

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

KEARLENE BROOKS, *Applicant*

vs.

**COUNTY OF LOS ANGELES/HIGH DESERT HEALTH; SUBSEQUENT INJURIES
BENEFITS TRUST FUND, *Defendants***

**Adjudication Numbers: ADJ8042236; ADJ7897534
Van Nuys District Office**

**OPINION AND DECISION AFTER
RECONSIDERATION**

We previously granted reconsideration in this matter to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Joint Findings of Fact and Order (F&O) issued on April 5, 2021, wherein the workers' compensation administrative law judge (WCJ) found as relevant that (1) the findings and award finding applicant one hundred percent permanently disabled and entitled to benefits from the Subsequent Injuries Benefits Trust Fund (SIBTF) was served on August 13, 2018; (2) SIBTF issued payment on the award on September 27, 2018; (3) SIBTF is a governmental agency and not an employer for purposes of Labor Code sections 4650, 5814 and 5814.5;¹ (4) the payments made by SIBTF were correct; and (5) all other issues are moot.

The WCJ ordered that applicant's petitions for penalties be denied.

Applicant contends that the WCJ erroneously found that SIBTF is not subject to penalties under sections 4650, 5814 and 5814.5. Applicant further contends that the WCJ erroneously (1) found that SIBTF's payments were correct; admitted Exhibit B into evidence; (3) failed to find that the February 26, 2020 report of CPA Eric Hunt constituted substantial evidence; and (4) failed to find that SIBTF took credit for permanent disability indemnity at an incorrect rate.

We received an Answer from defendant SIBTF.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that the Petition be denied.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

We have reviewed the contents of the Petition, the Answer, and the Report. Based upon our review of the record, and for the reasons discussed below, we will affirm the F&O.

FACTUAL BACKGROUND

On June 26, 2018, the matter proceeded to trial as to the issues of whether applicant was entitled to SIBTF benefits with respect to case number ADJ8042236 and case number ADJ7897534. (Minutes of Hearing and Summary of Evidence, June 26, 2018, pp. 2:19, 3:9.)

The parties stipulated that the cases-in-chief of both cases were resolved by a Joint Stipulation with Request for Award, dated November 17, 2016, wherein the applicant was awarded permanent disability at ninety-nine percent, entitling applicant to permanent disability indemnity payable at \$270.00 per week beginning December 6, 2014 in the total sum of \$278,248.98, and thereafter a life pension payable at \$301.50 per week, adjusted to 310.50 per week commencing February 6, 2015, pursuant to section 4868(d). (*Id.*, p. 3:13-17.)

On August 10, 2018, the WCJ found that (1) the percentage of applicant's permanent disability resulting from a combination of all her disabilities is one hundred percent, entitling her to \$1,010.50 per week for the remainder of her life and subject to section 4659; and (2) the amount awarded against SIBTF shall be reduced to the extent of any payments applicant received for her preexisting disability or impairment as provided by section 4753, with jurisdiction reserved. The WCJ awarded applicant SIBTF benefits pursuant to sections 4751 and 4753, consistent with the above findings, less fifteen percent payable to her attorney. (Joint Findings and Award, August 10, 2018, pp. 1-3.)

On July 23, 2019, the matter proceeded to trial on applicant's petitions for penalties and attorney's fees dated May 8, 2019 and September 19, 2019, respectively. (Minutes of Hearing and Summary of Evidence, July 23, 2019, p. 2:23-25.)

The WCJ admitted defendant's Exhibit A, entitled Letter from the Department of Industrial Relations to Mr. Hershewe dated September 5, 2018, into evidence. (*Id.*, p. 3:13-18.) The WCJ excluded Exhibit B, entitled E-mail from Ms. Arizabal to Mr. Hershewe dated October 10, 2018, from evidence. (*Id.*)

The September 5, 2018 Letter from the Department of Industrial Relations states:

The award for Kearlene Brooks states that Subsequent Injuries Fund payments commence from 12/6/2014. Due to a prior award of \$65000.00 MVA 2009, the accrued benefits from 12/6/2014 through 10/22/2018 is \$91470.86. A check in the

amount of \$77749.72 is being sent to your client and you will receive a check in the amount of \$13720.54.

Below is a listing of the payment schedule. Fifteen percent will be paid as attorney fee.

(Exhibit A, Letter from the Department of Industrial Relations to Mr. Hershewe, September 5, 2018, p. 1.)

The payment schedule reveals that defendant paid applicant \$91,470.26 as of October 23, 2018 and \$99,792.76 as of January 1, 2019. (*Id.*, p. 7.)

On December 8, 2020, the matter proceeded to continued trial, and the WCJ admitted, Exhibit 20, entitled February 6, 2020 Report of CPA Eric Hunt, into evidence. (Minutes of Hearing, December 8, 2020, p. 2:9-10.) The court also admitted Exhibit B as evidence in rebuttal to Exhibit 20. (*Id.*, p. 2:11-13.) The minutes reflect:

Applicant objects contending that the Court already excluded Exhibit B at the time of trial on July 23, 2019, indicating that it was never listed at the time of the MSC. The applicant contends that taking that report into evidence is a constitutional violation and violates the applicant's rights to due process. Once the exhibit is excluded, it's always excluded. The Court overrules the objection. The report of Mr. Hunt and Defendant's Exhibit B go to the issue of whether or not SIBTF correctly calculated and paid the Award that the Court had previously issued. Based on that, the Court believes they both should be considered. (*Id.*, p. 2:15-21.)

The February 6, 2020 Report of CPA Eric Hunt states:

I have been employed by your client, Kearlene Brooks, as a consultant in order to prepare a calculation of permanent disability benefits and interest due to her from the County of Los Angeles for the following periods:

Beginning: December 6, 2014, the date of permanent disability

Ending: September 27, 2018, the date the Subsequent Injuries fund made payment for the Award of August 10, 2018.

...

Beginning: September 28, 2018

Ending: October 22, 2018, the date the Subsequent Injuries Trust fund made payments for the Award in the amount of \$91,470.86.

...

The total accrued benefits as of October 22, 2018 is \$223,853.00 less Automobile Accident Settlement of 65,000 and payment of 91,470.86 [] \$77,749.72 to Applicant and \$13,720.64 to Attorney. [T]herefore the total amount due is \$67,482.74 . . .

(Ex. B, February 6, 2020 report of CPA Eric Hunt, p. 1.)

The October 10, 2018 E-mail from Ms. Arizabal to Mr. Hershewe states:

Please see below on how SIF award was calculated, basing figures from the Joint F & A dated 8/10/2018 and IND award 12/21/2016.

Per F&A, IW is 100% and IND is 99% and it is stated in addendum paragraph 4 and 9 that the td rate is \$1050.50. If you look at page 3 of Joint Opinion on Decision, it also clearly states that although the IW's td rate is \$1066.72, the MAXIMUM TD RATE FOR 2012 is \$1010.50. It is also stated that 15% will be paid as AA fee.

As per the IND award, it settled for 99% with a CREDIT that SIF will take for \$270.00 starting 12/6/2014 and increased pd rate of \$310.50 starting 2/6/2015. Since this is a 99% award, SIF is also entitled to take a credit of \$301.50.

SIF case is calculated with a 100% overall, 99% IND and 1% SIF with credit to the MVA of \$65000.00 as mentioned in Angerman's report dated 10/7/2016, page 2. (as per report, IW stated under oath during depo that she received \$65000.00 settlement with regard to the MVA in 2009).

...

So from 12/16/2014 to 2/5/2015 SIF will pay \$740.50 (\$1010.50 td - \$270.00 pd), plus COLA starting 1/1/2015) Then from 2/6/2015 to 2/14/2032, SIF will pay \$700.00 (\$1010.50 td -310.50 pd) totaling 897.25 weeks. (plus COLA) Then, from 5/15/2032 to LIFE, SIF will pay \$709.00 (\$1010.50 td - \$301.50 IND LP) (COLA

SIF started paying COLA 1/1/2015.

So after the prior award and COLAs from 2015-2018, SIF owes \$91470.26 for the period of 12/6/2014 through 10/22/2018. Less 15% AA fee of \$13720.54 (check #69770341 with check date 9/27 /18, where a 204 was needed to be filled out for being a first time provider for SIF) IW got a check for \$77749.72 for the same period (check #69730623, with check date 9/20/2018.

A check for \$453.54 (check number 69730622 dated 9/20/2018) & \$80.04 (check number 69770340 dated 9/27/2018) was also paid as interest to both IW and your office respectively.

Then for the remaining weeks of 2018, IW and your office will be paid a biweekly check of \$1414.82 and \$249.68. For 2019 lw and your office will be paid \$1472.54 and \$259.86. We will need COLA for 2020 and onwards in order to get a more specific amount for the remaining years.

(Exhibit B, E-mail from Ms. Arizabal to Mr. Hershewe, October 10, 2018, p. 1.)

In the Report, the WCJ states:

Kearlene Brooks, a Registered Nurse for the County of Los Angeles High Desert Health, received a stipulated Joint Award dated 12/21/2016 (EAMS Doc ID# 62502936) of 99% permanent disability for injuries to her lumbar spine, cervical spine, bilateral knees, bilateral ankles, bilateral shoulders, hip, psyche, GERD, both arms, both upper extremities, sleep disorder and stomach as a result of injuries sustained on 3/5/2010 (ADJ7897534) and during the period 7/22/1986 through 12/31/2012. Applicant filed an Application for Subsequent Injuries Fund Benefits on 1/24/2017 (EAMS Doc ID# 62682031). In 2006, Applicant sustained injury from a prior non-industrial motor vehicle accident which resulted in 9% permanent disability in the opinion of the Agreed Medical Examiner Alexander Angerman, M.D. The issue of entitlement to SIBTF benefits went to trial on 6/26/2018 and applicant was found to be 100% permanently and totally disabled as a result of her injuries and was awarded SIBTF benefits (Joint Findings & Award dated 8/10/2018, EAMS Doc ID# 67845673).

Applicant filed a Petition for Penalties dated 9/19/2018 (EAMS Doc ID# 68206078) and a subsequent amended petition dated 9/5/2019 (EAMS Doc ID# 70105083). Applicant alleged that the Award of SIBTF Benefits was paid late, and that the amounts paid were incorrect.

The issue of penalties went to trial on 7/23/2019 and Joint Findings of Fact & Order issued on 9/18/2019 (EAMS Doc ID# 71149032), finding that payment of the Award was unreasonably delayed and ordering a 10% penalty of the amount delayed per Labor Code Sections 5814 and 4650(d), less attorney fees. The decision noted that the Award was served on August 13, 2018 and that payment issued on September 27, 2018 and that no reason for the delay was offered by defendant.

Applicant filed a Petition for Reconsideration from that decision and the Order was rescinded. The Petition alleged that the penalty was insufficient and the Award was incorrectly paid, among other issues. The parties were directed to obtain expert testimony with regard to the accuracy of the amounts paid (Minutes of Hearing 11/14/2019, Doc ID# 71597524). Applicant obtained a letter from a Certified Public Accountant Eric Hunt dated 2/6/2020 (Exhibit 20) and defendant sought to rely on correspondence from the claims examiner (Exhibit B).

...

As to Petitioners claim that the Award of SIBTF benefits was underpaid, petitioner again failed to carry its burden of proof on the issue. Based upon the defendant's exhibits admitted into evidence, Exhibits A and B, which were the more persuasive, it was found that SIBTF has correctly paid the applicant her benefits due. In support thereof, applicant submitted a letter from Eric Hunt, CPA. In reviewing his analysis, there is nothing to show that he has taken into account the employer's obligation for indemnity payments pursuant to the 99% Award. Its probative value is therefore dubious at best, and is insufficient to carry her burden of proof. . . .

(Report, pp. 1-5.)

DISCUSSION

Citing no authority supporting her position, applicant argues that SIBTF should be subject to penalties under sections 4650(d), 5814 and 5814.5 because a determination to the contrary would foreclose “any remedy or relief to injured employees against the Subsequent Injuries Fund.” (Petition, p. 6:22.)

Section 4650(b) provides:

(1) If the injury causes permanent disability, the first payment shall be made within 14 days after the date of last payment of temporary disability indemnity, except as provided in paragraph (2). When the last payment of temporary disability indemnity has been made pursuant to subdivision (c) of Section 4656, and regardless of whether the extent of permanent disability can be determined at that date, the *employer nevertheless shall commence* the timely payment required by this subdivision and shall continue to make these payments until the *employer's* reasonable estimate of permanent disability indemnity due has been paid, and if the amount of permanent disability indemnity due has been determined, until that amount has been paid.

(2) Prior to an award of permanent disability indemnity, a permanent disability indemnity payment shall not be required if the *employer* has offered the employee a position that pays at least 85 percent of the wages and compensation paid to the employee at the time of injury or if the employee is employed in a position that pays at least 100 percent of the wages and compensation paid to the employee at the time of injury, provided that when an award of permanent disability indemnity is made, the amount then due shall be calculated from the last date for which temporary disability indemnity was paid, or the date the employee's disability became permanent and stationary, whichever is earlier.

(§ 4650(b) [Emphasis added].)

Section 4650(d) provides:

If any indemnity payment is *not made timely as required by this section*, the amount of the late payment shall be increased 10 percent and shall be paid, without application, to the employee, unless the *employer* continues the employee's wages under a salary continuation plan, as defined in subdivision (g). No increase shall apply to any payment due prior to or within 14 days after the date the claim form was submitted to the *employer* under Section 5401. No increase shall apply when, within the 14-day period specified under subdivision (a), the *employer* is unable to determine whether temporary disability indemnity payments are owed and advises the employee, in the manner prescribed in rules and regulations adopted pursuant to Section 138.4, why payments cannot be made within the 14-day period, what additional information is required to make the decision whether temporary disability

indemnity payments are owed, and when the *employer* expects to have the information required to make the decision.
(§ 4650(d) [Emphasis added].)

In *Baker v. Workers' Comp. Appeals Bd. (Guerrero)* (2017) 13 Cal.App.5th 1040 [220 Cal.Rptr. 3d 761], the court was presented with the issue of whether SIBTF was required to commence subsequent injury benefits payments to the applicant at the same time that section 4650 required the employer to commence permanent disability payments. The court held that, once permanent disability payments are required for an employee who also qualifies for SIBTF benefits, the SIBTF is obligated to commence benefits payments under section 4751.

The court reasoned:

Section 4650, subdivision (b) governs the payment of workers' compensation benefits for permanent disability. It provides that an employer must begin making permanent disability payments to an employee within 14 days of the date that the employee's last payment for temporary disability was owed. Even if the employee's injury has not yet been determined to be permanent and stationary, the employer must start making permanent disability payments once temporary benefits cease. (§ 4650, subd. (b)(1) [“regardless of whether the extent of permanent disability can be determined at that date, the employer nevertheless shall commence the timely payment required by this subdivision and shall continue to make these payments until the employer's reasonable estimate of permanent disability indemnity due has been paid”].)

Petitioner is correct that section 4650, subdivision (b), which states “the employer” must make timely payment of permanent disability benefits, *applies only to benefits payable by employers*, and that the *SIBTF is not considered an employer for purposes of payment of workers' compensation benefits*. (See *Subsequent Etc. Fund v. Ind. Acc. Com.*, *supra*, 39 Cal.2d at p. 92 [“We do not believe that the [SIBTF], even regarded as an entity, must necessarily be also regarded as in the position of an employer.”].) Petitioner is also correct that the timing of SIBTF benefit payments is governed by section 4751. But petitioner is incorrect that those premises result in a different conclusion than the one reached by the Workers' Compensation Appeals Board . . .

(*Guerrero, supra*, at pp. 1046-1047 [Emphasis added].)²

Here, inasmuch as section 4650(b) governs when an employer must begin paying permanent disability benefits, section 4650(d) authorizes the imposition of penalties when such

² Accord, *Subsequent Injuries Fund v. Industrial Acci. Com.*, (1957) 151 Cal.App.2d 147, 149-150 [22 Cal.Comp.Cases 118] (holding that liability for compensation pursuant to section 4700 could not be imposed against SIBTF on the grounds that it is not an “employer”).

payments are not “made timely”, and *Baker, supra*, finds that section 4650 applies only with respect to benefits payable by employers and SIBTF cannot be an employer thereunder, it follows that the WCJ may not impose section 4650 penalties against SIBTF.

Accordingly, we agree with the WCJ that SIBTF is a governmental agency and not an employer for purposes of section 4650.

Applicant argues that the WCJ is authorized to impose section 5814 and 5814.5 penalties against SIBTF because section 5814(a) omits any reference “employers” as the subject party.

Section 5814 provides, as relevant:

(a) When payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the payment unreasonably delayed or refused shall be increased up to 25 percent or up to ten thousand dollars (\$10,000), whichever is less. . . .

(b) If a *potential violation of this section is discovered by the employer* prior to an employee claiming a penalty under this section, *the employer*, within 90 days of the date of the discovery, may pay a self-imposed penalty in the amount of 10 percent of the amount of the payment unreasonably delayed or refused, along with the amount of the payment delayed or refused. This self-imposed penalty *shall be in lieu of the penalty in subdivision (a)*.

. . .

(d) The payment of any increased award pursuant to subdivision (a) *shall be reduced by any amount paid under subdivision (d) of Section 4650 on the same unreasonably delayed or refused benefit payment*.

(e) *No unreasonable delay in the provision of medical treatment shall be found when the treatment has been authorized by the employer in a timely manner and the only dispute concerns payment of a billing submitted by a physician or medical providers provided in Section 4603.2.*

(§ 5814 [Emphasis added].)

Section 5814.5 states:

When the payment of compensation has been unreasonably delayed or refused subsequent to the issuance of an award *by an employer* that has secured the payment of compensation pursuant to Section 3700, the appeals board shall, *in addition to increasing the order, decision, or award pursuant to Section 5814, award reasonable attorneys' fees* incurred in enforcing the payment of compensation awarded.

(§ 5814.5 [Emphasis added].)

In *Duncan v. Workers' Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294, the court was presented with the issue of whether section 5813 sanctions could be imposed against the Uninsured

Employers Benefits Trust Fund (UEBTF) for delay in payment of attorney fees. The court found that neither section 5813 sanctions nor section 5814 penalties could be imposed against UEBTF, reasoning:

The penalty provisions of section 5814, which apply when the payment of compensation has been unreasonably delayed or denied, were “enacted as an inducement to prompt payment on the part of *private employers and their insurers*, which otherwise would have an economic incentive to delay or deny the payment of workers' compensation benefits.” (*DuBois, supra*, 5 Cal.4th at p. 397.) They are both remedial and penal. (*Id.* at p. 396.) “The remedial aspect is to encourage the return of injured workers to their employment as quickly as possible. The penal aspect is to compel the *employer* to comply with the law fully and promptly.” (*Davison v. Industrial Acc. Com.* (1966) 241 Cal.App.2d 15, 18 [50 Cal.Rptr. 76]; accord, *DuBois, supra*, 5 Cal.4th at p. 396.) (*Duncan, supra*, at p. 301 [Emphasis added].)

While section 5814(a) sets forth the criteria for and limitations of penalties for delay of payment of workers' compensation benefits, it does not identify the parties against whom those penalties may be assessed. However, the language of sections 5814 (b)(d)(e), section 5814.5, and the reasoning of *Duncan, supra*, reveal that these statutes authorize penalties against “private employers and their insurers” and not governmental entities.

Accordingly, we agree with the WCJ that section 5814 penalties and section 5814.5 attorney's fees may not be imposed against SIBTF.

We next address applicant's contention that the WCJ erroneously found that SIBTF's payments were correct. Specifically, applicant argues that SIBTF's calculations in Exhibit A show that defendant owed the amount of \$99,792.76 for subsequent injuries benefits accrued from December 6, 2014 to October 22, 2018, but only paid \$91,470.26. However, our review of Exhibit A reveals that defendant did in fact owe the amount of \$91,470.26 for benefits accrued from December 6, 2014 to October 22, 2018, and did not owe the amount of \$99,792.76 until January 1, 2019. (Exhibit A, Letter from the Department of Industrial Relations to Mr. Hershewe, September 5, 2018, pp. 1,7.) It follows that applicant's argument lacks merit.

Accordingly, we agree with the WCJ that SIBTF's payments were correct.

We next address applicant's contention that the WCJ erred by admitting Exhibit B into evidence on the grounds that the WCJ had previously deemed it inadmissible.

Here, the record reveals that the WCJ imposed penalties upon defendant and applicant sought reconsideration of those penalties on the grounds that they were insufficient and that defendant incorrectly paid the August 10, 2018 award. (Report, p. 2.) Based upon applicant's

reconsideration request, the WCJ rescinded the penalties and directed the parties to obtain expert testimony with regard to the issue of whether the award was correctly paid. (*Id.*, pp. 2-3.) Upon applicant's submission of Exhibit 20, the February 6, 2020 Report of Eric Hunt, defendant submitted Exhibit B in rebuttal. (Minutes of Hearing, December 8, 2020, p. 2:9-21.)

This record demonstrates that (1) applicant's reconsideration request reopened the issues of whether and to what extent defendant issued subsequent injury benefits payments in accordance with the August 10, 2018 award; (2) applicant submitted new evidence in support of her reopened claims; and (3) defendant, in consequence, was entitled to submit new evidence in rebuttal.

Accordingly, we conclude that the WCJ properly admitted Exhibit B into evidence.

We next address applicant's contention that the WCJ erroneously failed to find that the Report of CPA Eric Hunt dated February 26, 2020, constituted substantial evidence.

Here, as stated by the WCJ in the Report, the report fails to indicate that Mr. Hunt accounted for applicant's employer's obligation to issue permanent disability indemnity pursuant to the ninety-nine percent award in order to correctly calculate SIBTF's obligations. (Report, p. 5; see also Joint Findings and Award, August 10, 2018, pp. 1-3.)³ More generally, the report does not calculate subsequent injury benefits owed by SIBTF, but rather permanent disability benefits and interest owed by County of Los Angeles; and, as such, appears wholly irrelevant to the issues of whether and to what extent SIBTF has complied with the August 10, 2018 award. (Ex. B, February 6, 2020 Report of Eric Hunt, p. 1.)

Accordingly, we agree with the WCJ that the February 6, 2020 Report of Eric Hunt does not constitute substantial evidence.

Lastly, we address applicant's contention that the WCJ erroneously failed to find that SIBTF took credit at an incorrect permanent disability indemnity rate. Specifically, applicant argues that defendant was entitled to take a credit against her permanent disability benefits at a rate no higher than \$244.67 per week.

Section 5702 provides:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. **The appeals board may thereupon**

³ Accord, *Brown v. Workers' Comp. Appeals Bd.* (1971) 20 Cal.App.3d 903 (finding that where the applicant had not shown that the injury he claimed as a previous permanent partial disability was not a nonspecific composite of the cumulative injury for which he sought and received compensation through a compromise settlement, the use of that same injury against both the defendant employers and the subsequent injuries benefits fund would result in an impermissible double recovery.)

make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy. (§ 5702 [Emphasis added].)

Stipulations between counsel are a "substitute for proof" and binding on the parties "if within the authority of the attorneys," and on the court if "not contrary to law, court rule or policy." (*Greator v. Board of Administration* (1979) 91 Cal.App.3d 54, 58 [44 Cal.Comp.Cases 553].) Stipulations between counsel further "'the public policies of settling disputes and expediting trials...' (citation) 'and their use in workers' compensation cases should be encouraged.'" (*Fireman's Fund Ins. Co. v. Workers' Comp. Appeals Bd. (Allen)* (2010) 181Cal.App.4th 752, 764 [75 Cal.Comp.Cases 1]; see *County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].)

Here, the record shows that on June 26, 2018, the parties stipulated that applicant's cases in chief were resolved through a joint stipulation and award to applicant of permanent disability indemnity payable at \$270 per week beginning December 6, 2014 in the total sum of \$278,248.98, and thereafter a life pension payable at \$301.50 per week, with the rate adjusted to \$310.50 per week commencing February 6, 2015. (Minutes of Hearing and Summary of Evidence, June 26, 2018, p. 3:13-17.) Having entered into this stipulation specifying the terms of the benefits subject to defendant's credit, applicant is bound by it. It follows that applicant's argument lacks support.

Accordingly, we conclude that applicant's contention that SIBTF took credit at an incorrect permanent disability indemnity rate is without merit.

Accordingly, we will affirm the F&O.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration, that the Petition for Reconsideration of the Joint Findings of Fact and Order issued on April 5, 2021 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 28, 2023

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

**KEARLENE BROOKS
LAW OFFICES OF DENNIS J. HERSHEWE
OFFICE OF THE DIRECTOR – LEGAL UNIT**

SRO/es

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