

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

BRANDI WOODS, *Applicant*

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT, *Permissibly Self-Insured, Defendant*

**Adjudication Numbers: ADJ14373904, ADJ14373906
Los Angeles District Office**

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

Defendant seeks reconsideration of the December 1, 2022, Joint Findings and Award wherein the workers' compensation administrative law judge (WCJ) found that, while employed as a Plant Manager, applicant sustained injuries arising out of and during the course of her employment to her lumbar spine on May 1, 2020, and on September 15, 2020. The WCJ found that applicant was temporarily disabled from January 6, 2021, through May 2, 2022. The WCJ also found that applicant sustained 6% permanent disability as a result of the May 1, 2020, injury and sustained 6% permanent disability as a result of the September 15, 2020, injury.

Defendant contends that the evidence does not support the finding that applicant was temporarily disabled from September 9, 2021, through May 2, 2022. Defendant also contends that the WCJ did not determine all issues submitted—specifically, the WCJ did not determine whether defendant is entitled to a credit or offset for an overpayment of permanent disability.

We have considered the allegations of the Petition for Reconsideration. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report). Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, with the exception of the WCJ's discussion of Contention B on pages 5 and 6, we will grant the Petition for Reconsideration and affirm the WCJ's finding that applicant is entitled to temporary disability

from September 9, 2020, through May 2, 2022, and defer the issue of defendant's entitlement to a credit.

In the portion of the Report we are not adopting, the WCJ incorrectly implied that defendant could automatically take a credit for overpayment of permanent disability against temporary disability.

Pursuant to Labor Code section 4909, the WCJ may allow a credit for any payment, allowance, or benefit paid by the defendant to the injured employee when it was not then due and payable or when there was a dispute or question concerning the right to compensation. The California Supreme Court has stated that the allowance of a credit is within the Workers' Compensation Appeals Board's discretion. (*City and County of San Francisco v. Workmen's Comp. Appeals Bd. (Quinn)* (1970) 2 Cal. 3d 1001, 1016 [35 Cal.Comp.Cases 390, 395]; *Herrera v. Workers' Comp. Appeals Bd.* (1969) 71 Cal.2d 254, 258 [34 Cal.Comp.Cases 382, 384].) In *Maples v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 827 [45 Cal.Comp.Cases 1106], the Court of Appeal stated that equitable principles are frequently applied to workers' compensation matters, that equity favors allowance of a credit if the credit is small and does not cause a significant interruption of benefits, that the allowance of a credit of overpayment of one benefit against a second benefit can be disruptive and in some cases totally destructive of the purpose of the second benefit, and that the injured employee should not be prejudiced by defendant's actions when the employee received benefits in good faith with no wrong-doing on his part. These equitable principles are particularly important where a defendant seeks a credit in one case for benefits paid in a different case, and such claims for credit should be scrutinized closely. (*City of Santa Clara v. Workers' Comp. Appeals Bd. (Henry)* (2004) 69 Cal.Comp.Cases 386 [writ den.])

Therefore, upon return, the WCJ should consider the factors discussed above before awarding a credit for an overpayment of one species of benefits against another species of benefits. Accordingly, we will amend the Findings and Award to defer the issue of the claimed credit with jurisdiction at the trial level in the event of a dispute.

For the foregoing reasons,

IT IS ORDERED that defendant's petition for reconsideration of the December 1, 2022, Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 1, 2022, Findings and Award is **AFFIRMED**, **EXCEPT** that Finding of Fact No. 4 and Award a) are **AMENDED** as follows:

FINDINGS OF FACT

4. Applicant was temporarily disabled for the period January 6, 2021, through May 2, 2022, payable at the rate of \$671.41 per week, less credit for time worked and benefits paid, and less reasonable attorney fees. The issue of whether defendant is entitled to credit for payments of permanent disability indemnity against its liability for temporary disability is deferred.

AWARD

(a) Temporary disability indemnity in accordance with Finding of Fact #4. Payment is to be adjusted by the parties with jurisdiction reserved by the WCJ in the event of a dispute.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 21, 2023

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

**BRANDI WOODS
LAW OFFICES OF APPEL & RIMBACH
HANNA, BROPHY, MacLEAN, McALEER & JENSEN, LLP**

MWH/mc

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

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

I

INTRODUCTION

1. Applicant's Occupation: Plant Manager I
Applicant's Age: 41
Date of Injury: May 1, 2020; September 15, 2020
Parts of Body Injured: Lumbar spine; Lumbar spine
Manner in Which Injury Occurred: Moving a large teacher's desk with a dolly;
Moving furniture in order to "social distance"
about 50 classrooms

2. Identity of Petitioner: Defendant filed the petition
Timeliness: The petition is timely filed
Verification: The petition is properly verified

3. Date of Issuance of Findings of Fact & Award & Order November 30, 2022 (filed and served on December 1, 2022)

4. Petitioner's Contentions:
 - A. The evidence does not support a finding of temporary disability from September 9, 2021 to May 2, 2022.

 - B. This WCJ failed to provide a determination regarding overpayment of permanent disability advances.

II

FACTS

The applicant, Brandi Woods, sustained an admitted May 1, 2020 injury to her lumbar spine while employed as a Plant Manager by Los Angeles Unified School District as a result of moving a large teacher's desk with a dolly. The applicant also claimed a September 15, 2020 injury to her lumbar spine as a result of moving furniture in approximately 50 classrooms in order to "socially distance". Defendant denied this injury. The parties stipulated to earnings at \$1,007.11 per week warranting a temporary disability (TD) rate of \$671.41 per week and a permanent disability (PD) rate of \$290.00 per week. Defendant paid, with respect to the May 1, 2020 injury, TD from January 6, 2021 to May 31, 2021 and PD advances from June 1, 2021 to March 9, 2022. No benefits were paid on the September 15, 2020 injury due to the denial of such.

The applicant treated with Dr. Matthew Longacre, and the parties stipulated to his status as the primary treating physician (PTP). In his final report dated May 2, 2022, Dr. Longacre notes on page 2 that that the applicant "...underwent chiropractic and acupuncture treatment with symptomatic improvement", but that all additional treatment was denied, including acupuncture, chiropractic treatment, an MRI, aquatic therapy, and a lumbar epidural steroid injection, after having submitted Requests for Authorization. Having found the applicant permanent and stationary (P&S) , Dr. Longacre found reasonable future medical care to include access to a treating physician, medication, chiropractic treatment, physical therapy, acupuncture, and even epidural steroid injections and decompressive surgery, should her symptoms worsen.

All 13 of his medical reports were admitted into evidence without objection, including the final report dated May 2, 2022 finding the applicant P&S. The parties stipulated that the PTP report rated 18%, after 10% apportionment, and that all PD was attributed to the May 1, 2020 injury.

Dr. Janet Dunlap acted as the panel qualified medical evaluator (PQME), evaluated the applicant one time (which resulted in the September 9, 2021 medical report) and issued a supplemental report dated July 15, 2022. In her September 9, 2021 P&S report, Dr. Dunlap, on page 16 under the caption of “future medical care”, provides that the applicant has symptoms into her legs and believes that the applicant “...*is* [a] candidate for epidural steroid injections” (emphasis added). Furthermore, the doctor allows for future medical care to include physician visits, physical therapy, acupuncture, chiropractic care, and non-addictive medication. The report does not reconcile the P&S finding with the finding that the applicant “is” a candidate for epidural steroid injections.

The parties stipulated that the PQME report rated 6% PD for the May 1, 2020 injury and also 6% PD for the September 15, 2020 injury. Dr. Dunlap also allowed for 10% non-industrial apportionment that both parties stipulated to as appropriate and legal.

During trial, the applicant testified credibly and without rebuttal as to the mechanism of both injuries, her complaints, and most importantly her treatment regimen, and the lack thereof. After being taken off of work and given a ten pound restriction from lifting, pushing, pulling, as well as a preclusion from twisting or bending from her initial treating physician at Kaiser (Dr. Xing Yang), she noted the treatment was not helping, and thus ended at Kaiser in May 2021 (see Minutes of Hearing and Summary of Evidence, page 5, line 25). She switched to Dr. Longacre whose treatment consisted of chiropractics and acupuncture and whose treatment helped with her mobility and going “...to the bathroom”. Various modalities thereafter were requested but denied, including additional sessions and epidural steroid shots, yet the applicant would have undergone the treatment had it been authorized.

The prevailing issues presented to this court at the time of trial were as follows:

- Injury AOE/COE as to the September 15, 2020 injury;
- TD/P&S date, with the applicant claiming January 6, 2021 to May 2, 2022 (based on Dr. Longacre’s opinion) and with the defendant claiming January 6, 2021 to September 9, 2021 (based on Dr. Dunlap’s opinion); and
- Permanent Disability

The court found industrial injury to the applicant's lumbar spine on September 15, 2020, and the defendant has not placed this in issue in its Petition for Reconsideration. The undersigned also found PD in the amount of 6% to the May 1, 2020 injury and 6% to the September 15, 2020 injury, which also is not disputed by way of this Petition for Reconsideration.

Accordingly, the defendant's main contention surrounds the finding of TD extending through May 2, 2022 (pursuant to the opinion of PTP Dr. Longacre) and argues in favor of September 9, 2021 (pursuant to the opinion of PQME Dunlap), despite having paid TD only through May 31, 2021 (as stipulated to at the time of trial).

The defendant's second issue raised in its Petition for Reconsideration is that the court did not provide a determination in terms of overpayment of PD advances, given that the undersigned awarded a total of \$10,440.00 in PD and the defendant had advanced \$11,682.86. Although seemingly clear, the position presents a conundrum due to the periods of TD found, which will be discussed more-fully below.

III

DISCUSSION

Contention A – The Court's Finding of Temporary Disability from September 9, 2021 to May 2, 2022

The defendant's Petition for Reconsideration recites the facts in a fair and accurate manner and argues that the PQME report of Dr. Dunlap is better-reasoned than that of the PTP, Dr. Longacre, when it comes to declaring the date when the applicant achieved P&S status. The defendant argues in favor of the two injuries found by Dr. Dunlap (that this court relied on) in an effort to argue the doctor's finding of TD is substantial evidence whereas Dr. Longacre's finding is not. Relying on PD and apportionment, however, are separate issues. In the case at hand, this court was presented with two divergent medical opinions as to the period of TD and the P&S date. What the undersigned then focused on was the reasoning behind each, coupled with the applicant's testimony.

The applicant was credible when testifying that she saw improvement when she began treating with Dr. Longacre, who was the authorized PTP. Subsequently, as testified to by the applicant and as set forth in Dr. Longacre's reporting, all further treatment recommendations were denied by the defendant. The applicant requested acupuncture, chiropractic treatment, an MRI, aquatic therapy, and a lumbar epidural steroid injection, all of which were denied at various times throughout her time with Dr. Longacre. Questioning at the time of trial by the defense attorney suggested that Utilization Review (UR) issued the denials (Minutes of Hearing and Summary of Evidence, page 7, line 17). If this court were to push back the P&S date merely on the sole basis that UR denied various RFAs, then UR would, in effect, be the de facto trier of fact when it comes to periods of TD. In other words, UR decisions would bootstrap periods of TD and tie the hands of the WCAB, and thus would be the be-all, end-all on this issue. That result defies logic.

Here, we have an applicant and a PTP requesting treatment, with an applicant willing to undergo same (Minutes of Hearing and Summary of Evidence, page 7, line 15), yet she was denied. On top of this, the PQME report, that the defendant requests a finding on, states herself that the applicant "is" a candidate for epidural steroid injections. Although the recommendation is made under the caption of "future medical care", this court could not overlook such a finding – a finding consistent with the recommendation and RFA by Dr. Longacre. Moreover, the PQME allows for future medical care to consist of physician visits, physical therapy, acupuncture, chiropractic care, and non-addictive medication.

The defendant argues that Dr. Longacre's opinion does not constitute substantial evidence. This court disagrees. This court actually finds that both reports constitute substantial evidence, but that the conclusion of Dr. Longacre is better-reasoned in terms of adequately defining the period of TD and the P&S date. Dr. Dunlap, after all, evaluated the applicant one time in a forensic capacity and applied a retroactive P&S date – even in the face of finding that the applicant was a current candidate for injections, not to mention other modalities that the applicant was willing to undergo and that Dr. Longacre was willing to provide.

Contention B – The Court’s Alleged Failure to Provide a Determination

Regarding Overpayment of Permanent Disability Advances

[Not Adopted]

IV

RECOMMENDATION

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

DATE: December 28, 2022

TODD T. KELLY
WORKERS’ COMPENSATION
ADMINISTRATIVE LAW JUDGE