

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

JOSE CORTES, *Applicant*

vs.

**ST. JOHN'S REGIONAL MEDICAL CENTER, permissibly self-insured,
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Numbers: ADJ10343251; ADJ10713340; ADJ10713342
Oxnard 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 WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 27, 2023

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

**JOSE CORTES
LAW OFFICES OF HOWARD J. WASSERMAN
LUNA, LEVERING & HOLMES
EMPLOYMENT DEVELOPMENT DEPARTMENT**

AH/cs

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

**JOINT REPORT AND RECOMMENDATION ON PETITION FOR
RECONSIDERATION**

**I
INTRODUCTION**

Jose Cortes, a receiving clerk for St. John's Regional Medical Center, filed a stipulations with request for award (ADJ10343251) as an opening document on 6/4/16, where it was stipulated that on 12/22/14, he sustained injury arising out of and occurring in the course of employment to his right shoulder. Applicant filed a Petition to Re-open that claim on 4/26/17.

On 1/10/17, Applicant filed two Applications for Adjudication alleging that on 11/16/16 (ADJ10713340) and during the period commencing 12/22/15 through 12/22/16 (ADJ10713342), he sustained injury arising out of and occurring in the course of employment to his left shoulder, and bilateral shoulders respectively as a result of excessive and repetitive use. Both claims were accepted by the employer.

Defendant (Hereinafter Petitioner) has filed a timely, verified, Petition for Reconsideration of the Joint Findings, Award, and Orders dated 2/21/23 that does not state any statutory grounds for reconsideration.

Petitioner contends that it is entitled to credit for a period of temporary disability indemnity allegedly previously paid in one case which overlaps with a period of temporary disability indemnity awarded in a companion case.

**II
FACTS**

The parties completed the Pre-Trial Conference Statement (PTCS) relative to all three cases at the Mandatory Settlement Conference on 10/20/22. Applicant raised the issue of entitlement to temporary disability indemnity at to all three cases for the period commencing 12/22/16 through 11/5/20. There was no stipulation entered into relative to compensation previously paid by the employer in any of the cases. Defendant raised the issue of credit for payments made by EDD as well as credit for permanent disability advances in all three cases.

In preparation for trial, the PTCS was amended, without objection, to reflect that the period of temporary disability claimed extended to 3/5/21. The PTCS was also amended, to reflect three different periods of payments made by EDD. Defendant did not list benefit printout as an exhibit

on the PTCS and did not offer one into evidence. No stipulations were added relative to compensation previously made by the employer. Defendant did not raise any additional issues.

The Court issued a Joint Findings, Award, and Orders on 2/21/23 wherein it was determined, among other things, that Applicant was entitled to temporary disability, less an attorney fee, for the period commencing 9/29/20 through 3/15/21, in case ADJ107133342 (DOI CT 1/1/94 through 2/23/18). The issue of permanent disability was deferred pending development of the medical record.

Petitioner now asserts on appeal, that it paid temporary disability indemnity to Applicant for the period commencing 9/29/20 through 3/15/21 for the specific injury of 1/16/16 (ADJ10713340), and wants to assert credit for those payments against the award in the cumulative trauma claim (ADJ10713342).

III

DISCUSSION

It is well settled that Labor Code section 5502(d)(3) requires the parties to set forth specific issues in dispute on the PTCS, and that failure to do so may constitute a waiver of any issues omitted. Generally, the Court does not have a problem with granting credit for benefits previously paid. But in this case, although provided with multiple opportunities to raise the issue, Petitioner chose not to do so. Additionally, Petitioner did not provide any evidence that the asserted payments of temporary disability were actually paid, and did not enter into a stipulation with Applicant's attorney in that regard. To compound the matter, Petitioner specifically raised the issue of credit for permanent disability advances. This fact, in conjunction with the fact that EDD paid a good portion of benefits during the claimed temporary disability periods, led the Court to believe that there was no issue raised relative to credit for temporary disability paid when the case was being decided. In consideration of all of these facts, the Court asserts that Petitioner waived the issue.

However, assuming arguendo that Petitioner did not waive the issue, no evidence was presented that the Court could rely on to grant the credit. Petitioner holds the affirmative of the issue and thus has the burden of proof pursuant to Labor Code section 5705. That burden was not met.

IV

RECOMMENDATION

For the foregoing reasons, the undersigned WCJ recommends that the Petition for Reconsideration be **DENIED**.

DATE: 3/23/23

Jeffrey L. Morgan
WORKERS' COMPENSATION JUDGE