

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

ARMEN MURADYAN, *Applicant*

vs.

**AJR TRUCKING;
INSURANCE COMPANY OF THE WEST, *Defendants***

**Adjudication Number: ADJ8520459
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION 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, we will grant reconsideration, amend the WCJ's decision to provide defendant credit for permanent disability advance (PDA) paid, and otherwise affirm the decision of January 22, 2024.

We agree with the WCJ's analysis that Labor Code section 4909 does not apply. We first note that the January 22, 2024 Findings and Award did not explicitly deny defendant credit for permanent disability advances (PDA). The parties stipulated that defendant paid applicant temporary disability benefits from August 25, 2012 to September 3, 2014, but there is no evidence in the record as to whether defendant advanced permanent disability benefits in accordance with Labor Code section 4650. We believe that it is appropriate that the credit be included in the Findings and Award, and we will amend the F&A to find that defendant is allowed credit for amounts previously paid, to be adjusted by the parties, with jurisdiction reserved at the trial level in the event of a dispute. Then if applicant disputes that PDAs were made or the amount of the claimed credit, applicant may bring that dispute to the WCJ.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of January 22, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of January 22, 2024 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS AND AWARD

FINDINGS OF FACT

6. The injury caused 100% permanent and total disability payable at the rate of \$272.01 per week commencing September 4, 2014 and subject to COLA upgrades per Cal. Lab.Code sec. 4659(c), with credit for amounts previously paid, to be adjusted by the parties, with jurisdiction reserved at the trial level in the event of a dispute.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

CRAIG SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 15, 2024

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

**ARMEN MURADYAN
ROSE, KLEIN & MARIAS
GALE, SUTOW & ASSOCIATES**

LN/pm

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

The injured employee (Respondent) is a 39-year-old truck driver who sustained injuries to his back while employed by the Petitioner. A Findings and Award was issued on 1/22/2024 finding the Respondent to be 100% permanently disabled.

The Petitioner is the Defendant who has filed a timely and verified Petition for Reconsideration on 2/15/2024 claiming (1) that the petition must be considered timely because the award had been improperly served by the Board, and (2) that the WCJ ought to have specifically awarded credit to the Petitioner for the permanent disability advances previously made against the permanent disability award.

For the reasons set forth below, the undersigned will recommend that the Petition either be DISMISSED or DENIED at the discretion of the Appeals Board.

I. STATEMENTS OF FACTS

The Award herein for 100% permanent disability was served by the Board on 1/22/2024 (EAMS#77559179). It was only served on the counsels of record. It was not served on any other parties. Hence Petitioner is correct that service of the Findings and Award was inadequate under Cal. Code of Regs. sec. 10628.

However, the Petition for Reconsideration was filed only 24 days after the award was issued (1/22/2024).

The Minutes of Hearing on 4/13/2023 set forth the issues to be determined. An issue characterized as “credit for permanent disability advances against permanent disability” was not specifically raised nor mentioned.

Permanent disability was ultimately found to be 100% payable at the temporary disability rate (\$272.01) commencing September 4, 2014, when the

statutory two years of temporary disability ceased under Cal. Lab. Code sec. 4656. COLA upgrades were awarded under Cal. Lab. Code sec. 4659(c).

While the Petitioner did not specifically ask for a finding on credit for permanent disability against any permanent disability award, it is more important to note that the Applicant did not contest any such credit.

II. DISCUSSION

Timeliness of Petition

Cal. Lab. Code sec. 5903 permits any aggrieved party from an order, decision, or award to file a Petition for Reconsideration within 20 days after service of said decision.

If an order is issued by mail, fax, or email then the time allowed to respond is increased by five calendar days. Cal. Code of Regs. sec. 10605.

The Findings and Award were issued on 1/22/2024. The Petition for Reconsideration was filed on 2/15/2024. Hence the petition is timely in that it was filed 24 days after the Findings and Award was issued.

Hence the argument that the service of the Findings and Award was defective is unnecessary.

Credit for Permanent Disability Advances

Petitioner “seeks” credit for the permanent disability advances they made for the periods 8/23/2014 through 4/19/2015 and 4/24/2015 through 7/2/2015.

They cite Cal. Lab. Code sec. 4909 as the basis for same. Sec. 4909 states: “Any payment, allowance or benefit received by the injured employee during the period of his incapacity, ... which by the terms of this division was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be an admission of liability for compensation on the part of the employer, but any such payment, allowance, or benefit may be taken into account by the appeals board in fixing the amount of the compensation to be paid....”

The permanent disability advances made by the Petitioner herein are not disputed at all. They are simply advances on permanent disability that were later found to be due to the Applicant. Hence sec. 4909 does not apply to this issue.

Sec. 4909 only applies to benefits that were voluntarily made but later found to not be due. Under those circumstances sec. 4909 allows the appeals board to consider credit issues against other benefits. But in this case the Petitioner was voluntarily paying permanent disability that was found to be due under the award.

There is no need for any defendant to petition to take credit for advances that are ultimately awarded as they were in this case. Petitions for credit apply to alleged overpayments of a benefit such as overpayments of temporary disability, credit in companion cases, credit for third party recovery and the like. However, in this case there is no overpayment. The employer is allowed to take credit for the advances against the ultimate permanent disability award without a petition to do so.

On the contrary it would be the Applicant who would need to petition to deny credit for permanent disability advances against the ultimate permanent disability award should there be some reason to do so. No such reason was raised herein.

III. RECOMMENDATION ON PETITION FOR RECONSIDERATION

A denial of this Petition could somehow be erroneously construed as a confirmation that credit for advances was denied. Hence it seems that denial of the Petition is inappropriate since there was no finding that credit was in fact denied.

The “issue” of credit for permanent disability was not an issue raised at trial (see Minutes of Hearing, 4/13/2023). Moreso, there is no need to petition to take such credit. Hence the undersigned would recommend that the Petition be **DISMISSED**.

DATED: February 21, 2024

Dean Stringfellow
Workers' Compensation
Administrative Law Judge