

**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**LARITA DAVIS, *Applicant***

**vs.**

**STATE OF CALIFORNIA, DEPARTMENT OF SOCIAL SERVICES, legally uninsured,  
administered by STATE COMPENSATION INSURANCE FUND CONTRACT  
SERVICES, *Defendants***

**Adjudication Number: ADJ7701947**

**Oakland District Office**

**OPINION AND DECISION  
AFTER  
RECONSIDERATION**

We previously granted defendant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.<sup>1</sup>

Defendant seeks reconsideration of the Findings of Fact and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on February 28, 2020, wherein the WCJ granted applicant's Petition for Commutation.

Defendant contends that the correct COLA (Cost Of Living Adjustment) adjustment date is January 1, 2014, that the commuted value should be calculated using the Uniformly Increasing Reduction Method, and that defendant is entitled to credit for the previous commutations.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be granted and that the matter be returned to the trial level to have the Disability Evaluation Unit recalculate the commutation amount. We did not receive an Answer from applicant.

We have considered the allegations in the Petition and the contents of the Report. The Appeals Board has been advised that on September 1, 2022, while this matter has been pending on reconsideration, the parties submitted stipulations whereby they agreed that: defendant is

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<sup>1</sup> We issued an Opinion and Order Denying Reconsideration on July 14, 2017, and we issued an Opinion and Order Granting Reconsideration on May 13, 2020. Commissioner Lowe was a member of both panels. Commissioner Lowe has since retired, and another panel member has been assigned in her place.

entitled to credit for the three prior commutations; that based on the August 2, 2022 DEU commutation attached to the Stipulations, the overall case value as of September 30, 2022 is \$460,839.66; and that the Appeals Board can either allow a commutation using the DEU calculation of August 2, 2022, or not allow the commutation. The Stipulation also states that it is “only effective until September 30, 2022.”

Based on our review of the record, including the September 1, 2022 Stipulations, and for the reasons discussed below, we will rescind the F&O, grant applicant’s December 11, 2019 Petition for Commutation, approve the Stipulation, and award the commutation using the DEU calculation of August 2, 2022.

### **BACKGROUND**

Applicant claimed injury to her hips, low back, right knee, psyche, nervous system, and in the form of complex regional pain syndrome, while employed by defendant as a program technician on April 21, 2009. Pursuant to the March 24, 2017 Joint Findings and Award, applicant was permanently totally (100%) disabled as a result the April 21, 2009 injury. Thereafter applicant submitted three requests for commutation of different amounts, and each request was granted.

On December 11, 2019, applicant filed a Petition for Commutation requesting commutation of the remaining balance of the future permanent disability benefits. The parties proceeded to trial on January 15, 2020. Applicant testified regarding her monthly income and her monthly expenses, including her mortgage payments. She testified that she had requested the commutation so she could pay off the mortgage. (Minutes of Hearing and Summary of Evidence (MOH/SOE), January 15, 2020, pp. 3 - 4.) The request for commutation was the issue submitted for decision. (MOH/SOE, p. 2.)

### **DISCUSSION**

We first note that the Division of Workers’ Compensation (DWC) closed its district offices for filing as of March 17, 2020 in response to the spread of the novel coronavirus (COVID-19). In light of the district offices’ closure, the Appeals Board issued an en banc decision on March 18, 2020 stating that all filing deadlines are extended to the next day when the district offices reopen for filing. (In re: COVID-19 State of Emergency En Banc (2020) 85 Cal.Comp.Cases 296 (Appeals Board en banc).) The district offices reopened for filing on April 13, 2020. Therefore, the filing deadline for a petition for reconsideration that would have occurred during the district offices’ closure was tolled until April 13, 2020, and the Petition was timely filed. Therefore, the petition

for reconsideration is deemed filed on April 13, 2020, and the opinion granting the petition for reconsideration issued within the 60-day period.

As noted above, the parties have now agreed that the present value of applicant's remaining permanent disability indemnity benefits is \$460,839.66. They also agree that defendant is entitled to credit for the previous commutations, and that the correct COLA start date is January 1, 2014.

In his Report, the WCJ explained:

I have considered the general financial condition of the Applicant and her ability to live without periodic indemnity benefits from workers' compensation. In that regard, as set out above, Ms. Davis receives \$1,889.65 per month from Social Security and PERS. She also currently receives \$1,000 per month from the rental of a room in her house. The granting of the Petition for Commutation would allow her to eliminate an ongoing obligation of \$1,516 per month as well as make necessary repairs to her home. I note that Ms. Davis is now 65 years of age and that a stable living situation is likely to provide both financial and emotional relief.

(Report, p. 4.)

Having reviewed the entire record, including applicant's testimony, the previous trial exhibits, and the parties' September 1, 2022 Stipulations, we agree with the WCJ that applicant has shown good cause to have her permanent disability indemnity benefits commuted pursuant to the August 2, 2022 DEU calculation. Accordingly, we rescind the F&O, grant applicant's December 11, 2019 Petition for Commutation, approve the Stipulation, and award the commutation using the DEU calculation of August 2, 2022.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order issued by the WCJ on February 28, 2020 is **RESCINDED**.

**IT IS FURTHER ORDERED** that applicant's Petition for Commutation is **GRANTED**, and the Stipulation of September 1, 2022 is **APPROVED**, and applicant is **AWARDED** a commutation using the DEU calculation of August 2, 2022.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**September 28, 2022**

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

**LARITA DAVIS  
MANGOSING LAW GROUP  
SCIF, LEGAL**

**TLH/mc**

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