

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

MIGUEL AHUMADA, *Applicant*

vs.

**CSW CONTRACTORS and ZURICH NORTH AMERICA administered by
CREATIVE RISK SOLUTIONS, *Defendants***

Adjudication Number: ADJ10210301

Bakersfield District Office

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

Applicant and Defendant seek reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on August 7, 2023, wherein the WCJ found in pertinent part that applicant was entitled to temporary disability indemnity benefits for the period from October 23, 2015, through November 17, 2016, in the amount of \$61,784.24, less \$4,125.00 in Unemployment Insurance benefits he received and less \$11,584.28 in State Disability Indemnity benefits he received, leaving a total of \$45,074.96; and that the Employment Development Department (EDD) was entitled to recover \$23,963.57 in State Disability Insurance (SDI) benefits paid to applicant plus \$3,115.00 in Unemployment Insurance (UI) benefits paid to applicant for a total of \$27,078.57.

Applicant contends that the proper temporary disability indemnity rate is \$165.40 per day so the award of temporary disability indemnity should have been \$64,671.40.¹

Defendant contends that since it is required to reimburse the EDD for benefits paid to applicant during the period that he was temporarily totally disabled, it is entitled to credit against applicant's temporary disability indemnity in the amount of \$23,963.57 for SDI benefits paid to

¹ Although applicant's "Petition other" was correspondence sent to the WCJ requesting "clarification" of F&A, it actually seeks review of a threshold issue and therefore is deemed a Petition for Reconsideration.

applicant by the EDD, and in the amount of \$4,125.00 for UI benefits the EDD paid to applicant.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending defendant's Petition for Reconsideration (Petition) be denied. We did not receive an Answer from applicant.

We have considered the allegations in the Petitions, and the contents of the Report. Based on our review of the record, for the reasons stated in our September 24, 2021 Opinion and Order Granting Petition For Reconsideration and Decision After Reconsideration, (Decision) which we adopt and incorporate by this reference thereto,² and for the reasons discussed below, applicant's Petition will be denied; regarding defendant's Petition, we will grant reconsideration, rescind the F&A, and return the matter to the WCJ to conduct further proceedings, if necessary, and to issue a new decision consistent with this opinion, from which any aggrieved person may timely seek reconsideration.

BACKGROUND

Applicant claimed injury to his low back and both legs while employed by defendant as a laborer on September 10, 2015. His last day of work for defendant was October 22, 2015. (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 29, 2018, p. 5; Def. Exh. 5.) The EDD paid applicant UI benefits for the period from November 7, 2015, through February 6, 2016, and it paid SDI benefits from March 7, 2016, through October 3, 2016. (Def. Exh. 15; Lien Cl. EDD, Exh. 2.)

The parties initially proceeded to trial on August 29, 2018. The subsequent Findings, Orders, and Award was rescinded for further development of the record and the parties again proceeded to trial on January 14, 2020. The March 4, 2020 Findings and Award was rescinded and the parties returned to trial on May 5, 2021. The issues submitted for decision included temporary disability, the permanent and stationary date, and the EDD lien. (MOH/SOE, May 5, 2021, p. 2.) On September 24, 2021, we issued our Decision whereby we affirmed the July 6, 2021 Findings and Award, except we amended it as follows:

4. The injury caused temporary disability from October 23, 2015, to November 17, 2016, a period of 392 days, which at \$1,103.29 per week, equals \$61,784.24; the award of temporary disability indemnity will be reduced by the amount of

² Commissioners Lowe and Sweeney, who were members of that panel have since retired and other panel members have been assigned in their place.

State Disability Insurance benefits and Unemployment Insurance benefits paid to applicant during the period of his temporary disability.

5. The EDD is entitled to recover \$23,963.57 on their lien, plus interest per Unemployment Insurance Code §2629.1; the EDD is entitled to be reimbursed the amount of Unemployment Insurance benefits it paid to applicant from November 7, 2015, through February 6, 2016, the amount of the reimbursement is deferred, with jurisdiction reserved.
(Decision, p. 7.)

The matter was returned to the WCJ to determine the amount of the reimbursement owed to the EDD based on the amount of UI benefits it paid to applicant for the period from November 7, 2015, through February 6, 2016. At the May 16, 2023 trial the matter was again submitted for decision. The issues submitted for decision included “Level of reimbursement to EDD per the Opinion and Order Granting Reconsideration,” the EDD lien for SDI benefits paid to applicant in the amount of \$23,963.57, and the EDD lien for UI benefits paid in the amount of \$4,135.00.

DISCUSSION

Having reviewed our Decision in the context of the Petitions and the Report, it is clear that we found the EDD was entitled to reimbursement from defendant for all benefits it paid to applicant (whether SDI or UI) during the period that applicant was temporarily totally disabled as a result of his injury; and that defendant is entitled to credit for the reimbursement/payments made to the EDD, against the temporary disability indemnity benefits it owes to applicant. Neither the parties nor the lien claimant (EDD) sought reconsideration or review of our Decision. Thus, it became final, and binding, i.e., the amended Findings were not matters to be litigated after our September 24, 2021 Decision became final. (Lab. Code, §§ 5901 *et seq.* and 5950 *et seq.*)

To clarify, we did not return the matter to the WCJ to have the parties re-litigate the issues of the amount of temporary disability indemnity benefits owed to applicant or the amount of reimbursement to which the EDD was entitled for the SDI benefits it paid to applicant. Based on the existing trial record at the time of our Decision, we were unable to determine the amount of UI benefits the EDD had paid applicant, and in turn we were unable to determine the proper amount of reimbursement the EDD was entitled to for its payment of the UI benefits. Therefore, upon return of this matter to the trial level, the only issue to be resolved, or litigated, was the amount of UI benefits the EDD paid to applicant.

Under these circumstances, it is appropriate that we again return this matter to the trial level for the parties to resolve or litigate the actual amount of the UI benefits the EDD paid to applicant so for which it is entitled to reimbursement.

Accordingly, applicant's Petition is denied; defendant's Petition is granted, we rescind the F&A, and we return the matter to the WCJ to conduct further proceedings, if necessary, and to issue a new decision consistent with this opinion, from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Award issued by the WCJ on August 7, 2023, is **DENIED**.

IT IS FURTHER ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued by the WCJ on August 7, 2023, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 7, 2023 Findings and Award is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings if necessary, and to issue a new decision, consistent with this opinion, from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 23, 2023

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

**MIGUEL AHUMADA
LAW OFFICE OF JOSEPH PLUTA
BRADFORD & BARTHEL, LLP
EMPLOYMENT DEVELOPMENT DEPARTMENT, UI, RANCHO CUCAMONGA
EMPLOYMENT DEVELOPMENT DEPARTMENT, SDI, BAKERSFIELD**

TLH/mc

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