

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

ROBERT CAMARILLO, *Applicant*

vs.

**SAFENET, INCORPORATED;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants***

**Adjudication Number: ADJ7306752
Marina del Rey District Office**

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

Applicant seeks reconsideration of the Amended Findings and Award and Opinion on Decision (F&A) issued in this case by a workers' compensation administrative law judge (WCJ) on December 29, 2022. By the F&A, the WCJ found that applicant was entitled to a 71% permanent disability (PD) award, equivalent to \$121,297.50, and thereafter a life pension at the weekly rate of \$85.04, less attorney's fees payable to applicant's present and former attorneys and credit for sums previously paid by defendant.¹ (F&A, December 29, 2022, pp. 2-3.) Pursuant to an Attorney Fee Calculation issued by the Disability Evaluation Unit (DEU) on December 28, 2022, the WCJ commuted the entirety of the attorney's fees, totaling \$28,775.91, from applicant's life pension. (F&A, p. 3, Award (d); F&A, p. 2, Finding of Fact No. 3, citing PD LP Commutation, December 28, 2022, p. 1.)

In the Petition for Reconsideration (Petition), applicant contends that the WCJ erroneously commuted attorney's fees in the amount of \$18,194.62, i.e., 15% of applicant's accrued PD benefits, from applicant's life pension. Applicant argues that this caused an excessive reduction

¹ We note that a search of the record in EAMS reveals that defendant failed to bring a current computer printout of benefits paid to applicant to each mandatory settlement conference, as required by WCAB Rule 10759(b). (Cal. Code Regs., tit. 8, § 10759(b).) We remind defendant to do so in the future.

in applicant's life pension, from which only \$10,581.29 in attorney's fees should have been commuted.

We did not receive an answer to the Petition. We also did not receive a Report and Recommendation on Petition for Reconsideration from the WCJ.

We have considered the allegations of the Petition. Based upon our review of the record, and for the reasons stated below, we will grant reconsideration, rescind the F&A, and substitute new findings that, subject to a court order or jointly signed agreement between applicant's present and former attorneys as to a fee split: \$18,194.62 in attorney's fees shall be payable from applicant's unpaid, accrued PD benefits; \$10,581.29 in attorney's fees shall be commuted from the side of applicant's remaining life pension payments; and jurisdiction is reserved at the trial level in the event of a dispute regarding attorney's fees. We will defer the issue of calculating applicant's weekly life pension payments to reflect the attorney's fee award, and order that the matter be returned to the trial level for further proceedings consistent with this decision.

DISCUSSION

Applicant sustained injury to multiple body parts while employed during the period January 20, 1995 through May 4, 2010 as a Material Supervisor by defendant, SafeNet, Inc. (Minutes of Hearing/Summary of Evidence, November 18, 2021, p. 2.) On December 29, 2022, the WCJ issued the F&A at issue stating, in part:

It is found that Applicant is entitled to a permanent disability award of 71%, equivalent to 449.25 weeks of indemnity, payable beginning August 8, 2012 at the rate of \$270.00 per week, in the total sum of \$121,297.50, and thereafter a life pension at the weekly rate of \$85.04, less the attorney fee awarded herein and less credit for sums previously paid by the weekly amount of \$61.00 as set forth in the 12/28/2022 Commutation of Portion of Remaining Life Pension By Uniform Reduction of Life Pension enclosed herein and incorporated fully by reference.

(F&A, p. 2, Finding of Fact No. 3.)

The F&A further found:

Pursuant to the WCAB Rules of Practice and Procedure and Policy and Procedure Manual, it is found that a reasonable attorney's fee is \$28,775.91 as set forth in the Attorney Fee Calculation. Defendant shall hold the attorney fee pending receipt of a court order or a jointly signed fee split agreement between the present and former attorneys. Jurisdiction reserved.

(F&A, p. 2, Finding of Fact No. 7.)

The WCJ then awarded the attorney's fees pursuant to the DEU's Attorney Fee Calculation, which commuted the entirety of the fees from applicant's life pension. (F&A, p. 3, Award (d).)

Applicant contends that the WCJ erroneously commuted 100% of the attorney's fees from applicant's life pension. We agree. In doing so, the WCJ overlooked the portion of the DEU's Attorney Fee Calculation that specifically states that \$18,194.62 in attorney's fees is payable from applicant's PD award. (F&A, p. 2, Finding of Fact No. 3, citing PD LP Commutation, December 28, 2022, p. 1.) The DEU entered this amount into its Attorney Fee Calculation at the joint request of the parties. (Joint Petition for Reconsideration, December 12, 2022, p. 4 [requesting "an additional award of *fees in the amount of \$18,194.62 from the 71% PD* in addition to the \$10,581.29 attorney's fee awarded based on the [commuted] Life Pension."] [italics added]; Lab. Code, § 4903.)

Based on the foregoing, we will grant reconsideration, rescind the F&A, substitute findings reflecting the requested attorney's fee award and defer the calculation of applicant's weekly life pension payments, and order that this matter be returned to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the F&A of December 29, 2022 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the F&A of December 29, 2022 is **RESCINDED**, and the following findings are **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Applicant, while employed during the period of January 20, 1995 through May 4, 2010, as a Material Supervisor, occupational group number 360, at El Segundo, California, by SafeNet, Incorporated did sustain psyche and sleep disorder injury arising out and in the course of his employment.
2. Applicant, while employed during the period of January 20, 1995 through May 4, 2010, as a Material Supervisor, occupational group number 360, at El Segundo, California, by SafeNet, Incorporated did not sustain industrial injury to his head or headaches.

3. Applicant is entitled to a permanent disability award of 71%, equivalent to 449.25 weeks of indemnity, payable beginning August 8, 2012 at the rate of \$270.00 per week, in the total sum of \$121,297.50, less attorney's fees of \$28,775.91, as set forth below.
4. The reasonable value of the services and disbursements of applicant's attorney(s) is the sum of \$28,775.91, payable as follows:
 - a. \$18,194.62 shall be payable from unpaid, accrued permanent disability benefits.
 - b. \$10,581.29 shall be commuted from the side of each remaining life pension payment in an amount necessary to pay attorney's fees as one lump sum.
5. Attorney's fees are ordered held in trust by defendant pending receipt of a written, signed fee split agreement between all current and former attorneys, or further order of the court. Jurisdiction is reserved over the issue of attorney's fees in the event of further dispute.
6. 10% of the permanent disability attributable to applicant's psyche injury is due to non-industrial causes and/or factors.
7. Applicant is in need of further medical treatment to cure and/or obtain relief from the effects of the industrial injury herein which includes the stipulated parts of body identified and agreed to by the parties in the November 18, 2021 Minutes of Hearing. Those stipulated parts of body are as follows: cervical spine, lumbar spine, left knee, right knee, right wrist, left wrist, and psyche.
8. Applicant is entitled to reimbursement for out-of-pocket medical costs and mileage in amounts to be adjusted by the parties or determined herein upon the filing of a petition and supporting documents. Jurisdiction is reserved at the trial level if any dispute arises.
9. The issue of calculating applicant's weekly life pension payments is deferred.

AWARD IS MADE in favor of applicant **ROBERT CAMARILLO** against defendants **SAFENET, INCORPORATED** and **TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA** as follows:

AWARD

- (a) Permanent disability as set forth in Finding No. 3.
- (b) Reasonable attorney's fees as set forth in Finding Nos. 4 and 5.
- (c) Further medical care as set forth in Finding No. 7.
- (d) Reimbursement for out-of-pocket medical costs and mileage as set forth in Finding No. 8.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 20, 2023

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

**ROBERT CAMARILLO
LAW OFFICES OF GARY R. CARLIN
WOOLFORD AND ASSOCIATES
EMPLOYMENT DEVELOPMENT DEPARTMENT**

AH/cs

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