

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

RUTH CISCO, *Applicant*

vs.

**SUBSEQUENT INJURIES BENEFITS
TRUST FUND, *Defendants***

**Adjudication Number: ADJ6866699
Santa Rosa 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.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and the Opinion on Decision 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 and Opinion on Decision, both of which we adopt and incorporate, we will affirm the December 14, 2020 Findings and Order.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the December 14, 2020 Findings and Order is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 18, 2021

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

**RUTH CISCO
MARK WEINBERGER, ESQ.
OFFICE OF THE DIRECTOR-LEGAL UNIT (OAKLAND)
SIBTF**

PAG/abs

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

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

I

INTRODUCTION

Defendant, the Subsequent Injuries Benefits Trust Fund (SIBTF), through their attorney Edward Kunnes, filed a timely Petition for Reconsideration challenging the Findings and Award dated December 14, 2020.

Applicant suffered an industrial injury to right ankle, right foot, psyche, headaches, teeth and fingers on October 2, 2007 during the course of her employment as a nanny for the employer David Alexander. She was age 54 on the date of injury.

The underlying claim was settled by Stipulations with Request for Award for 69% permanent disability to her right ankle, right foot, psyche, and headaches on May 8, 2019.

Subsequently, the applicant filed a petition for benefits from the Subsequent Injuries Benefits Trust Fund and the parties tentatively agreed that the applicant qualified for SIBTF benefits and the permanent disability resulting from the combination of all disabilities is 100%. A trial was held on the sole issue of whether the WCJ or the WCAB has the power to order the SIBTF to pay the proceeds of a stipulation into a special needs trust pursuant to the applicant's request.

In the F&O, the undersigned WCJ found that a Workers' Compensation Judge has the authority to order SIBTF to pay the proceeds of a stipulation into the CPT Institute Special Needs Trust pursuant to applicant's request.

Petitioner contends:

- a. The F&O is a final order subject to reconsideration even though the parties had not finalized the settlement. Petition p. 3, line 18-p. 4, line 4.
- b. The WCAB cannot order payment of compensation to an entity not authorized by statute to receive it. Petition p. 4, line 5-p. 7, line 7.
- c. The authority relied upon by WCJ does not grant power to order SIF benefits paid into a special needs trust. Petition p. 7, line 8-p. 9, line 17.
- d. The special needs trust, into which SIP benefits are ordered paid, is not for the purpose of collecting and disbursing money for Applicant's primary needs and support for which SIF benefits are paid. Petition p. 9, line 18-p. JO, line 9.

II

FACTS

Applicant, Ruth Cisco, sustained an admitted industrial injury on October 2, 2007 to her right ankle, right foot, psyche, headaches, teeth and fingers during the course of employment as a nanny by the employer David Alexander.

In addition to workers' compensation benefits, the applicant qualified for Social Security Disability Insurance and Medicare. (Jt. Exh. 4.) Currently, the applicant also receives MediCal, In-Home Supportive Services (IHSS) and housing subsidy benefits. These benefits could be at risk, reduced, or eliminated if SIBTF benefits are not placed into a Special Needs Trust. (Minutes of Hearing, Stipulation No. 3, p. 2.)

A special needs trust was set up by California Charities Pooled Trust (CPT) for the Applicant's benefit consistent with 42 U.S.C. §1396p(d)(4)(C). (Jt. Exh. 1.) To qualify as the trust beneficiary, the applicant was deemed to have physical or mental impairments of such severity that she is not only unable to do her previous work but cannot, considering her age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. (42 U.S.C.A. § 1382c(a)(3)(B).)

The purpose of the special needs trust is to provide a discretionary, safe and effective method for persons with disabilities to benefit from their assets while retaining eligibility for Government Assistance benefits. (Jt. Exh. 2, p. 3.) This trust consists of a nominal initial contribution and additional contributions in cash or property made to the Trust estate at any time by any Grantor. (Jt. Exh. 2, p. 3). All disbursements of the CPT must be for the direct benefit of the trust beneficiary. (Jt. Exh. 1.)

The applicant's underlying workers' compensation claim was resolved by Stipulations with Request for Award for 69% permanent disability for the right ankle, right foot, psyche, and headaches on May 8, 2019. The proceeds of the settlement was ordered directly payable to the CPT trust for the applicant's benefit. Within the Stipulations with Request for Award, it stated: "Checks to be made payable as follows: CPT Institute #6540-5745/ "FBO Ruth M. Cisco". The settlement checks were ordered to be sent to "Charles Schwab & Co, Inc. 1945 North Western Drive, El Paso, Texas 79912." (Stipulations with Request for Award, 5/8/19.)

Presiding Judge Peter Hink approved the Stipulations, as drafted, and instructed the defendant to render payment as follows: "(I) All of Applicant's benefits must be paid to the CPT Institute as set forth in 19 of the Stipulations," (Award, 5/8/19.)

An application for benefits from the Subsequent Injuries Benefits Trust Fund was filed on November 8, 2018. The parties tentatively agreed that the applicant qualified for SIBTF benefits and the permanent disability resulting from the combination of all disabilities is 100%.

This matter was tried on the sole issue of whether the WCJ or WCAB has the power to order the SIBTF to pay the proceeds of a stipulation into a special needs trust pursuant to the applicant's request. An F&O issued finding that a Workers' Compensation Judge possessed the requisite authority and SIBTF was ordered to disburse the proceeds of the stipulation into the CPT Institute Special Needs Trust. The court erroneously indicated in the F&O that the parties had previously settled the SIBTF case. However, the proposed Stipulations had not yet been executed by the parties.

It is from this Findings and Order that the petitioner seek reconsideration.

III

DISCUSSION

A Workers' Compensation Judge has full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue any interim, interlocutory and final orders, findings, decisions and awards as might be necessary to the full adjudication of the case, (CCR §10348.)

All of the following proceeds shall be instituted before the appeals board and not elsewhere, except as provided in Division 4:

- a. For the recovery of compensation, or concerning any right or liability arising out of or incidental thereto.
- b. For the enforcement against the employer or an insurer of any liability for Compensation imposed on the employer by this division in favor of the injured employee, his or her dependents or any third person.
- c. For the determination of any question as to the distribution of compensation among dependents or other persons.
- d. For the determination of any question as to who are dependents of any deceased employee, or what persons are entitled to any benefit under the compensation provisions of this division.
- e. For obtaining any order which by Division 4 the appeals board is authorized to make.
- f. For the determination of any other matter, jurisdiction over which is vested by Division 4 in the Division of Workers' Compensation, including the administrative director and the appeals board. (Labor Code §5300.)

Here, SIBTF benefits are governed by Labor Code §§4751-4755, within Division 4. The basic components of SIBTF claims, including eligibility, the timing and amount of benefits, credits, and offsets, are dictated by the Labor Code, under the exclusive jurisdiction of the WCAB.

Additionally, benefits payable from the Subsequent Injuries Benefits Trust Fund are considered "compensation" for purposes of the invoking authority with the WCJ. (*Subsequent Injuries Fund v. IAC (Parm)* (1950) 15 CCC 227) The Board is specifically granted authority to fix and award the amounts of special additional compensation to be paid under this article, and shall direct the State Compensation Insurance Fund to pay the additional compensation so awarded. (Labor Code §4754.)

Notwithstanding the above, the petitioner claims that the WCAB lacks the power to order SIF to pay Subsequent Injury Fund benefits (SIF benefits) into a special needs trust instead of to the applicant. (Petition p. 2, lines 2-5.) According to the petitioner, SIF benefits are only payable to an injured worker, unless the WCAB determines that the injured worker is incompetent (or a minor) and appoints a trustee. (Petition p. 5, lines 18- 19.) However, this contention misstates the law.

Labor Code §4902 states that "no compensation, whether awarded or voluntarily paid, shall be paid to any attorney at law or in fact or other agent, but shall be paid directly to the claimant entitled thereto unless otherwise ordered by the appeals board." (Emph. added.)

The petitioner seemingly ignores that a WCJ may approve a settlement via C&R with a portion of the proceeds designated to a special needs trust, regardless of whether the applicant is a minor or deemed incompetent. Alternatively, as in this case, a WCJ may expressly authorize the proceeds from the Stipulations with Request for Award to be paid directly to the special needs trust, a detail notably omitted from the petitioner's rendition of the facts in this matter.

The petitioner reiterates that there is no statutory authority or basis for such an order because the applicant has never claimed to be mentally incompetent to handle her own affairs. (Petitioner p. 6, lines 22-25.) Again, this argument fails to recognize that the applicant's condition, although not requiring a formal trustee per Labor Code §5408, did not prevent or prohibit the Presiding Judge Peter Hink from expressly ordering the proceeds from her underlying workers' compensation settlement to be paid directly to the CPI Institute for the benefit of the applicant.

Of course, in addition to a special needs trust, there are multiple instances where the WCJ is permitted to order payments directed to recipients besides the injured worker, such as financial institutions. For example, a Compromise and Release regularly includes a Medicare Set-Aside Trust (MSA) pursuant to federal regulations that require a portion of settlement funds be "set-aside" to pay for future injury-related medical expenses. As such, a portion of the workers' compensation settlement are ordered to be paid to a third party financial institution to professionally administer the trust on behalf of the applicant.

Similarly, a structured settlement or annuity are commonly used with high-value Compromise and Releases. The annuity policy pays the applicant (annuitant) tax free benefits periodically over their lifetime. The board in *Willoughby v. Hoge, Fenton, Jones & Appel*, found that LC §4900 does not preclude a structured settlement whereby an employer or workers' compensation insurer arranges with the consent of the injured worker for a third-party financial institution to satisfy the employer or workers' compensation insurer's obligation to pay the worker benefits. It concluded the settlement was adequate and in the best interest of the applicant. (*Willoughby v. Hoge, Fenton, Jones & Appel* (2020) 85 CCC 712 (panel decision).)

Regardless, according to the petitioner, neither the WCAB nor the Applicant may assign compensation benefits per Labor Code §§4900, 4902. (Petition, p. 7, line 2.)

Labor Code §§ 4900 et seq., was intended to remove workers' compensation awards from the operation of the usual remedies available to creditors, to limit and regulate the kinds of debts for which liens are allowed, and to insure that the award is available to the injured employee for his recovery and rehabilitation. (*Prudential Ins. Co. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal. 3d 776.) Labor Code §4900 is designed to protect disabled workmen and their dependents, and is not intended as a shield to resist payment of an award. (*Richey v. Ziegler* (1928) 89 Cal. App. 35.)

Here, it would be illogical to interpret section 4900 as precluding an assignment of applicant's benefits only when they are paid by SIBTF, but permitting assignment when the underlying case is resolved by Stipulations with Request for Award. Consistent with the statutory

intent of Labor Code §4900, the financial protection afforded by a special needs trust should not be barred merely because the applicant's owed benefits are rendered by the state instead of the insurance company. The implementation of the special needs trust, and any contribution to it by a grantor, is for the sole benefit of the applicant as the trust beneficiary. (Jt. Exh. 2, p, 3.)

Finally, petitioner asserts that 'it appears evident that Applicant here would necessarily rely on SIF benefits to assist with the cost of essentials of daily living (i.e. support needs), and thereby the trust would impede Applicant's ability to use the funds for both their intended and necessary purposes. (Petition p. 10, lines 6-9.)

This argument has no bearing on the limited issue presented in this case, whether the WCJ has authority to direct proceeds of a SIBTF settlement to be placed in the trust. The applicant's eligibility for both the special needs trust and SIBTF are undisputed. As such, the petitioner's assumptions of how the applicant will spend her owed benefits, is immaterial. The underlying purpose of a special needs trust is not left to the discretion of the petitioner and certainly not before this court.

Disallowing the SIBTF proceeds to be paid directly to the applicant's special needs trust would only result in a stifling effect on the filing of SIBTF claims by qualified severely disabled workers reliant on other governmental benefits for survival. The workers' compensation statutes are to be "liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment", and compels the opposite conclusion than that urged by the petitioner. (Labor Code §3202.) Accordingly, there is nothing in the petition to disrupt the court's finding.

RECOMMENDATION

It is respectfully recommended that the Petition for Reconsideration be denied.

Dated: January 21, 2021

Respectfully submitted,

KATIE F. BORIOLO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

The parties have resolved the applicant's underlying Subsequent Injuries Benefits Trust Fund (SIBTF) claim. The sole issue for adjudication is whether a Workers Compensation Judge has the authority to order the SIBTF proceeds to be placed into a CPT Institute special needs trust. This court finds in the affirmative.

Labor Code §5300 grants the Board exclusive jurisdiction and authority over proceedings for the recovery of compensation, or concerning any right out of or incidental thereto. (Labor Code §5300(a).) Although the money comes from the state treasure, payments from the Subsequent Injuries Benefits Trust Fund are classified as "compensation" (*Subsequent Injuries Fund v. IAC (Patterson)* (1952) 39 C2d 83.) and the Board is authorized to make awards out of the funds appropriated for that purpose. (Labor Code §4754.)

Similarly, the WCAB has jurisdiction to supervise a trust created to administer and distribute the proceeds of a compromise and release agreement. (*Callejo v. WCAB (Alcala)* (1975) 40 CCC 543) (writ denied) Additionally, the Appeals Board or a workers' compensation judge may appoint a trustee to receive and disburse compensation for the benefit of the minor or incompetent and his family. (Labor Code §§5307(a), 5408.)

Here, there has been no persuasive showing as to why explicit jurisdiction may not extend to the instance case. The severity of the applicant's disability and her SIBTF eligibility are not disputed. The trust proceeds will consist of her SIBTF compensation award pursuant to Labor Code §4751. The applicant is merely requesting the proceeds be placed in a special needs trust, for her benefit, in order to maintain eligibility for Government Assistance Benefits, including housing and medical care. (Jt. Exh. 2, CPT Master Trust Agreement, 12/16/16)

There are no additional legal obligations bestowed upon SIBTF by changing the mechanism of which the owed benefits are paid. Like SIBTF, the special needs trust is made for the sole benefit of the beneficiary and not a third party, and will terminate upon the death of the beneficiary. (Jt. Exh. 2, CPT Master Trust Agreement, 12/16/16.)

Based on the record as a whole, it is found that the WCJ is vested with the authority to order the SIBTF to place proceeds into the CPT Institute special needs trust and as such, SIBTF is ordered to do so, at the behest of the applicant.

DATE: December 14, 2020

KATIE F. BORIOLO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE