

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

**WILLIAM LESSING, *Applicant***

**vs.**

**LABORATORY CORPORATION OF AMERICA HOLDINGS;  
BROADSPIRE, *Defendants***

**Adjudication Number: ADJ11900841  
Oxnard 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/ JOSEPH V. CAPURRO, COMMISSONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**July 21, 2023**

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

**WILLIAM LESSING  
LAW OFFICE OF JOHN H. SUGDEN  
SAVAGE LAW FIRM, APC**

**AS/mc**

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

# **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

## **I**

### **INTRODUCTION**

Bill Lessing, a 61-year-old courier for Lab Corp, filed an Application for Adjudication on 2/1/19, alleging that on 8/19/18, he sustained injury arising out of and occurring in the course of employment to his lower extremity, wrist, fingers, shoulder, and hand, as a result of falling while carrying a box. The claim was accepted by the employer.

Defendant has filed a timely, verified, Petition for Reconsideration of the Findings, Award, and Orders dated 4/27/23 alleging that:

- 1) By the Findings, Award, and Orders, the Board acted without or in excess of its powers, and;
- 2) The evidence does not justify the Findings of Fact.

Petitioner contends that the Court erred in determining Applicant's earnings for purposes of calculating the temporary disability indemnity rate.

## **II**

### **FACTS**

The issues of earnings and temporary disability, among other things were submitted for decision at the time of trial on 3/16/21. At trial, Applicant testified he had concurrent employment at Lab Corp and VC Star, also known as Alta Inc., (Summary of Evidence, 3/16/21, page 4). The Court issued Findings and Orders on 10/25/21 wherein it was determined that based on earnings information submitted by Applicant relative to the two different employers (Applicant's exhibit 7), his earnings were 1,533.42 corresponding to a temporary disability rate of \$1,022.28. Based on the W-2 form from Lab Corp, Applicant had average weekly earnings in excess of \$900.00. The balance of the earnings (over \$600.00) were determined from the carrier statements from Alta Inc. The parties were also ordered to develop the record on the period of temporary disability as well as the level of permanent disability. That decision was never appealed.

After development of the record, the matter was again submitted for decision at the hearing of 3/8/23. The Court issued a Findings, Award and Orders on 4/27/23 wherein it was determined that the period of temporary disability commenced 8/10/18 through 1/6/19, and that Applicant was

entitled to temporary disability indemnity at the weekly rate which had already been determined in the decision of 10/25/21.

### III

#### DISCUSSION

Petitioner's grievance is solely with the amount of wages the Court found as the foundation for temporary disability rate. However the decision relative to earnings was made on 10/25/21. A determination of earnings constitutes a final decision as opposed to a non-final interlocutory order<sup>1</sup>.

Petitioner never filed a Petition for Reconsideration relative to that decision and it has long since become final. Since the determination of earnings was determined and became a final decision back in 2021, it is not a proper subject for reconsideration now.

However, assuming arguendo that Petitioner has timely challenged the decision on earnings, her argument as to Applicant's weekly wage at Lab Corp is not based on any evidence. No evidence was submitted or testimony taken relative to Applicant's hourly rate at Lab Corp. Petitioner also argues that in aggregating<sup>2</sup> the earnings per LC 4453, the earnings from the employer where the injury did not occur shall not be taken at a higher rate. As already explained, the Court determined that the wages from Lab Corp, where the injury occurred, were in excess of \$900.00 based on the W-2 form, and the earnings from Alta were only around \$600.00. Finally, Petitioner argued that Applicant testified that he was not able to do the job at Alta at times due to his injury. But again, there is no evidence to that effect.

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<sup>1</sup> Ordinarily, a "final" order is a non-interlocutory decision which determines a substantive right or liability. (Maranian v. Workers' Comp. Appeals Bd. (2000) 81 Cal.App.4th 1068, 1075 [97 Cal. Rptr. 2d 418] [65 Cal.Comp.Cases 650]; Rymer v. Hagler (1989) 211 Cal.App.3d 1171, 1180 [260 Cal. Rptr. 76]; Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer) (1980) 104 Cal.App.3d 528, 534-535 [163 Cal. Rptr. 750] [45 Cal.Comp.Cases 410]; Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer) (1978) 82 Cal.App.3d 39, 45 [147 Cal. Rptr. 30] [43 Cal.Comp.Cases 661].)

<sup>2</sup> Petitioner mistakenly used the word "accurate" instead of "aggregate."

**IV**

**RECOMMENDATION**

For the foregoing reasons, the undersigned WCALJ recommends that the Petition for Reconsideration be **DENIED**.

DATE: 5/31/23

**JEFFREY MORGAN**  
WORKERS' COMPENSATION JUDGE