

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

CARLOS SMITH, *Applicant*

vs.

COUNTY OF SACRAMENTO, *Permissibly Self-Insured, Defendant*

**Adjudication Numbers: ADJ10758177; ADJ12154978
Sacramento District Office**

**OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact, Award and Order of July 5, 2023, wherein, as relevant to the instant Petition, it was found in case ADJ10758177 that while employed on November 1, 2016 as deputy probation officer, applicant sustained industrial injury to the left wrist and in the form of high blood pressure, but not to the cervical spine, left elbow or left upper extremity. The WCJ issued an "interim" award of 1% permanent disability comprising of the high blood pressure permanent disability and deferred the issue of left wrist permanent disability pending further development of the record. The WCJ also found the applicant "entitled to a TTD credit in the amount of \$779.48 for the period 11/27/17 through 11/25/17 – Labor Code 4850 benefits overpayment" and "Defendant is entitled to a TTD credit in the amount of \$706.24 for the period 11/22/17 through 11/25/17 – TTD rate issue." In case ADJ12184978 it was found that while employed as deputy probation officer during a cumulative period ending on November 9, 2016, applicant sustained admitted industrial injury to the neck. Applicant also alleged presumptive industrial injury to the heart pursuant to Labor Code section 3212.10, which was deferred. The WCJ issued an "interim" award of 16% permanent disability comprising of the neck permanent disability.

Applicant contends that the WCJ erred in finding defendant entitled to the two credits against permanent disability indemnity liability in case ADJ10758177, and in not finding presumptive industrial heart trouble in case ADJ12184978. We have received an Answer from

defendant and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explained below, we will grant reconsideration, rescind the WCJ's decision, and return this matter for further proceedings, further development of the record, clarification of the WCJ's findings.

With regard to the finding that "Defendant is entitled to a TTD credit in the amount of \$706.24 for the period 11/22/17 though 11/25/17 – TTD rate issue," it appears that this finding contains clerical error in the dates and this credit is actually for an alleged overpayment in the temporary disability indemnity rate paid to the applicant corresponding to the period November 26, 2017 to March 17, 2018. (See Report at p. 6.) This issue was compounded by the Opinion on Decision stating, apparently erroneously, that "Applicant received TTD benefits at the same time he received Labor Code, Section 4850 benefits." (Amended Opinion on Decision at p. 7.) We will therefore grant reconsideration and rescind the WCJ's decision so that the WCJ may clarify this finding and analysis. Additionally, the issue of credit against permanent disability liability may be premature prior to determining the permanent disability liability. Rather than issue piecemeal permanent disability findings, the issue of permanent disability should be deferred until a single permanent disability rating is determined in each case, so there is only a single time period to seek review from a permanent disability finding.

With regard to the issue of whether the WCJ erred in not finding presumptive heart injury in case ADJ12184978, the WCJ has not yet made any finding regarding industrial injury in the form of heart trouble, thus any such argument is premature. To the extent that applicant is arguing that the WCJ erred in ordering further development of the record on the issue of "heart trouble" injury, an order deferring issues for future determination pending further development of the record is not a final order and is thus subject to the removal standard rather than the reconsideration standard. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658 [81 Cal.Comp.Cases 1122].) The removal standard requires "significant prejudice" or "irreparable harm." (Cal. Code Regs, tit. 8, § 10955, subd. (a).) Applicant has not met this standard, as he will be free to offer argument and evidence regarding the merits of the heart trouble claim in the further proceedings. In any case, since we rescind on the credit issue and the interim permanent disability findings, we do not reach this issue.

We therefore grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further analysis, development of the record, proceedings, and decision. We take no position on the ultimate resolution of any issue in this matter.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings of Fact, Award and Order of July 5, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Award and Order of July 5, 2023 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 29, 2023

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

**CARLOS SMITH
NOVEY LAW GROUP
LENAHAN, SLATER, PEARSE & MAJERNIK**

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