

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

CAROL BERNHARD, *Applicant*

vs.

**CORE MARK INTERNATIONAL and
LIBERTY MUTUAL INSURANCE COMPANY, *Defendants***

Adjudication Number: ADJ2537816 (LBO 0392489)

Long Beach District Office

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

By correspondence from applicant's counsel, applicant contends that the Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, (Opinion and Order) issued January 13, 2022, contained a clerical error regarding the amount of permanent disability indemnity being awarded to applicant.¹ The correspondence from applicant's counsel will be deemed a Petition for Reconsideration (Petition) filed by applicant and we will address the issues raised in the Petition by utilizing the applicable reconsideration standard.

We have considered the allegations in the Petition.

For the reasons discussed below, we will grant reconsideration and affirm the Opinion and Order except that we will amend the Opinion and Order to find that Applicant's injury caused permanent disability of 63%, entitling applicant to disability indemnity in the sum of \$98,957.91 (Finding of Fact #6) and that the reasonable value of the services of applicant's attorney is \$18,835.00 (Finding of Fact #8); the Award will be amended based thereon.

Commissioner Sweeney was a member of the panel that issued the Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration. She has since retired, and another panel member has been assigned in her place.

As a preliminary matter, we note that the Petition was timely. Applicant filed the Petition on January 24, 2022 . However, the Petition did not come to the attention of the Appeals Board until February 8, 2023. Applicant's Petition was not timely acted upon by the Appeals Board, which has 60 days from the filing of a petition for reconsideration to act on that petition. (Lab. Code, § 5909.) Here, through no fault of applicant, the timely-filed Petition did not come to the attention of the Appeals Board until after the expiration of the statutory time period. Consistent with fundamental principles of due process, and in keeping with common sensibilities, we are persuaded, under these circumstances, that the running of the 60-day statutory period for reviewing and acting upon a petition for reconsideration begins no earlier than the Appeals Board's actual notice of the Petition, which occurred on February 8, 2023. (See *Shiple v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1107-1108 [57 Cal.Comp.Cases 493]; *State Farm Fire and Casualty v. Workers' Comp. Appeals Bd. (Felis)* (1981) 119 Cal.App.3d 193 [46 Cal.Comp.Cases 622, 624].)

Having reviewed our Opinion and Order it is clear that the Finding of 63% disability warrants a permanent disability indemnity award of \$98,957.91 (Lab. Code, §§ 4453, 4658), and the award of \$94,725.91 was a clerical error.

Accordingly, Findings #6 and #8, and the Award are amended.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration issued by the Workers' Compensation Appeals Board on January 13, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 13, 2022, Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

6. Applicant's injury caused permanent disability of 63%, entitling applicant to 375.25 weeks of disability indemnity payable at the rate of \$230.00 per week for the first 60 days and \$264.50 thereafter based on the Labor Code 4658(d) increase, in the total sum of \$98,957.91 less applicant attorney fee of \$18,835.00 and less a stipulated third party credit in the amount of \$3,279.22.

* * *

8. The reasonable value of the services and disbursements of applicant's attorney is \$18,835.00.

AWARD

* * *

a. Permanent disability of 63%, entitling applicant to 375.25 weeks of disability indemnity at the rate of \$230.00 for the first sixty days and \$264.50 thereafter based on the Labor Code 4658(d) increase, in the total sum of \$98,957.91, less credit to defendant for all sums previously paid on account thereof, less \$18,835.00 payable to Ozurovich and Schwartz as attorney fees to be commuted from the far end of the award, and less a stipulated third party credit in the amount of \$3,279.22, to be commuted from the far end of the award.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 16, 2023

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

**CAROL BERNHARD
OZUROVICH & SCHWARTZ
TESTAN LAW**

TLH/mc

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