

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

LUCIA VIDALES, *Applicant*

vs.

**HACIENDA FARM SERVICES, INC.; STAR INSURANCE COMPANY, administered by
MEADOWBROOK INSURANCE GROUP, *Defendants***

**Adjudication Number: ADJ12895510
Salinas District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the Findings and Award (F&A) issued on July 23, 2021, wherein the workers' compensation administrative law judge (WCJ) found that applicant is entitled to reimbursement for computer equipment in the amount of \$1,000.00 and a Labor Code section 5814¹ penalty of twenty-five percent of that amount for defendant's unreasonable delay in payment of her Supplemental Job Displacement Benefit (SJDB) voucher. The WCJ awarded applicant \$1,000.00 and a \$250.00 penalty.

Defendant contends that applicant is not entitled to reimbursement on the grounds that applicant did not purchase the computer equipment for vocational retraining or skill enhancement. Defendant further contends that applicant is not entitled to a penalty because its determination that applicant was not entitled to reimbursement was reasonable and in good faith.

We did not receive an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will affirm the F&A.

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

FACTUAL BACKGROUND

While employed from September 30, 2018 through September 30, 2019 as a general laborer, applicant sustained injury to her left wrist.

On July 17, 2020, the parties filed their Compromise and Release (C&R), which provides that “DEFENDANT IS TO ISSUE THE SJDB VOUCHER WITHIN 30 DAYS OF SERVICE OF ORDER APPROVING COMPROMISE AND RELEASE.” (C&R, July 17, 2020, p. 10.)

On July 23, 2020, the WCJ issued the Order Approving Compromise and Release. (Order Approving Compromise and Release, July 23, 2020.)

On April 26, 2021, the matter proceeded to trial of the following issues:

- (a) Attorney’s fees.
- (b) Whether Applicant is entitled to reimbursement for her computer purchase, which Applicant claims is appropriate per the SJDB Voucher issued by Defendants on 8/5/20.
- (c) Applicant’s entitlement to Labor Code Section 5814 penalties and attorney’s fees under Labor Code Section 5814.5.
(Minutes of Hearing, April 26, 2021, p. 2:11-15.)

The WCJ admitted a September 3, 2020 letter with a receipt for computer equipment that PS Vocational Consulting sent to defendant and applicant’s August 5, 2020 Supplemental Job Displacement Voucher into evidence. (*Id.*, p. 2:18-23.)

The September 3, 2020 letter appears on PS Vocational Consulting letterhead and states in pertinent part:

Attached please find the request for reimbursement of computer expenses and payment of the RTW counselor fees.

| | |
|--------------------|-----------------------------------|
| Computer: | To be paid to: Lucia Vidales |
| Amount: \$1,000.00 | 1008 Santa Inez Soledad, CA 93960 |

| | |
|---------------------|--|
| RTW Counselor Fees: | To be paid to: Patricia Salazar, Vocational Consultant |
| Amount: \$600.00 | PO Box 188 Salida, CA 95368 |

Please note: PAYMENT IS DUE WITHIN 45 DAYS. According to the SJDB Voucher Audit Penalties, Statutes § 5814 and ADR § 10112.2(g)(7), states a fine of \$2500 for each penalty award for unreasonable delay or refusal.

(Ex. A, Letter from PS Vocational Consulting with Receipt, September 3, 2020, p. 1.)

In the Report, the WCJ writes:

Defendant contends that “the Voucher, including computer equipment purchases, is intended for education-related retraining or skill enhancement expenses for an injured employee. *While nothing in the Voucher mandates enrollment in a vocational retraining program to receive reimbursement for computer equipment*, the clear intent of creating the Voucher as a benefit, and all reimbursements arising therein, is for educational purposes.” (Deft’s Pet. for Recon., 8/6/21, p. 3; EAMS Doc ID: 37751841.) (Italics added.)

...
Defendant further contends, “In the instant case, Applicant was not enrolled in and *did not intend to enroll* in any educational vocational retraining coursework. Therefore, the computer was not purchased for its intended purpose of vocational retraining or educational skill enhancement. Without enrollment in a vocational retraining program, there is no need for a computer.” (Deft’s Pet. for Recon., 8/6/21, p. 3; EAMS Doc ID: 37751841, Italics added.) Defendant’s statement about Applicant’s intent is unsupported by the evidence. Applicant did not testify at trial; and, there were only two exhibits admitted into evidence. (Minutes of Hearing, 4/26/21 Trial; EAMS Doc ID: 74458983.)

...
On the invoice attached to the letter, there are notes next to the 9/1/20 charges, which indicate that Applicant has an interest in computer skills. The counselor also discussed with Applicant on 9/3/20 some training options, to include “1. Child Care- Caledonian Vocational training; 2. General Office (Computer Skills)-Modesto Technical College.” It appears from the invoice that the counselor provided Applicant with a computer-related option for training.

...
Combined with at least an interest in computer skills and without Applicant’s testimony, it cannot be said what Applicant’s intent was with respect to vocational training. Nor can the absence of a “Training Provider or School” on Applicant’s reimbursement form alone lead to an inference regarding her intent. (APPL’S EX. A-1: Letter, PS Vocational Consulting, 9/3/20, DWC-AD Form 10133.32 (SJDB), Rev: 10/1/15, Page 2 of 6, attachment.) . . . Applicant could use her computer for vocationally-related activities that do not require a training provider or school, such as applying for jobs online, utilizing free educational sources online, and engaging in self-employment. . . .

The Labor Code provides that, “The voucher may be applied to any of the following expenses *at the choice of the injured employee*: (5) Purchase of computer equipment, up to one thousand dollars (\$1,000). (Lab. Code § 4658.7(e)(5); Italics added.) . . . The language makes clear that a computer may be purchased and reimbursed up to \$1,000.00. . . .

Applicant submitted her claim for reimbursement on or about 9/3/20. As such, the claims administrator is required to issue reimbursement within forty-five days from receipt of the completed voucher, receipts, and documentation. “The claims administrator *shall issue the voucher payments to the employee* or direct payments to the VRTWC, training providers, and/or computer retailer within 45 calendar days from receipt

of the completed voucher, receipts, and documentation.” (8 C.C.R. § 10133.31(j), *Italics added.*) Defendant failed to reimburse Applicant. (Report, pp. 2-5.)

DISCUSSION

Section 4658.7(e) provides that SJDB vouchers may be applied to any of the following expenses at the choice of the injured employee:

(1) Payment for education-related retraining or skill enhancement, or both, at a California public school or with a provider that is certified and on the state’s Eligible Training Provider List (EPTL), as authorized by the federal Workforce Investment Act (P.L. 105-220), including payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement.

(2) Payment for occupational licensing or professional certification fees, related examination fees, and examination preparation course fees.

(3) Payment for the services of licensed placement agencies, vocational or return-to-work counseling, and résumé preparation, all up to a combined limit of 10 percent of the amount of the voucher.

(4) Purchase of tools required by a training or educational program in which the employee is enrolled.

(5) Purchase of computer equipment, up to one thousand dollars (\$1,000).

(6) Up to five hundred dollars (\$500) as a miscellaneous expense reimbursement or advance, payable upon request and without need for itemized documentation or accounting. The employee shall not be entitled to any other voucher payment for transportation, travel expenses, telephone or Internet access, clothing or uniforms, or incidental expenses.

(§ 4658.7(e).)

Here, as stated by the WCJ in the Report, when injured employees receive SJDB vouchers, they may choose to apply them for reimbursement of expenses incurred with respect to six categories of goods or services, including purchases of computer equipment in an amount of up to \$1,000.00. (Report, p. 4.) In this case, it is clear that applicant chose to apply her voucher for reimbursement of expenses incurred for computer equipment after she received advice from her vocational consultant in that the consultant requested reimbursement on her behalf. (Ex. A, Letter from PS Vocational Consulting with Receipt, September 3, 2020, p. 1.) In addition, as stated in

the Report, it is evident that applicant purchased the computer equipment after discussing the prospect of developing her “General Office (Computer Skills).” (See *Id.*, pp. 1-2; Report, p. 3.) Based upon this evidence, and based upon the absence of evidence suggesting that applicant purchased the computer equipment for any purpose that could render it ineligible for reimbursement, we conclude that applicant is entitled to reimbursement under section 4658.7(e)(5). Accordingly, we are unable to discern error in the WCJ’s finding that applicant is entitled to reimbursement for the purchase of computer equipment in the amount of \$1,000.00.

Turning to the issue of whether applicant is entitled to a penalty, we observe that section 5814 provides as follows:

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. In any proceeding under this section, the appeals board shall use its discretion to accomplish a fair balance and substantial justice between the parties.
(§ 5814(a).)

Here, the record lacks evidence regarding how defendant determined that applicant was not entitled to apply her voucher to the purchase of computer equipment, or how, if at all, it justified its determination in any communication to applicant. In the absence of such evidence, the record lacks support for defendant’s contention that it reasonably and in good faith relied upon its reading of section 4658.7 to determine that applicant was required to explicitly connect her purchase to a certain retraining or skill enhancement program. Accordingly, we are unable to discern error in the finding that applicant is entitled to a section 5814 penalty in the amount of \$250.00.

Accordingly, we will affirm the F&A.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued on July 23, 2021 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 15, 2021

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

**LUCIA VIDALES
RUCKA, O'BOYLE, LOMBARDO, MCKENNA
GILSON DAUB**

SRO/ara

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