

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

MOZART LOZANO (DEC'D), *Applicant*

vs.

**CENTRAL CALIFORNIA WOMEN'S FACILITY/CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION, LEGALLY UNINSURED,
ADMINISTERED BY STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ13462778
Fresno District Office**

**OPINION AND ORDER
DENYING PETITION FOR
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, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER



/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 21, 2022

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

**ELSA LOZANO, GUARDIAN AD LITEM
SERGIO LOZANO
ADAMS FERRONE & FERRONE
STATE COMPENSATION INSURANCE FUND**

SAR/abs

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

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

The contentions of the Petitioner are:

1. By the order, decision or award made and filed by the Workers' Administrative Compensation Law Judge, the Division of Workers' Compensation acted without or in excess of his powers.
2. The evidence does not justify the findings of fact.
3. The findings of fact do not support the order and opinion on decision.

The petition was verified and timely filed.

**II
FACTS**

The pertinent facts are that the widow and two minor children of the deceased, an employee of the Central California Women's Facility/California Department of Corrections and Rehabilitation on the date of death (July 4, 2020), were presumed, total dependents for purposes of workers' compensation death benefits, and no evidence to the contrary was presented.

The widow, Elsa Lozano, was entitled, and did in fact elect, to receive the CalPERS Special Death Benefit in lieu of workers' compensation death benefits.

The two minor children applied for and were awarded workers' compensation death benefits. The value of the benefit for two minor children is \$290,000.00.

The court found that the loss of the decedent's income represented a significant change in circumstances for the family, and specifically was good cause for a finding of financial hardship. The financial hardship being the inability to afford the college education for the two dependent children.

**III
DISCUSSION**

Defendant's primary argument is that the case should be reopened and re-litigated so that additional facts and arguments can be introduced into evidence, which in turn might convince the judge to decide the case on terms more favorable to the defendant. However, what is not mentioned by the defendant is that it did not see fit to introduce *any* evidence, or raise *any* argument, at the time of trial.

Only three issues were raised at trial: Death benefits; Dependency; Whether CalPERS Special Death Benefits *and* Workers' Compensation Death Benefits could be awarded to the dependents described herein. (Summary of Evidence; 2:19-24).

Only three exhibits were submitted/admitted into evidence by the parties, all as joint exhibits: (AA) QME report dated August 23, 2021; (BB) QME report dated November 24, 2020; (CC) Death Certificate of applicant dated July 14, 2020. (SOE; 3:2-7).

The evidence the defendant would like the court to review, copies of the decedent's actual pay stubs; tax records; actual deductions; documentation of who paid the decedent's medical bills; whether those expenses were actually reimbursed to the widow (and when) should have been presented during the discovery phase, not on appeal. (Petition for Reconsideration; 4:2-16). In essence, the defendant is now stating it would be improper to allow the court's decision to stand, because the defendant is now *ready to present contrary evidence after the court has decided the facts* on the evidence properly presented at trial.

Defendant goes on to argue that evidence obtained three months post trial, (a "final letter" from CalPERS) will detail the actual benefits the widow will be receiving for the Special Death Benefit. (Recon; 3:18-21). Similarly, the defendant wishes the court to review and reassess the issue of financial hardship after it has the opportunity to present evidence (Recon; 4:17-21). As noted above, the defendant presented no evidence at all at the time of trial, (SOE; 3:2-7), not a "final" letter, or even a "preliminary" explanation of the CalPERS Special Death Benefit.

Defendant also argues that the division of the death benefit awarded to the minor sons was unreasonably too high (\$290,000) and offers what appears to be a compromise at \$213,333.34. The court found the award should be based on the value of a death benefit for two minor children. The defendant suggests the value should be based upon the benefit due to *three* total dependents, and then divide the total by three, with one-third diminished (the widow) due to the CalPERS benefit, and the remaining balance to be divided among the remaining dependent minor children. (Recon; 5:21-6:2). The court would agree that in comparison to the more restrictive and limiting interpretations of *ANTRIM* and *AFOLAYAN* (citations omitted) this proposed solution might be acceptable. But the decision, as this trier of fact believes, rests upon the showing of good cause. It is the determination of the court that good cause has been shown based upon the unrefuted testimony of the widow. (SOE; 3:19-21). As such, this court also believes the division made is the correct one, as there is no other evidence to refute that decision, or to modify it.

The benefit amounts to the cost of college for four years, for two students, roughly four years apart: tuition, books, room and board, meals, clothing, transportation and everyday expenses. College expenses are continually on the rise, with little chance of reversal. The costs the first child will experience will be repeated four years later for the second child. There is nothing in the case law or in the statutes which allow the defendant, or the court, to decide which expenses may be ignored, minimized or deleted, in terms of justifying the benefit.

Given appropriate foundation, estimates may be offered. However, the defendant was completely silent and offered no evidence for the court to consider. For the defendant to now file for reconsideration and ask the court to allow it to set aside the decision, reopen discovery and

permit the introduction of evidence that the defendant had, or could have had, prior access to (earnings, withholdings, deductions, benefits and projections) is unthinkable.

**IV
RECOMMENDATION**

It is recommended the Petition for Reconsideration be Denied.

DATED: February 22, 2022

JEFFRY DIAMOND
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE