

STATE OF CALIFORNIA

MICHAEL RAMRAKHA, *Applicant*

vs.

**STATE OF CALIFORNIA, RICHARD J. DONOVAN CORRECTIONAL FACILITY,
legally uninsured; STATE COMPENSATION INSURANCE FUND,
STATE CONTRACT SERVICES SAN DIEGO, *Defendants***

**Adjudication Numbers: ADJ8919366 (MF); ADJ4508242 (AHM 0121305);
ADJ1415534 (AHM 0121299)
San Diego District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Previously, we issued our Opinion and Decision After Reconsideration (Opinion) on March 29, 2023. On April 17, 2023, applicant filed a Petition for Reconsideration, on the basis that he had new evidence that he could not have discovered with reasonable diligence. (Lab. Code, § 5903(d).) Applicant contends that the level of his impairment has increased since the Joint Findings and Award (F&A) of March 10, 2020.

We received defendant's Answer.

In the F&A, the workers' compensation judge ("WCJ") issued decisions in three case numbers. In ADJ1415534, the WCJ found, in relevant part, that on September 16, 2001, applicant, while employed as a correctional officer by the California Department of Corrections and Rehabilitation ("CDCR"), sustained industrial injury in the form of coronary heart disease, hypertensive cardiovascular disease, and hematopoietic impairment, that applicant's earnings at the time of injury were \$1,156.62 per week, warranting an indemnity rate of \$170.00 for permanent disability, that the injury caused permanent disability of 25% with compensation payable by 95.75 weeks of indemnity benefits at a rate of \$170.00 per a week for a total \$16,277.50, that applicant's attorney is allowed a fee of 15% of said indemnity for a total of \$2,441.63, and that defendant is not entitled to take credit for this permanent disability from ADJ4508242.

In ADJ4508242, the WCJ found that on March 16, 2003, applicant, while employed as a correctional officer by the CDCR, sustained industrial injury in the form of coronary heart disease,

hypertensive cardiovascular disease, and hematopoietic impairment, that applicant's earnings at the time of injury were \$1,659.44 per week, warranting an indemnity rate of \$185.00 for permanent disability, that the injury caused permanent disability of 4% with compensation payable by 12 weeks of indemnity benefits at a rate of \$185.00 per week for a total of \$2,220.00, that applicant's attorney is allowed a fee of \$333.00, and that "[t]he employer/carrier has paid compensation pursuant to the benefits paid report."

In ADJ8919366, the WCJ found that applicant, while employed by the CDCR as a correctional officer during the period March 17, 2003 to February 3, 2013, sustained industrial injury in the form of coronary heart disease, hypertensive cardiovascular disease, and hematopoietic impairment, that applicant's earnings at the time of injury were \$2,608.48 per week, warranting an indemnity rate of \$230.00 for permanent disability, that the injury caused permanent disability of 53% with compensation payable by 295.25 weeks of indemnity at a rate of \$230.00 per week totaling \$67,907.50, that applicant's attorney is allowed a fee of \$10,186.13, that "[t]he employer/carrier has paid compensation pursuant to the benefits paid report[.]" and that defendant is not entitled to take credit for permanent disability for this case from ADJ4508242.

Defendant filed a timely Petition for Reconsideration of the WCJ's decisions, contending that the WCJ erred in denying credit for overpayment based on defendant's failure to file a petition for credit, because defendant filed a petition for credit on February 7, 2020. Defendant further contended that applicant was not prejudiced by defendant's alleged failure to file a petition for credit, that the WCJ erred in concluding defendant submitted no evidence showing the reasons how and why benefits were paid, and that the WCJ abused her discretion in disallowing credit.

Based on our review of the record and applicable law, we concluded that in ADJ1415534, defendant was entitled to credit for permanent disability indemnity paid in ADJ4508242, but the WCJ correctly denied credit in ADJ8919366. As our Decision After Reconsideration, we amended the WCJ's decisions to allow defendant credit in ADJ1415534 for permanent disability indemnity paid in ADJ4508242, and we affirmed the WCJ's denial of credit for permanent disability indemnity owed by defendant on the cumulative injury in ADJ8919366 (date of injury March 17, 2003 to February 3, 2013).

We have reviewed the record and have considered the allegations in the Petition and the Answer, based on our review of the record, and as discussed below, we will deny reconsideration.

A Petition for New and Further Disability pursuant to Labor Code section 5410 derives from the Appeals Board's authority "to make awards for new and further disability caused by an earlier industrial injury ..." (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd. (Cairo)* (1973) 9 Cal.3d 848, 854-858 [109 Cal.Rptr. 211, 512 P.2d 843] (conc. opn. of Sullivan, J.)) On the other hand, sections 5803 and 5804, "together with section 5805 define the power of the Board to rescind, alter or amend previous awards of compensation where "good cause" is shown." (Ibid.; see also *Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920 [72 Cal.Comp.Cases 778] (*Sarabi*); *Nicky Blair's Rest. v. Workers' Comp. Appeals Bd. (Macias)* (1980) 109 Cal.App.3d 941 [45 Cal.Comp.Cases 876] (*Macias*).) Once the continuing jurisdiction of the WCAB has been invoked, the WCJ and the Appeals Board possess the authority to reconsider the entire case, including applicant's assertions related to the sufficiency of the Award. (*Bland v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 324, 475 [35 Cal. Comp. Cases 513, 517] ["in a petition to reopen, the injured employee need not request any particular classification of compensation in order to vest the Board with jurisdiction to reconsider the entire case"]; see also *Sarabi*, supra, at p. 925 [very broad or general petitions are sufficient to invoke the continuing jurisdiction of the Appeals Board].)

Here, the sole issues raised at trial on January 15, 2020 were attorney's fees and "whether or not defendant can take credit of a permanent disability overpayment in a total amount of 27,833.25 from ADJ4508242, with \$13,835.88 to ADJ1415534 and \$13,997.37 to ADJ8919366." The parties stipulated to the level of applicant's permanent disability in each case, and no issue was raised as to the level of permanent disability. In applicant's Answer of April 13, 2020, applicant did not raise the issue of further permanent disability impairment, and in fact, applicant's arguments were based on the stipulated levels of permanent disability and the amounts owed by defendant.

Applicant admits in his Petition that his level of permanent disability has increased since the F&A of March 10, 2020. While we do not consider the merits of whether it is appropriate as a timely filed petition to reopen, our cursory review of applicant's Petition indicates that it is more akin to a petition for new and further disability since the issues raised were not raised at trial or in a timely petition for reconsideration of the F&A. Our Opinion is based on the record as it existed at the time of the issuance of the F&A, and the issue of new evidence under Labor Code section 5903(d) is required to be raised in a timely filed petition for reconsideration in the first instance.

In short, applicant's contention that applicant now has an increased level of permanent disability is not a basis for a petition for reconsideration of our Opinion. (Lab. Code, §§ 5815, 5904.) We make no determination as to the merits of the Petition, or whether it could be considered to be a timely filed petition to reopen.

Accordingly, we deny applicant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Opinion and Decision After Reconsideration issued on March 29, 2023 by the Workers' Compensation Appeals Board is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 25, 2023

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

**MICHAEL RAMRAKHA
LAW OFFICES OF EDWARD SINGER
STATE COMPENSATION INSURANCE FUND, LEGAL**

AS/mc

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