

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

**MOHINDER MANN for BALWINDER MANN (deceased), *Applicant***

**vs.**

**D&G TRANS LOGISTICS;  
UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ8496155  
Lodi District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted the Petition for Reconsideration (Petition) filed by the Uninsured Employers Benefits Trust Fund (UEBTF) in order to further study the legal and factual issues raised therein. This is our Opinion and Decision After Reconsideration.<sup>1</sup>

UEBTF sought reconsideration of the Findings of Fact (F&O) of April 4, 2019, wherein the workers' compensation administrative law judge (WCJ) denied UEBTF's request for credit against its liability for death benefits paid to decedent's wife, Mohinder Mann, for \$39,960.00 in civil settlement proceeds that Ms. Mann received after the death of her husband, Balwinder Mann (decedent).

In the Petition, UEBTF contends that the credit is mandatory pursuant to Labor Code sections 3709, 3709.5, and 3732.<sup>2</sup> UEBTF claims that Ms. Mann's civil settlement recovery was "directly related" to Mr. Mann's industrial injury/death, and that "expenses related to death are clearly subject to a credit as they duplicate payments available in the workers' compensation claim." (Petition, pp. 5-6.)

We received an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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<sup>1</sup> Commissioners Sweeney and Lowe, who were previously panelists in this matter, no longer serve on the Appeals Board. Other panel members have been assigned in their places.

<sup>2</sup> All further statutory references are to the Labor Code unless otherwise stated.

We have considered the allegations of the Petition, the Answer, and the contents of the WCJ's Report. Based on our review of the record, and for the reasons discussed below, it is our decision after reconsideration to affirm the WCJ's April 4, 2019 F&O.

## FACTS

Balwinder Mann sustained injury and death during a motor vehicle accident on April 25, 2011 while employed as a truck driver by an uninsured employer, Darbara Singh, individually, doing business ("dba") D&G Trans Logistics.

In August 2012, Mr. Mann's wife, Mohinder Mann, filed a death claim with the Workers' Compensation Appeals Board, seeking an award of death benefits, burial expenses, accrued and unpaid compensation, and unpaid medical bills. UEBTF was joined in the proceeding in December 2014, and the matter was settled by Compromise and Release Agreement (C&R) in May 2017. Pursuant to the C&R, UEBTF paid Mr. Mann's family \$309,798.24 in death benefits, including \$103,266.08 in death benefits to Ms. Mann. (C&R, May 17, 2017; Order Approving C&R (OACR), August 3, 2017.) In an addendum to the C&R, UEBTF claimed that it was entitled to a credit for \$39,960.00 that Ms. Mann had received in a third party settlement, disbursed from the Stein Law Firm in September 2011, as depicted in a document titled "Final Settlement Distribution," which was entered into evidence. (C&R, p. 7, Defendant's Exh. I.) The WCJ reserved the credit issue and deferred it for trial at a later date.

On February 7, 2019, the parties proceeded to trial on UEBTF's request for credit. During trial, when asked whether a civil suit had been filed "due to the fact of her husband's death," Ms. Mann indicated in the affirmative. (Minutes of Hearing and Summary of Evidence (MOH/SOE), February 7, 2019, p. 3.) Ms. Mann was initially unsure why she received the settlement money, however, upon further questioning by UEBTF's counsel, Ms. Mann indicated that part of the civil settlement "included companionship." (*Ibid.*) Ms. Mann remembered signing the Final Settlement Distribution document with the Stein Law Firm and receiving \$39,960.00. (*Ibid.*; Defendant's Exh. I.)

On April 4, 2019, the WCJ issued the disputed F&O, concluding that UEBTF failed to establish that it was entitled to credit for Ms. Mann's civil settlement recovery against the death benefits paid. Specifically, the WCJ concluded that UEBTF did not satisfy its burden to prove that

Ms. Mann received a “double recovery” as a result of the civil settlement and the death benefits, and denied UEBTF’s request for credit accordingly.

## DISCUSSION

In its Petition, UEBTF contends that pursuant to sections 3709, 3709.5, and 3732, it is entitled to a mandatory credit for Ms. Mann’s civil settlement recovery. UEBTF asserts that the WCJ erroneously placed the burden upon it to prove “double recovery” between the death benefits that it paid to Ms. Mann and the third party settlement proceeds in order obtain the credit. (Petition, pp. 3-6, citing Lab. Code, §§ 3709, 3709.5, 3732.) UEBTF argues that, if anything, it was Ms. Mann’s burden to prove that the civil suit was unrelated to her husband’s industrial injury/death, and that the settlement proceeds thus did not constitute overlapping workers’ compensation benefits for which UEBTF could claim credit.

Upon review, we conclude that the WCJ correctly placed the burden of proof upon UEBTF. We have previously explained that the defendant bears the burden of proof to establish entitlement to credit. In *Martinez v. Associated Engineering & Construction Co. (Martinez)* (1979) 44 Cal.Comp.Cases 1012, 1021 (Appeals Board en banc),<sup>3</sup> we explained:

[D]efendant has the burden of proof to establish its right to claim a credit. It must show that there was a third party settlement and that it has paid out compensation benefits or will likely have to pay such benefits in the future.

(*Id.* at p. 1021; see also Lab. Code, § 5705.)<sup>4</sup>

Here, UEBTF is the defendant asserting its right to a credit for Ms. Mann’s third party settlement in the amount of \$39,960.00. As a result, UEBTF bears the burden of proof on this issue. As explained below, we conclude that UEBTF has failed to meet its burden.

Section 3861 governs the allowance of credit in a Workers’ Compensation Appeals Board proceeding, and states, in pertinent part:

The appeals board is empowered to and shall allow, as a credit to the employer to be applied against his liability for compensation, such amount of any recovery by the employee for his injury, either by settlement or after judgment, as has not theretofore been applied to the payment of expenses or attorneys’ fees....

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<sup>3</sup> En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers’ Comp. Appeals Bd.* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

<sup>4</sup> “The burden of proof rests upon the party or lien claimant holding the affirmative of the issue.” (Lab. Code, § 5705.)

(Lab. Code, § 3861.)

In cases where the employer is uninsured, UEBTF is joined in the claim and may request credit for any compensation paid. Under the Workers' Compensation Act (Act), "compensation" includes "every benefit or payment conferred by this division upon an injured employee, or in the event of his or her death, upon his or her dependents, without regard to negligence." (Lab. Code, § 3207.) As the Court of Appeal has previously explained, "[t]he term 'compensation' is a technical one and includes all payments conferred by the act upon an injured employee....[it] is indemnification for injury sustained." (*Hawthorn v. Beverly Hills* (1952) 111 Cal.App.2d 723 [17 Cal.Comp.Cases 180, 183]; *Ferguson v. Workers' Comp. Appeals Bd.* (1995) 33 Cal.App.4th 1613, 1619 [60 Cal.Comp.Cases 275].)

Here, UEBTF argues that it is entitled to a mandatory credit against the death benefits that it paid to Ms. Mann in the amount equal to her civil settlement recovery. We disagree.

When an injury causes death to an employee, an employer is liable for an additional "death benefit, to be allowed to the dependents. . ." (Lab. Code, § 4701(b).) That is, by statute, death benefits do not compensate the deceased employee for their injury. Instead, death benefits compensate the deceased employee's *dependents* for the loss of support that was provided by the employee during their lifetime. (Lab. Code, §§ 4701, 4702.) The courts have frequently explained that the "dependent's right...to death benefits...is '*independent and severable* from the employee's claim for disability compensation.'" (*Berkebile v. Workers' Comp. Appeals Bd.* (1983) 144 Cal.App.3d 940, 944 [48 Cal.Comp.Cases 438], quoting *Zenith Insurance Co. v. Workers' Comp. Appeals Bd.* (1981) 124 Cal.App.3d 176, 187 [46 Cal.Comp.Cases 1126], italics added; Lab. Code, §§ 4701(b), 4702, 4703.) In other words, death benefits are a separate species of benefit that belong *strictly* to the dependent and are *independent* of any workers' compensation benefits owed to the deceased employee.

Under section 3861, the Appeals Board shall allow "a credit to the employer...[for] any recovery *by the employee for his injury...by settlement....*" (Lab. Code, § 3861, italics added.) Yet, UEBTF's claim is not against the injured employee for proceeds that the injured employee received in the civil settlement because of the incident that caused the industrial injury. On the contrary, UEBTF's claim of credit is against the injured employee's *dependent* for the proceeds that the injured employee's *dependent* received for a separate and distinct recovery of expenses and loss of companionship. Although UEBTF emphatically asserts that the civil settlement was a

“direct result” of Mr. Mann’s industrial injury, there is nothing in the record to support such a strong position.

First, it is clear that Ms. Mann is not, and was not, the injured employee. Second, as explained above, the benefits owed to Ms. Mann by UEBTF were dependents’ death benefits, and not accrued and unpaid compensation for Mr. Mann’s injuries under section 4700. Third, the only clear evidence in the record regarding the settlement’s purpose is Ms. Mann’s testimony that she was compensated for her loss of companionship of her husband, i.e., loss of consortium.<sup>5</sup> (MOH, February 7, 2019, p. 3.) It is well established that an employer, or, here, UEBTF, is not entitled to credit for money paid to settle a spouse’s loss of consortium claim. (*Montgomery Ward v. Workers’ Comp. Appeals Bd.* (1994) 59 Cal.Comp.Cases 1102 (writ den.); *Gapusan v. Jay* (1998) 66 Cal.App.4th 734, 742 [63 Cal.Comp.Cases 1144] [“A spouse’s retention of settlement funds for loss of consortium damages, for which an employer has no liability...does not violate the rule against double recovery.”].) That is, even if we were to assume, *arguendo*, that UEBTF established that it paid compensation as contemplated under section 3861, the third party settlement at issue here did not constitute compensation to Mr. Mann for his industrial injury.

Thus, under the language of the statutes, there is simply no statutory construction that would allow us to construe section 3861 and section 4700 et seq. to allow UEBTF to take a credit against separate compensation that it owes to a non-employee dependent based on a separate civil settlement that the non-employee dependent received based on separate legal claims that only she could assert. Thus, although UEBTF paid Ms. Mann death benefits under the C&R, but it failed to establish that it paid compensation that would be subject to a section 3861 claim. (*Martinez, supra*, 44 Cal.Comp.Cases at p. 1021; Lab. Code, § 5705.) Put simply, UEBTF failed to satisfy its burden to prove its right to a credit for any of the settlement money in this case.

Accordingly, as our decision after reconsideration, we affirm the WCJ’s decision to deny UEBTF’s request for credit for Ms. Mann’s civil settlement recovery in the amount of \$39,960.00.

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<sup>5</sup> *Leonard v. John Crane, Inc.* (2012) 206 Cal.App.4th 1274, 1283 (“Consortium ‘embraces such elements as love, companionship, affection, society...and more.’ [Citation.] As to each, ‘the interest sought to be protected is personal to the [spouse]’ [citation]....”)

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the F&O issued by the WCJ on April 4, 2019 is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**APRIL 18, 2024**

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

**MOHINDER MANN  
OFFICE OF THE DIRECTOR – LEGAL UNIT  
ROCKWELL, KELLY, DUARTE & URSTOEGER  
UNINSURED EMPLOYERS BENEFITS TRUST FUND**

**AH/cs**

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