

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

GEORGIA MARQUEZ, *Applicant*

vs.

**COUNTY OF VENTURA, permissibly self-insured, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ13696194; ADJ10888539; ADJ8761845; ADJ9927442
Oxnard District Office**

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

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate except as noted below, we will grant reconsideration, amend all four (4) separately issued Findings and Awards to defer the issues of credit for overpayment of permanent disability indemnity and attorney fees and to defer the award of permanent disability. We will otherwise affirm the WCJ's decisions and return these matters to the trial level for further proceedings and decisions as deemed appropriate by the WCJ.

We do not adopt or incorporate the WCJ's report to the extent that it recommends that reconsideration be granted only as to Case Nos. ADJ8761845 and ADJ10888539. Rather, an Order consolidating Case Nos. ADJ8761845, ADJ10888539, ADJ9927442, and ADJ13696194 issued during trial on March 26, 2021. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 3/26/21, at p. 2:3-7.) Therefore, the parties may litigate the issue of credit in all four cases. (Cal. Code Regs., tit. 8, former § 10589, now § 10396 (eff. Jan. 1, 2020) [Consolidation may be ordered for all purposes of related cases involving common issues of fact or law, to adjudicate complex issues, to avoid duplicate or inconsistent orders, and/or for the efficient utilization of judicial resources].)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the May 13, 2021 Findings and Awards in each of these matters is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the May 13, 2021 Findings and Awards in each of these matters is **AFFIRMED, EXCEPT** that they are **AMENDED** as follows:

**Case No. ADJ8761845
Findings and Award**

* * *

6. Attorney fees are deferred.
7. The issue of credit for overpayment of permanent disability is deferred.

AWARD

AWARD IS MADE in favor of **GEORGIA MARQUEZ** against **VENTURA COUNTY MEDICAL CENTER** of:

- a. The award of permanent disability is deferred.

* * *

- c. Attorney fees are deferred.

**Case No. ADJ10888539
Findings and Award**

* * *

6. Attorney fees are deferred.
7. The issue of credit for overpayment of permanent disability is deferred.

AWARD

AWARD IS MADE in favor of **GEORGIA MARQUEZ** against **VENTURA COUNTY MEDICAL CENTER** of:

- a. The award of permanent disability is deferred.

* * *

- c. Attorney fees are deferred.

**Case No. ADJ9927442
Findings and Award**

* * *

- 6. Attorney fees are deferred.
- 7. The issue of credit for overpayment of permanent disability is deferred.

AWARD

AWARD IS MADE in favor of **GEORGIA MARQUEZ** against **VENTURA COUNTY MEDICAL CENTER** of:

- a. The award of permanent disability is deferred.

* * *

- c. Attorney fees are deferred.

**Case No. ADJ13696194
Findings and Award**

* * *

- 6. Attorney fees are deferred.
- 7. The issue of credit for overpayment of permanent disability is deferred.

AWARD

AWARD IS MADE in favor of **GEORGIA MARQUEZ** against **VENTURA COUNTY MEDICAL CENTER** of:

a. The award of permanent disability is deferred.

* * *

c. Attorney fees are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 2, 2021

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

**GEORGIA MARQUEZ
LAW OFFICES OF PAUL KINSLER
ROBERTSON & KIMBALL**

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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*

JOINT REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Applicant Georgia Marquez born [] while employed as a housekeeper in occupational group number 340 at Ventura, California by the County of Ventura:

- 1) in ADJ8761845 on 06/10/2010 sustained injury arising out of and occurring in the course of employment to her low back
- 2) in ADJ9927442 on 11/15/2010 sustained injury arising out of and occurring in the course of employment to her neck, low back and left shoulder
- 3) in ADJ10888539 on 09/03/2013 sustained injury arising out of and occurring in the course of employment to her low back and right shoulder
- 4) in ADJ13696194 during the period 09/30/2015 through 09/23/2020 sustained injury arising out of and occurring in the course of employment to her right and left shoulders, right and left carpal tunnels and lumbar spine.

II. CONTENTIONS

Petitioner defendant seeks reconsideration of the 05/12/2021 decision herein contending that the issues of credit for overpayment of benefits were not full and properly decided.

III. FACTS

Petitioner defendant did in fact raise as issues credit for overpayment of permanent disability in ADJ8761845 and for overpayment of temporary disability in ADJ10888539 in the Minutes of Hearing 03/26/2021. This is consistent with the pre-trial conference statement of 02/12/2021.

No separate petitions for credit are filed in these consolidated cases.

Nevertheless a review of the record reflects that in ADJ8761845 defendant has paid some 415 days in permanent disability (some \$13,635.71) against the ultimate award of this benefit of 9% PD (\$6,210.00).

And in ADJ10888539 petitioner paid 11 days of temporary disability beyond the Labor Code Section 4656 cap of 104 weeks (some \$960.80 overpaid) and also paid permanent disability advances for over two years (some \$33,018.57) against the ultimate award herein in that case of 11% PD (\$9,932.50).

At the time of the hearing the claims of credit were raised generically without the specifics of the amounts claimed, though Defendant's Exhibits K, L and M were admitted into evidence.

IV. DISCUSSION

As set forth in the respondent applicant's Answer to Petition for Reconsideration, the claims of credit were raised only in ADJ8761845 and in ADJ10888539.

Credit for overpayment of benefits is largely discretionary, as Labor Code Section 4909 provides that such overpayments are to be "taken into account by the appeals board in fixing the amount of compensation to be paid." There is no automatic right to take the credit and no automatic prohibition to allowing credit in part or in full to accomplish substantial justice.

Here, the full extent of the impact of credit claim was not readily apparent to the undersigned and the evidence was not fully weighed at the time of the trial and decision herein.

In order to properly evaluate the credit claims and exercise the discretion in ruling on same, reconsideration should be granted and the matter remanded to the trial level for specific rulings on the two claims of credit in ADJ8761845 and in ADJ10888539.

V. RECOMMENDATION

Based on the foregoing the undersigned WCALJ recommends that reconsideration be granted and that the two claims of credit in ADJ8761845 and ADJ10888539 remanded to the trial level for specific rulings.

DATED AT OXNARD, CALIFORNIA

DATE 06-10-2021

**WILLIAM M. CARERO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE**