

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

CALVIN GOOLSBY, *Applicant*

vs.

NORTHROP GRUMMAN CORPORATION; AIG, *Defendants*

**Adjudication Number: ADJ1335458 (SJO 0202708)
San Jose District Office**

**OPINION AND ORDER
DENYING PETITION FOR
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, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 7, 2022

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

**CALVIN GOOLSBY
LAW OFFICE OF ROBERT THAYER
STANDER, REUBENS, THOMAS, KINSEY**

PAG/pc

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

**I.
INTRODUCTION**

- | | | |
|----|--|--|
| 1. | Applicant's Occupation
Applicant's current Age
Date of Injury
Parts of Body Injured | Painter
67
04/21/1998
left lower extremity, right knee, psyche,
lumbar spine |
| 2. | Identity of Petitioner
Timeliness:
Verification: | <u>Defendant</u> filed the Petition.
The petition was timely filed on 01/04/2022.
The Petition was properly verified. |
| 3. | Date of Issuance of Order | 12/10/2021 |
| 4. | Petitioner's contentions: | Petitioner contends that 1) the WCAB has acted without or in excess of its jurisdiction; and 2) That the findings of fact are not supported by substantial evidence. |

Applicant has not filed an Answer as of the date of this Report and Recommendation.

**II
FACTS**

Applicant, Calvin Goolsby, born [], while employed on 04/21/1998, as a Painter, in Sunnyvale, California, by Northrop Grumman Corporation, sustained injury arising out of and arising in the course of employment to the left lower extremity, right knee, psyche, and lumbar spine. Applicant's claim was settled by way of Stipulations with Request for Award of 99³/₄%, payable at \$230.00 per week beginning on 4/22/2000, for a total sum of \$159,677.50, less credit for permanent disability payments previously made, "plus life pension thereafter – rate to be adjusted as appropriate (see para.6)". Pursuant to paragraph 6 of the Stipulations, Applicant's attorney requested and was granted a fee of \$31,000, which was to be commuted from the far end of the Award. The Award issued on 3/30/2005. (Stipulations with Request for Award-Signed, EAMS Doc. ID #38660961)

On 10/15/2019, defendant filed a Petition for Credit. Applicant was not served with this Petition.

On 01/16/2020, defendant filed an Amended Petition for Credit. Applicant was served with this Petition.

On 10/18/2021, the matter was submitted for decision on the record with the sole issue being whether defendant is entitled to a credit of \$32,750.98 for overpayment of permanent disability.

III **DISCUSSION**

Defendant's Amended Petition for Credit, dated 01/16/2020, states that per the Stipulations with Request for Award, attorney's fees of \$31,000.00 were to be commuted from the far end, resulting in a commutation of 134.7826 weeks of benefits. The Petition further states that the commutation would have caused a lapse of benefits from 8/27/2013 through 03/25/2016. However, rather than cease permanent disability benefits to allow for the commutation of the attorney's fees, defendant inadvertently continued to advance permanent disability indemnity at the rate of \$230.00 per week until 07/07/2014. Defendant then began life pension benefits at the rate of \$150.75 per week from 07/08/2014 to the present and continuing. Applicant does not deny having received the payments and has stipulated as such. (MOH, p. 2; lines 13-15) Defendant is requesting a credit in the amount of \$32,750.98 for the overpayment, which would result in a lapse of applicant's life pension benefits for 217.25 weeks (4.18 years).

Whether or not to allow a credit for overpaid compensation is within the discretion of the court. That discretion must weigh the equities and consider whether granting such a credit will result in an undue burden and hardship to the Applicant. (*Munroe v. USC Verdugo Hills Hosp. LLC*, 2015 Cal. Wrk. Comp. P.D. LEXIS 722, citing *Maples v. Workers' Comp. Appeals Bd.* (1980) 45 Cal. Comp. Cases 1106, 1112)

In *Munroe*, a Board Panel Decision, the Board denied reconsideration and held that the WCJ did not abuse his discretion when he denied defendant credit for overpayment of permanent disability indemnity against amounts due on applicant's life pension. The court found that allowing the credit would eliminate the life pension award, given applicant's advanced age, resulting in applicant suffering extreme burden and hardship for actions that were entirely defendant's fault.

As noted in the undersigned's Opinion on Decision, the facts here are similar to those in *Munroe* in that the applicant is also of advanced age, the error resulting in the overpayment was entirely defendant's fault, and the significant lapse in life pension benefits would result in extreme burden and hardship to applicant. Defendant argues that applicant has been unjustly enriched by having received his benefits early, benefits which he would not have received until after the 134.78 week gap caused by the commutation of attorney's fee. Defendant states, "Applicant received early payment of benefits which he may never earn if he does not live long enough to collect them." The undersigned is aware that

applicant received permanent disability payments when none were due. However, there is nothing in the record indicating applicant was aware of the overpayment prior to January 2020 nor that he was somehow at fault for the overpayment. Defendant's argument that it would be equitable to pause applicant's payments until the credit has been caught up is defeated by the resulting burden and hardship to applicant. If the credit were allowed, applicant who is currently 67 years-old, would be 71 when benefits resume. Although defendant argues that applicant's life pension would not be eliminated as he has a life expectancy of approximately 15.6 years, the actuarial estimate likely does not consider applicant's significant disability. To cease life pension benefits for over four years for an applicant of this age and level of disability is the equivalent to eliminating the benefit.

As stated in the undersigned's opinion, it is the duty of the experienced claims administrator, not the applicant, to ensure that payment of an Award is made promptly and accurately. Defendant continued to pay permanent disability benefits after 08/27/2013, the date defendant states the award of permanent disability was fully paid. Page 14 of Defendant's Exhibit A, confirms defendant ended permanent disability benefits of \$230.00 per week (\$460 bi-weekly) on 07/07/2014 and initiated life pension benefits on 07/08/2014 at \$150.75 per week (\$301.50 bi-weekly). This appears to be an arbitrary date. The undersigned can only assume that the claims administrator must have realized permanent disability payments were no longer due to applicant. That change in benefit payments, from permanent disability to life pension, should have been the opportunity for the claims administrator to make an accounting of what had been paid to date, discover the overpayment, and alert the applicant and their counsel of the change in benefits and resulting overpayment. However, that did not occur until 2019, some five years later. Defendant's statement that the applicant "feigned an interest in settlement for many months which delayed adjudication of this matter" overlooks the fact that defendant's failure to discover the overpayment in 2014 is the actual cause for the delay. Again, the onus is on the experienced claims administrator, not on the applicant, to ensure the Award is made promptly and accurately.

In balancing the equities, as case law requires, the undersigned considered defendant's Petition for Credit against applicant's current advanced age of 67, his significant permanent disability of over 99%, and the resulting burden and hardship a four-year lapse in life pension benefits would cause. Applicant would be 71 years of age before his life pension benefits would resume. Given applicant's advanced age and significant disability, it is an unreasonable burden for applicant to bear. For the foregoing reasons, defendant's request for credit is DENIED.

IV
RECOMMENDATION

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

DATE: 01/13/2022
NORMA L. ACOSTA
WORKERS' COMPENSATION JUDGE