

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

**CHRISTINA MAUSER (DEC'D), *Applicant***

**vs.**

**MAMBA SPORTS ACADEMY dba MAMBA, SPORTS ACADEMY  
FOUNDATION, LLC., MAMBA & MAMBACITA SPORTS FOUNDATION, LLC.;  
HARTFORD CASUALTY INSURANCE COMPANY, administered by  
THE HARTFORD, *Defendants***

**Adjudication Number: ADJ13092614**

**Santa Ana 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/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER**



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

**October 20, 2023**

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

**MATTHEW MAUSER, DEPENDANT  
BENTLEY & MORE LLP  
ENGLAND PONTICELLO & ST. CLAIR**

**AS/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 OF  
WORKERS' COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION**

**I.**

**INTRODUCTION**

1. Applicant's occupation : Basketball Coach  
Applicant's Age : 39  
Date of Injury : January 26, 2020  
Parts of Body Injured : Death.  
Manner in which it occurred : Specific Incident
  
2. Identity of Petitioner : Defendant Sports Academy Foundation  
LLC, Mamba Sports Academy, Mamba &  
Mambacita Sports Foundation, and Sports  
Academy Thousand Oaks  
  
Timeliness : Petition is timely  
Verification : Petition is verified
  
3. Date of Order : July 27, 2023
  
4. Petitioner contends that the WCJ erred in:
  - a) Finding the defendant unreasonably terminated payment of death benefits.
  - b) Ordering the defendant to reinstate payment of Death benefits and pay penalties and interest.
  - c) Granting the applicant's Petition to Compel the Deposition of Vanessa Bryant as the alleged CEO of Sports Academy Foundation LLC, Mamba Sports Academy, Mamba & Mambacita Sports Foundation, and Sports Academy Thousand Oaks.

## II. FACTS

On March 23, 2020, An Application for Adjudication was filed on behalf of Matthew Mauser, the husband, Penelope Mauser, Thomas Mauser, and Ivy Mauser, the children of Christina Mauser, who died in a helicopter crash on January 26, 2020, while in the course and scope of her employment with Granity Studios LLC.<sup>1</sup> Subsequently, the Application for Adjudication was amended on May 1, 2020, to correct the name of her employer to Mamba Sports Academy DBA Mamba.<sup>2</sup>

On March 12, 2021, the matter was resolved by Stipulation with Request for Award identifying the employer as Sports Academy Foundation, LLC; Mamba Sports Academy DBA by Mamba Sports Academy, LLC; Sports Academy Thousand Oaks.<sup>3</sup>

The Stipulation with Request for Award was approved on March 25, 2021, awarding Death benefits in the amount of \$563,076.36, payable at \$769.23 a week. The Award was in favor of Ivy Mauser, Thomas Mauser, Penelope Mauser, and Matthew Mauser against Mamba Sports Academy DBA Mamba; Sports Academy Foundation, LLC, and The Hartford.<sup>4</sup>

The applicant noticed the deposition of Vanessa Bryant on September 3, 2022.<sup>5</sup> The defendant filed a motion to quash the notice of the deposition<sup>6</sup>, and Counsel for Vanessa Bryant issued an objection thereto.<sup>7</sup>

The matter proceeded to trial on March 14, 2022, on the issue of whether or not the applicant was entitled to take the deposition of Vanessa Bryant.

The Undersigned Judge issued a Findings and Order dated June 17, 2022, finding that there was (1) no pending issues within the jurisdiction of the workers' compensation appeals board to which an employer's waiver of a subrogation right would be relevant; (2) that The deposition of Vanessa Bryant will not provide admissible evidence or is reasonably calculated to lead to the discovery of admissible evidence relevant to any issue currently pending before the

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<sup>1</sup> EAMS Doc ID: 32770531; APPLICATION FOR ADJUDICATION OF CLAIM-DEATH

<sup>2</sup> EAMS Doc ID: 32313950; Mauser-Amended Letter, DWC Claim Form and POS

<sup>3</sup> EAMS Doc ID: 35901850; Signed SWRA

<sup>4</sup> EAMS Doc ID: 74002261; AWARD & GAL

<sup>5</sup> APPLICANT'S 5: Notice of Deposition, dated September 3, 2021

<sup>6</sup> APPLICANT'S 6: Joint Motion to Quash Deposition, dated September 30, 2021

<sup>7</sup> DEFENSE C: Objection to the deposition of Vanessa Bryant, dated January 18, 2022

Workers' Compensation Appeals Board; and (3) The applicant was not entitled to take the deposition of Vanessa Bryant at that time.<sup>8</sup>

Subsequently, the defendant filed a [Redacted] Petition for Credit, which requested the Court allow the defendant to take a credit towards liability for any and all workers' compensation liability in an undisclosed amount from a third-party lawsuit.<sup>9</sup>

An Objection to the Petition for credit was filed by the applicant alleging that there was a mutually released in the Civil Action as well as employer negligence that could reduce and/or negate the defendant's rights to a credit for the third-party lawsuit settlement.<sup>10</sup>

On July 6, 2022, the undersigned Judge issued an Order Deferring Determination On Petition For Credit Pending Evidentiary Hearing, which ORDERED "that all action upon said Petition is deferred pending completion of trial on those issues, at which time a judge may rule upon the evidence then presented. No action will be taken toward that end until a party files a declaration of readiness to proceed, when appropriate."<sup>11</sup>

On September 29, 2022, the applicant issued a Notice Of Taking Remote Video Conference Deposition Of Vanessa Bryant As An Employer Representative/CEO Of Sports Academy Foundation, LLC, Mamba & Mambacita Sports Foundation, LLC, and as a Witness to Any Employer Negligence; Request for Production And Notice Of Intent To Videotape Said Deposition; Subpoena.<sup>12</sup>

Again, Counsel for Vanessa Bryant issued an Objection to the Notice of Deposition.<sup>13</sup>

On November 8, 2022, the defendant sent notice that it was terminating payment of Death benefits effective October 22, 2022, on the grounds that the defendant had filed a petition for credit.<sup>14</sup>

On February 9, 2023, the applicant filed a Petition to Enforce the Court Order Dated July 6, 2022, Deferring Determination on Petition For Credit, Request For Reinstatement Of Death Benefits; Request For Penalties, Interest And Attorney's Fees.<sup>15</sup>

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<sup>8</sup> EAMS Doc ID: 75622549, F&O AND OPINION-MAUSER, C

<sup>9</sup> EAMS Doc ID: 41989368, 06-22-22-MausCh-Redacted Pet. for Credit

<sup>10</sup> EAMS Doc ID: 42004173, Applicant's Obj to Def's Pet for Credit

<sup>11</sup> EAMS Doc ID: 75679894, ORDER DEFERRING ACTION ON PETITION FOR CREDIT-MAUSER, C

<sup>12</sup> APPLICANT'S EXHIBIT 15: Notice of deposition, dated 9/29/2022

<sup>13</sup> APPLICANT'S EXHIBIT 17: Objection to deposition, dated 10/28/2022

<sup>14</sup> APPLICANT'S EXHIBIT 19: Death benefit termination, dated 11/8/2022

<sup>15</sup> EAMS Doc ID: 45022412, Pet to Enforce Court Order dated 7.6.22

The matter proceeded to trial on May 17, 2023, on the issues of (1) attorney's fees, (2) motion to compel the deposition of Vanessa Bryant, (3) penalties and interest for failure to pay benefits per the Stipulation and Award. and (4) costs and sanctions for 5814 and 5814.5.<sup>16</sup>

On July 27, 2023, the Undersigned Judge issued a Findings, Award, And Order finding that the deposition of Vanessa Bryant may produce admissible evidence, or was it reasonably likely to lead to the discovery of admissible evidence relevant to the issues currently pending before the Workers' Compensation Appeals Board; and that the applicant was entitled to take the deposition of Vanessa Bryant[.];

The Undersigned Judge found that there was no good cause to allow the defendant to withdraw from the stipulation that Sports Academy Foundation LLC, Mamba Sports Academy, Mamba & Mambacita Sports Foundation, and Sports Academy Thousand Oaks employed Christina Mauser; that the language in the Order Deferring Determination On Petition For Credit Pending Evidentiary Hearing was unambiguous and ordered all action upon said Petition deferred; that the defendant violated the Court's Order to deferrer action when it terminated benefits on October 22, 2022; and that the defendant unreasonably delayed payment of compensation[.];

The Undersigned Judge ordered that the applicant was entitled to compensation payments per the March 25, 2021, Award on Stipulations with Request for Award from the date of termination of payments, October 22, 2022, through the present and continuing until such time the Award is paid in full or by Order of the Court; that the applicant was entitled to an increase in compensation totaling \$6,337.77 for the defendant's unreasonable delay in payment of compensation; that the applicant was entitled to interest on each delayed payment of compensation from the day it was due through the date of payment at the same rate as judgments in civil actions; and that the applicant was entitled to an attorney fee of \$2,020.00 for having to file a petition to enforce the Award and Court's Order.

The defendant filed a petition for reconsideration to the July 27, 2023 Findings, Award, And Order asserting that the Undersigned Judge acted in excess of his powers in light of the mandatory language of labor code §§ 3858 and 3861 and that the findings of fact do not

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<sup>16</sup> EAMS Doc ID: 76768230, Minutes of Hearing, 5-17-23

support the Order requiring Hartford to produce a non-employer representative witness, who has previously declared a lack of relevant knowledge, for deposition.

**III.**  
**DISCUSSION**

**CALIFORNIA LABOR CODES SECTIONS 3858 AND 3861**

The defendant has asserted that California Labor Codes Sections 3858 and 3861 are a mandatory relief from the obligation to pay further compensation "as a result of an employee's third-party recovery and that this credit is mandatory except in unusual circumstances.["]

However, it has been held that a defendant may not take unilateral credit for a third-party settlement unless not doing so would be "financially foolhardy."<sup>17</sup>

In this matter, the Award was for \$563,076.36, payable at \$769.23 a week. This is not an insignificant amount.

The defendant's Petition for credit was for an undisclosed amount, the numbers having been redacted, and there was no indication of the nature of the settlement proceeds.<sup>18</sup>

The defendant's Petition provides, "The total amounts netted from the third-party civil suit are as follows: (1) [REDACTED]; (2) [REDACTED] ; (3) [REDACTED]; (4) [REDACTED] (Id.) Based on this June 2022 provision of third-party settlement information, defendant now files this Petition for Credit."<sup>19</sup>

To get credit, a defendant must show an overlap between benefits owed in the workers' compensation system and the damages awarded or settled for in the civil arena. No evidence has been submitted regarding the nature and amount of the third-party settlement and if it included any loss of consortium and/or pain and suffering.

With the assertion of employer negligence that could reduce or negate the employer's right to a credit, the amount of death benefits due to the applicants, there is no evidence that continuing payment of death benefits to the decedent's surviving children and spouse would be financially foolhardy.

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<sup>17</sup> California Compensation Ins. Co. v. Workers' Compensation Appeals Bd., 66 Cal. Comp. Cases 1076, 1078 (Cal. App. 3d Dist. July 19, 2001)

<sup>18</sup> EAMS Doc ID: 41989368, 06-22-22-MausCh-Redacted Pet. for Credit. Page 2

<sup>19</sup> EAMS Doc ID: 41989368, 06-22-22-MausCh-Redacted Pet. for Credit. Page 2

As such, the undersigned Judge was not in error in determining that the defendant's unilateral termination of death benefits was unreasonable and in finding that the defendant unreasonably delayed payment of compensation.

### **DOUBLE RECOVERY**

The defendant asserts that not allowing the defendant to take a unilateral credit before litigation of its right to credit by the Appeals Board would impermissibly allow a double recovery.

The defendant cites *Graham v. Workers' Comp. Appeals Bd.*, 210 Cal. App. 3d 499, for the premise that "the subrogation provisions prevent a double recovery to an employee who makes both a workers' compensation claim and a claim against a third party tortfeasor . . ."

In *Graham v. Workers' Comp. Appeals Bd.* the Court of Appeal of California annulled an Appeals Board granting of a defendant's Petition for credit.

In the *Graham* matter, the applicant resolved a civil action for medical malpractice. The civil settlement was reported to be solely for pain and suffering. The Court of Appeal was addressing the interaction between Cal. Civ. Code § 3333.1 and Cal. Lab. Code §§ 3858, 3861.

The Court of Appeal ultimately denied the employer's request for credit on the grounds that the civil settlement accounted for the workers' compensation benefits received by the applicant and, therefore, was not a double recovery.

In *Roe v. Workmen's Comp. Appeals Bd.* (1974) *supra*, 12 Cal.3d 884, the Supreme Court of California discussed a matter where a negligent employer was claiming a credit under section 3861 after the injured employee had settled his cause of action against the third party without determining employer negligence.

The Court in [*Roe*] [Court, *sic*] stated that there was "doubt as to whether the recovery of workers' compensation benefits by an employee following a settlement constituted a double recovery, given the likelihood that any settlement took into account the possibility of such a recovery" and pointed out that "the policy against double recovery primarily protects the third-party tortfeasor, not the employer."

The California Supreme Court has stated that the Legislature's command in California Labor Code section 3202 that the courts liberally construe the Act to extend benefits for the



protection of persons injured in the course of their employment, governs all aspects of workers' compensation and applies to factual as well as statutory construction.<sup>20</sup>

In the current case, there is no evidence of the nature and amount of the third-party settlement and if it included any loss of consortium and/or pain and suffering. As such, there is no evidence there would be a double recovery that a credit award would exceed the benefits owed by the defendant.

Based on the above, the undersigned Judge was not in error in finding that the defendant was to recommence payments per the March 25, 2021, Award on Stipulations With Request For Award from the date of termination of payment, October 22, 2022, through the present and continuing until such time as the Award is paid in full or by Order of the Court.

#### **PLAIN LANGUAGE OF THE COURT'S ORDER DEFERRING**

The defendant asserts that the language "IT IS HEREBY ORDERED that all action upon said petition is deferred pending completion of trial on those issues, at which time a judge may rule upon the evidence then presented" was ambiguous and, as such, was not in violation of the Order deferring all action on the Petition.

The defendant states that it did not understand that the Undersigned Judge's statement "that all action upon said petition is deferred pending completion of trial on those issues, at which time a judge may rule upon the evidence then presented" was not limited to only court action. That is was not until the Undersigned Judge's July 27, 2023 Findings and Order that the defendant realized that the July 6, 2022, Order deferred all cation on the Petition and not just court action.

However, the defendant did not request clarification of the Undersigned Judge's Order and continued to pay benefits for an additional three months.

The Undersigned Judge does not believe that the language in his Order Deferring Determination On Petition For Credit Pending Evidentiary Hearing was ambiguous when it ordered all action upon said Petition [was] deferred.

Based on the above, the undersigned Judge was not in error in determining that the defendant violated his Order, deferring all action on the defendant's Petition for credit.

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<sup>20</sup> Arriaga v. County of Alameda, 9 Cal. 4th 1055, 1065

**INTEREST, SANCTIONS, AND ATTORNEYS' FEES**  
**RELATED TO THE TERMINATION OF PAYMENTS**

The defendant asserts that there was a satisfactory excuse for the delay in payment of benefits is genuine legal doubt as to liability for benefits.

As discussed above, the defendant's Petition for credit was for an undisclosed amount, the numbers having been redacted, and there was no indication as to the nature of the settlement proceeds.

No evidence was provided of an overlap between benefits owed in the workers' compensation system and the damages awarded or settled for in the civil arena.

The defendant requests that the Court accept on faith that the civil settlement exceeds the amount awarded to the applicants and that the alleged employer's negligence would not reduce or negate the defendant's right to a credit.

With no evidence submitted as to the nature and amount of the third-party settlement and whether or not it included any loss of consortium and/or pain and suffering, there is no evidence. With the assertion of employer negligence that could reduce or negate the employer's right to a credit, the amount of death benefits due to the applicants, there is no evidence that the civil settlement proceeds exceed the employer's liability under Stipulations with Request for Award.

As such, the undersigned Judge was not in error in determining that the defendant's termination of death benefits was unreasonable and in finding that the defendant unreasonably delayed payment of compensation.

"When payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the payment unreasonably delayed or refused shall be increased up to 25 percent or up to ten thousand dollars (\$10,000), whichever is less. In any proceeding under this section, the appeals board shall use its discretion to accomplish a fair balance and substantial justice between the parties."

The defendant terminated payments per the March 25, 2021, Award on Stipulations With Request For Award on October 22, 2022.

The undersigned Judge found that the defendant's unilateral termination of death benefits was unreasonable and that the defendant unreasonably delayed payment of compensation.

According to California Labor Code Section 5814, the amount of payment unreasonably delayed or refused shall be increased up to 25 percent or up to ten thousand dollars (\$10,000), whichever is less.

As such, the Undersigned Judge was not in error in finding that the applicant was entitled to an increase in compensation for the defendant's unreasonable delay in payment of compensation under the March 25, 2021, Award on Stipulations with Request For Award.

Furthermore, the Undersigned Judge was not in error in finding that the applicant was entitled to interest on each delayed payment of compensation from the day it was due through the date of payment at the same rate as judgments in civil actions.

### **THE EMPLOYER NAME**

On March 12, 2021, this matter was resolved by Stipulation with Request for Award identifying the employer as Sports Academy Foundation, LLC; Mamba Sports Academy DBA by Mamba Sports Academy, LLC; and Sports Academy Thousand Oaks.

On February 27, 2023, the parties completed a pretrial conference statement identifying the employer as Mamba & Mambacita Sports Foundation, Sports Academy Foundation, LLC, Mamba Sports Academy, and Sports Academy Thousand Oaks.

On May 17, 2023, at the time of trial, the defendant requested that it be allowed to withdraw from the stipulation that Mamba & Mambacita Sports Foundation was to be included as one of the names of the decedent's employer.

The appeals board's discretion to reject a stipulation is limited and may only do so on a showing of good cause.

A stipulation may be set aside if it has been entered into through inadvertence, excusable neglect, fraud, mistake of fact, or law. Good cause may also exist where the facts stipulated to have changed, or there has been a change in the underlying conditions that could not have been anticipated, or where special circumstances exist, rendering it unjust to enforce the stipulation.

Good cause will not be found if there has been a failure to exercise due diligence or a miscommunication between a principal and an agent.

At the time of trial, no good cause was provided that would make it unjust to enforce the stipulation.

In addition, according to the Secretary of State Certificate of Amendment of Articles of Incorporation, filed June 11, 2019, Sports Academy Foundation changed its' name to Mamba Sports Foundation.<sup>21</sup>

According to the Secretary of State Certificate of Amendment of Articles of Incorporation, filed on February 5, 2020, Mamba Sports Foundation changed its' name to Mamba and Mambacita Sports Foundation.<sup>22</sup>

Based on the evidence submitted, the undersigned Judge was not in error in declining to allow the defendant to withdraw from the stipulation that Mamba and Mambacita Sports Foundation is a valid name of the decedent's employer.

### **EMPLOYER REPRESENTATIVE WITNESS**

The defendant asserts that without a factual finding that Mrs. Bryant is the employer representative or that Hartford identified Mrs. Bryant as the employer representative, the Order requiring Hartford to produce Mrs. Bryant should be overturned.

The applicant has asserted that Vanessa Bryant, as the chief executive officer for Mamba and Mambacita Sports Foundation (Sports Academy Foundation) and on behalf of Sports Academy Foundation LLC, Mamba Sports Academy, Mamba & Mambacita Sports Foundation, and Sports Academy Thousand Oaks, entered into a binding mutual release of both the contractual and statutory right of subrogation.

According to the California Secretary of State Electronic Filings dated 11/05/2021 and 4/21/2020, Vanessa Bryant was chief executive officer of Mamba and Mambacita Sports Foundation.<sup>23</sup>

According to the Secretary of State Certificate of Amendment of Articles of Incorporation, filed June 11, 2019, Sports Academy Foundation changed its' name to Mamba Sports Foundation.<sup>24</sup>

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<sup>21</sup> APPLICANT'S 1: Certificate of Amendment of Articles of Incorporation, dated June 11, 2019

<sup>22</sup> APPLICANT'S 2: Certificate of Amendment of Articles of Incorporation, dated February 5, 2020

<sup>23</sup> APPLICANT'S 4: Corporation Statement of Information, dated November 5, 2021 &  
APPLICANT'S 3: Corporation Statement of Information, dated April 21, 2020

<sup>24</sup> APPLICANT'S 1: Certificate of Amendment of Articles of Incorporation, dated June 11, 2019

According to the Secretary of State Certificate of Amendment of Articles of Incorporation, filed on February 5, 2020, Mamba Sports Foundation changed its' name to Mamba and Mambacita Sports Foundation.<sup>25</sup>

The evidence submitted at trial shows that the Sports Academy Foundation changed its name to Mamba Sports Foundation, subsequently changing it to Mamba and Mambacita Sports Foundation. Based on this evidence, Mamba and Mambacita Sports Foundation and Sports Academy Foundation are the same entity.

Based on the evidence submitted, Vanessa Bryant has been the chief executive officer for Mamba and Mambacita Sports Foundation (Sports Academy Foundation) since April 21, 2020, and would have been the chief executive officer for Mamba and Mambacita Sports Foundation (Sports Academy Foundation) in November 2021 when the civil claim was resolved.

Based on the evidence submitted, the undersigned Judge was not in error in granting the applicant's Petition to compel the deposition of Vanessa Bryant as the alleged CEO of Sports Academy Foundation LLC, Mamba Sports Academy, Mamba & Mambacita Sports Foundation, and Sports Academy Thousand Oaks.

#### IV.

#### **RECOMMENDATION**

For the reasons stated above, it is respectfully recommended that the defendant's Petition for reconsideration be denied.

DATE: September 5, 2023

**Oliver Cathey**  
WORKERS' COMPENSATION JUDGE

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<sup>25</sup> APPLICANT'S 2: Certificate of Amendment of Articles of Incorporation, dated February 5, 2020