petition for Reconsideration, (EAMS Doc. ID 38717217) dated October 21, 2021, and is aggrieved by the Opinion on Decision and Findings of Fact and Order, dated August 27, 2021. (EAMS Doc. ID 74698058 and 74698060 respectively) This matter came on for trial on September 7, 2021, wherein exhibits were taken into evidence and testimony elicited by applicant on his own behalf. (Minutes of Hearing and Summary of Evidence, EAMS Doc ID 74629530)

PETITIONER'S CONTENTIONS

In addition to the jurisdictional recitals, Defendant contends that pursuant to Labor Code Section 5100 the evidence does not support a commutation of the remaining balance of the award. Defendant goes through a list of applicant's assets and liabilities and goes on to state that the WCJ should take into consideration the probability of applicant's death with the use of actuarial data in Reg. 10169, though no request to do such took place. Defendant also contends that the undersigned should have given an amount certain in the order of commutation, apparently, not content with an order for commutation to its current value and to be adjusted by the parties. Interestingly, an earlier stipulated commutation, prepared by the parties, contained the same language.

II
BACKGROUND

Anthony Bennett, born 7/25/1968, while employed during the period of 1/2/1998 through 9/18/2014, as a Corrections Officer, Occupational Group No. 490, at Lancaster, California by California Department of Corrections and Rehabilitation, sustained injury arising out of and in the course of employment pursuant to the 11/29/2017 Award. At the time of injury, the employer was legally uninsured.

Mr. Bennett was injured during the period of 01/02/1998 through 09/18/2014 while employed as a correctional officer at the prison at Lancaster California. He originally alleged injury to the wrist, back, shoulder and knee. Several amended applications followed alleging injury to leg (foot), then more specifically to right leg, right foot, right wrist, continuous stress and strain and multiple. The last amended application added hepatitis and skin cancer.

This claim was settled by Stipulation with Request for Award, dated 11/29/2017, with an additional claim of ADJ992943, a specific injury to the wrist. Permanent disability of 75% and life pension of \$115.96, before commutation was the settlement amount. (EAMS Doc ID 65547425)

A prior Stipulation and Order issued for a commutation in the amount of \$30,000.00, to be taken from the far-end of permanent disability, with a credit to defendant for “present value” issued on July 25, 2019 on the currently litigated claim of ADJ9738543. (EAMS Doc ID 70746119)

III DISCUSSION

TESTIMONY OF MR. BENNETT, (Minutes of Hearing and Summary of Evidence, dated September 7, 2021):

Mr. Bennett testified that he reviewed the petition for commutation and he provided the bills to his attorney for his student loan payments, his car payments, his gas and electric, his telephone, as well as his mortgage.

He now is approximately \$33,205.70 in arrears on his mortgage. He believes he is \$7,390.24 in arrears on his car loan. He stated that between 2018 and 2019 he was a student at University of Tennessee in accounting, and in 2020 when COVID hit, he lost all of his income.

He currently is employed by the Department of Energy. His monthly revenue is approximately \$6,700, which includes his monthly salary of about \$2,500. He receives \$3,200 from his PERS medical retirement plus \$480 every two weeks on his workers' compensation case.

He believes that his total monthly liability is approximately \$5,200. He currently pays \$2,000 on his mortgage. He has credit card debt of approximately \$9,000, a personal loan of approximately \$8,000, and student loans of \$90,000. The personal loan was taken out to pay for books and school supplies while going to college. He said all these debts were accrued while he wasn't working. (ibid. pgs. 3-4).

Mr. Bennett stated he lives with his wife who does not work and does not make any income. His older daughter also lives with him. He believes he currently has \$3,000 in his personal bank account. He started employment with the Department of Energy in March of 2021. He does not anticipate any raises in the near future.

He stated he has taken the tests for certified public accountant and is continuing to take different portions of the test. He stated his industrial disability retirement started in 2017 and that he has no other retirement accounts. He stated he doesn't recall his salary in 2016, and he never paid into social security. He stated he hasn't had other employment since retirement and believes his employment ended on 3/4/2020. He had been out of work prior to his current employment for about a year. He was unable to collect unemployment because he was employed with the college in a work-study program. He stated he did not receive any other assistance. He did state he was retired from the army. However, he receives no pension until he's 60.

When asked if between March of 2020 and March of 2021 he received any form of disability insurance besides workers' comp, he stated no, and he currently is not receiving any. When asked about Veterans Administration benefits, he stated he does collect \$1,000 a month which began in 2008.

When asked about his mortgage, he stated he did attempt to receive an accommodation from the bank. They talked about putting him on a payment plan, but there has been no agreement.

When asked about a bill from the University of Tennessee and asked if there was a surplus, he stated he wasn't sure.

He stated the CarMax bill is for his wife's car and the Ford Credit bill is for his car. When asked why he has two cars, he stated the wife has one and he has one. (ibid. p. 4). He stated he started at the University of Tennessee in the fall semester of 2017.

He believes the CarMax vehicle was purchased in 2016 or 2017. He doesn't recall. He doesn't recall the initial borrowed amount. He also believes he purchased the Ford in 2016 or 2017, but he doesn't recall either the date or the amount financed.

He has a bill from OneMain Financial for over \$15,000. It was a personal loan used for buying books and supplies while going to university. He has a balance on his Verizon account of approximately \$1,326.02. When asked if he has six phones, he stated he and his wife have one and his two daughters have one.

When asked about a bill from the First Utility District of Knox County and whether he was behind, he stated he doesn't recall when it became in arrears.

He said he purchased his current home in 2018 and believes it was for \$350,000 but isn't sure.

When asked when his mortgage became in arrears, he stated it was approximately July of 2020. He stated he restarted paying his mortgage this month. No one else in the family contributed.

He stated he has an outstanding bill from KUB, a utility company that provides gas. However, he doesn't recall how much in arrears he is. He also has a bill from Spectrum and doesn't recall how much in arrears that bill is. There is also a bill from Waste Management, and again he is not sure how far in arrears he is.

When asked if he recalls his previous commutation in 7/2019, he says he does, and it was for \$30,000. He stated he used it to pay medical bills for himself and his wife. He did have medical insurance through Blue Cross and they covered a lot of the bills. He currently has no money left over from that commutation. (ibid. p. 5).

Pursuant to CA Labor Code § 5100:

At the time of making its award, or at any time thereafter, the appeals board, on its own motion either upon notice, or upon application of either party with due notice to the other, may commute the compensation payable under this division to a lump sum and order it to be paid forthwith or at some future time if any of the following conditions appear:

(a) That such commutation is necessary for the protection of the person entitled thereto, or for the best interest of the applicant. In determining what is in the best interest of the applicant, the appeals board shall consider the general

financial condition of the applicant, including but not limited to, the [Applicant's ability] to live without periodic indemnity payments and to discharge debts incurred prior to the date of injury.

(b) That commutation will avoid inequity and will not cause undue expense or hardship to the applicant.

(c) That the employer has sold or otherwise disposed of the greater part of his assets or is about to do so.

(d) That the employer is not a resident of this state.

The finding of this Court is as follows:

The applicant, based upon his general financial condition and his current ability to live without periodic payments due to his current employment, shall have the remaining balance of his Award, in the above matter, commuted to its *current value* and paid to applicant, less a reasonable attorney's fee of \$1,000.00, *to be adjusted by the parties*. (Emphasis added)

IV **RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

DATE: October 28, 2021

ROBERT SOMMER
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE