

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

MOJGAN MIKAIL, *Applicant*

vs.

**LOS ANGELES UNIFIED SCHOOL DISTRICT;
SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ7760743
Oxnard District Office**

**OPINION AND DECISION AFTER
RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

We have considered the allegations of the Petition for Reconsideration filed by applicant, in pro per, 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, except as noted below, we will affirm the February 26, 2021 Findings and Award.

We do not adopt or incorporate the third full paragraph on page three of the WCJ's report and have omitted it from the copy of the report attached to this decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 26, 2021 Findings and Award is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 12, 2022

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

**MOJGAN MIKAIL, IN PRO PER
TOBINLUCKS**

PAG/abs

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

- | | |
|-------------------------------|--|
| 1. Date of Injury: | 3/8/2011 |
| Applicant's age: | 47 |
| Occupation: | School Psychologist |
| Body Parts Injured: | Cervical Spine, Lumbar Spine, Headaches and Thoracic Spine |
| 2. Identity of Petitioner: | Applicant (Pro Per) |
| Timeliness: | The Petition was timely filed on 3/23/2021 |
| Verification: | The Petition is verified |
| 3. Date of Finding and Award: | February 26, 2021 |

4. The Petitioner Contends that: The WCJ acted without or in excess of its powers, the evidence did not justify the findings of facts and the findings of fact did not support the decision/award. More specifically: Applicant claims she is owed essentially her full salary for all time off, penalties on said failure to pay her salary, insurance premium costs, unpaid mileage costs and penalties for emotional stress.

II
FACTUAL BACKGROUND

This court issued an F&A and Opinion on Decision on 2/26/2021 after multiple trial settings and dates of testimony. Although the Award and Opinion addressed several issues, it appears the only issue being raised on Applicant's Petition for Reconsideration is on the issue of TTD amounts alleged to have been owed. Although the Applicant lists various Education Codes, Labor Codes and excerpts from the LAUSD employment manuals, she makes no cohesive statement of exactly how the award was incorrect. She does conclude that \$214,963.20 in wages is due, plus insurance premiums, unpaid mileage and wants penalties for underpayment of wages, for withholding wage deductions from TTD and penalties for emotional distress.

This court did address the TTD issue in its Opinion on Decision, including amounts requested by Defendants as overpayment. In fact this was really the only issue discussed by the Applicant in her testimony and the 2 employer witnesses. This court addressed the issue in its Opinion as follows:

TEMPORARY DISABILITY

The parties stipulated that the Applicant's AWE was \$1,543.38 and that her TTD rate for 2011 was \$986.69, for 2012 was \$1,010.50 and for 2013 was \$1,028.92. (See Summary of Evidence 8/2/2017). She was TTD beginning 3/9/2011 returning to work on 12/10/2012 through 1/11/2013 and remained TTD thereafter. (See Summary of Evidence 12/16/20, page 3).

Both defense witnesses felt she was paid her full 104 weeks, and in fact felt the applicant was overpaid, which will be discussed below. The testimony on exactly what she was paid and why, was quite confusing, so the court calculates that the TTD that should have been paid is as follows:

- 1) 3/9/2011 – 5/7/2011 (60 days) full salary. $\$1,543.38 \times 60/7 = \$13,228.93$*
 - 2) 5/8/2011 – 12/31/2011 = 238 days. $238/7 \times \$986.69 = \$33,547.46$*
 - 3) 1/1/2012 – 12/10/2012 = 344 days. $344/7 \times \$1,010.50 = \$49,658.80$*
 - 4) 1/14/2013- 03/18/2013 = 86 days. $86/7 \times \$1,028.92 = \$12,641.00$*
- 104 week Grand Total Salary/TTD owed = \$109,076.19*

Note; the first 60 days per the Education Code is paid at full salary and counts toward the 104 week cap. Calculating in the Applicant's return to work in December 2012 through the Christmas Break, her 104 weeks of TTD eligibility would have extended to 3/18/2013.

For purposes of calculating whether any additional TTD is owed, the court is relying on Defendant's Exhibit "B", the Benefit printout of TTD benefits paid. That Exhibit although showing a lot of entries and deletions, shows a total paid of \$126,535.60. This is more than the calculated amount owed listed above of \$109,076.19 for the max cap of 104 weeks. Therefore this court finds that the applicant was adequately paid for TTD owed.

OVERPAYMENT OF TTD/PDA CREDIT?

This was the main contention between the parties, with the applicant claiming that she was owed thousands of dollars more for the TTD period based on her belief that she had sufficient sick time accumulated to give her full salary during the majority of her TTD period. The Defendants disputed her claim pointing out that the her sick time, referred to as Full Time or Half Time benefits and later the 10/90 time was depleted by the time the next allocation of said time was issued (July 1st each year assuming the individual was working). Or that the applicant was paid monies retroactively for time wherein she had already been paid TTD, thus creating the overpayment.

Apparently there was supposed to be coordination between the LAUSD, who pays the salary directly to the individuals, and Sedgwick, who pays the workers compensation benefits (I.E. TTD etc.). Obviously from the testimony of the two defense witnesses, the coordination between LAUSD and Sedgwick was not very desirable. The two witnesses gave differing accounts on what they felt the overpayment was and exactly why she was overpaid. It is noted that Defendants Exhibit #B, discussed above included both alleged TTD and PDA paid and was added to arrive at the figure of the \$126,535.60.

For purposes of this workers compensation case, the court as noted above finds that the TTD was adequately paid. Any amounts, including the TTD and PDA, noted or alleged to have been paid beyond the TTD owed, have to do with either the internal workings of the LAUSD and/or Sedgwick, having not been caused nor created by the Applicant and/or having to do with the Contacted "full time, half time or 10/90 time" benefits created by the Union Contract.

Further, the Payroll Specialist for LAUSD, the defenses expert, Vincent Epinosa, explained that the TTD overpayment which was estimated at \$16,207.19 and for which they would normally ask

for a credit against P.D., had been waived. (Summary of Evidence, 2/5/20, pg. 6, lines 11 – 16). Therefore, this court finds any alleged overpayment or underpayment of TTD and/or P.D. as noted in the paid \$126,535.60 shall not be credited against any P.D. found to be owed nor applied toward any future benefits that may become owing.

This court discussed the TTD end date and thus the P.D. start date in it's Opinion as follows:

PERMANENT DISABILITY/P.D. Start Date

*The factors of permanent disability are based upon the medical report of Dr. James Styner M.D., dated 6/16/2014. In that report there is reference to a deposition taken on 3/13/14, at which time the doctor indicated the applicant was in fact P&S but needed to write a supplemental report regarding P.D. Apparently he forgot to put that in his 5/16/2014 report and therefore responded to the Applicant Attorneys inquiry with his 6/16/2014 report. (It should be noted that neither the 3/13//2014 depo nor the report of 5/16/2014 were placed into evidence.) Although the Prior Applicant Attorney and the Defense stipulated to a P&S (MMI) date of 2/9/2013 (See Minutes of Hearing 8/2/2017), there was no support for that date in the PQME records of Dr. James Styner. In fact, per his reporting offered by Defendants all reports (Exhibits E – I, dated 6/6/14 – 10/26/2012 had the applicant TTD the entire time with need for additional treatment). **Therefore, since the Applicant and her Attorney disagreed on the case and eventually the Attorney was dismissed, it is felt the date of 2/9/2013 is inappropriate and unsupported. The 104 weeks of TTD would have run out long before the P&S date of 3/13/2014. As noted above the TTD would have run on 3/18/2013.***

Therefore P.D. would be owing as of 3/19/2013 and the court will assign that as the P.D. Start date.

III DISCUSSION

This case's first day of trial was 8/2/2017. At that time, the applicant was represented by Gordon Edelstein, et al. The issues for trial were formulated and read into the record. TTD amounts were not at issue at that time. After several more trial settings, the Applicant's Attorney was dismissed as counsel of record per request. At the hearing and per the Minutes of Hearing for 8/28/2018, the issue of TTD benefits was added to the issues. After multiple further MSC and Trial Settings, which were continued for a myriad of reasons primarily for the applicant herself, the case was finally concluded on 12/16/2020.

Although the applicant appears to raise the issue of mileage, that issue was not before this court and no decision was rendered on an issue of mileage. Applicant also seemed to demand Insurance Premiums of \$5,300 and penalties for emotional distress; those costs and damages are beyond the preview and jurisdiction of this court.

Any issue of penalty was not before this court as well, and no decision was rendered on any issue of penalty. Since there was a finding that no further TTD was owed there would be no basis for a penalty.

This court did essentially rule in Applicant's favor by disallowing any credit on the alleged overpayment asserted by Defendants.

At first this court did not understand the applicant's position that she was entitled to full salary without any deductions for anything. The issue was quite confusing at first. This court did allow testimony and for the Applicant to present evidence on her own behalf regarding this issue which included information on the half-time, full-time and the 10/90 benefits alleged to allow her a full salary for all time off, at least per her understanding. However, after hours of testimony by the applicant, and the 2 employer witnesses it became clear that we were dealing with the applicant's misunderstanding of the first 60 days for full salary and TTD thereafter, with supplement to full salary for accumulated vacation/sick time, paid in addition to the TTD. The issues were even more confusing at first when she was talking about annualized salaries, being paid "as work", returning to work at mid-year etc. and then requesting 10/90 time, not to mention eventually retiring with a disability retirement.

In the end it boiled down to the applicant being paid her full salary for the first 60 days per Education Code (Ed. Code §44984 and §45192), also defined in the Joint Exhibit #1, the LAUSD Payroll Concepts Manuel, EAMs I.D. # 72717842 (see page 54), and TTD thereafter. All other amounts alleged to have either been under paid or overpaid were issues arising out of the Applicant's contract with the School District as negotiated by her Union. As noted above it was found that the Applicant was adequately paid for 104 weeks. This court used the parties stipulation to gross salary for the 1st 60 days and the stipulated TTD rate for the balance of the 104 weeks.

IV
RECOMMENDATION

For reasons as stated herein, in the Opinion on Decision, and in the Findings and Award, this court recommends that the Findings and Award be upheld.

DATE: 04/02/2021

Robert M. Mays
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE