

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

**EMILIE HILL, *Applicant***

**vs.**

**UNITED CALIFORNIA BANK; BROADSPIRE BREA, *Defendants***

**Adjudication Number: ADJ12785424  
Anaheim District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
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 grant reconsideration, amend the WCJ's decision as recommended in the report, and otherwise affirm the July 1, 2021 Findings and Order.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the July 1, 2021 Findings and Order is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the July 1, 2021 Findings and Order is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

**ORDERS**

**IT IS ORDERED** that Defendant pay applicant's estate the amount of \$34,237.18 in life pension benefits owed up to and including October 15, 2019, and \$33.92 per week thereafter, through and including May 18, 2021.

**IT IS FURTHER ORDERED** that defendant pay applicant's estate a 25% penalty in the amount of \$8,559.30.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**September 20, 2021**

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

**EMILIE HILL  
LAURIE A. PEDERSEN  
LAUGHLIN, FALBO, LEVY & MORESI**

**PAG/ara**

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 BY  
WORKERS' COMPENSATION JUDGE**

**I.  
INTRODUCTION**

Applicant sustained an injury arising out of and incurring in the course of employment to her psyche during the period of 1967 to 8/3/1979. The matter proceeded to trial and Judge Harper issued a Findings and Award on 12/15/1981. Applicant was awarded temporary total disability for the period of 8/4/1979 through 6/30/1980, permanent disability payable at \$70.00 per week for 469.25 weeks beginning 7/4/1980 and life pension thereafter at the rate of \$33.92 per week, reimbursement for self-procured medical treatment, attorney fees and medical-legal costs.

Defendant arbitrarily stopped life pension payments on or about September of 2019. On or about 12/3/2019, Applicant's representative filed a Declaration of Readiness regarding the payments of life pension. The matter proceeded to trial on 9/14/2020 and parties submitted on the record. The court issued a Findings and Order on 10/6/2020 further developing the record. The court ordered Defendant to provide a benefits paid printout identifying all payments made and properly categorizing the payments in chronological order. Defendant did not file a Petition for Removal nor did it comply with the Order.

On 1/11/2021, Applicant's representative again filed a Declaration of Readiness on defendant's failure to comply with the Findings and Order. The matter proceeded to trial again on 5/17/2021. The court issued its Opinion on Decision and Findings and Order on 7/1/2021.

Defendant filed a timely and verified Petition for Reconsideration under Labor Code §5903 following the court's Findings and Order dated 7/1/2021, finding Defendant did not provide evidence of an overpayment of life pension benefits, Defendant underpaid life pension benefits in the amount of \$34,237.18 up to and including 10/15/2019, based upon Defendant's unreasonable **delay in providing life pension benefits and arbitrarily stopping payments, defendant was to pay a penalty** in the amount of \$8,559.30, and sanctions were deferred against the claims examiner and defendant.

Defendant contends there was no evidence presented to show the Applicant was still alive, defendant's exhibits should be analyzed in its entirety not the conclusion on the last page, and a penalty is not justified because there was lack of proof the Applicant was alive. At the time of this report, Applicant's representative had filed an Answer to the Petition for Reconsideration.

**II.  
FACTS**

Applicant sustained an injury arising out of and incurring in the course of employment to her psyche during the period of 1967 to 8/3/1979. The matter proceeded to trial and Judge Harper issued a Findings and Award on 12/15/1981. Applicant was awarded temporary total disability for the period of 8/4/1979 through 6/30/1980, permanent disability payable at \$70.00 per week for

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On 1/11/2021, Applicant's representative again filed a Declaration of Readiness on defendant's failure to comply with the Findings and Order. Defendant filed an objection to the Declaration of Readiness stating it was still in the process "to complete an accurate printout of benefits as requested". **Objection to Declaration of Readiness filed 12/23/2020.** A hearing was held on 1/28/21 before Judge Schultz who continued the matter to the undersigned judge. An MSC was held on 3/16/21. The judge inquired of defendant if the categorized and chronological benefit paid printout had been completed. Defense counsel advised the court that his client was unable to complete one. The court then ordered the claims examiner to appear at trial. **Minutes of Hearing EAMS Doc ID 73963387.** The matter proceeded to trial again on 5/17/2021. The undersigned judge inquired whether the claims examiner was present. Defense counsel advised the court that he had subpoenaed the claims examiner and it did not seem that claims examiner would be appearing despite the court order and the subpoena. Parties resubmitted the matter on the evidence previously admitted.

The undersigned judge found based on defendant's exhibits, or lack thereof, defendant had not overpaid life pension benefits as claimed; to the contrary, based on Defendant's exhibit B, defendant had underpaid life pension benefits in the amount of \$34,237.18 up to and including 10/15/2019; based on defendant's unreasonable delay of benefits and the arbitrary stoppage of benefits, a penalty was owed by defendant in the amount of \$8,559.30; and sanctions against defendant and the claims examiner were deferred. It is from this Findings and Order that Defendant Petitions for Reconsideration under *Labor Code* §5903.

### **III. DISCUSSION**

**As to Defendant's contention that there was no evidence presented that Applicant was actually alive, the court offers the following:**

Defendant did not raise this as issue. In fact, in the correspondence going back and forth between defendant's claims examiners and attorneys and Applicant's representative, defendant did not once raise as an issue of whether the Applicant was alive. If Defendant had a belief that the Applicant had passed away, it was defendant's burden to ascertain the necessary records. To raise this issue for the first time on a Petition for Reconsideration is disingenuous.

**As to Defendant's assertion that Defendant's Exhibit B should have been analyzed in its entirety as opposed to relying on the last page, the court offers the following:**

When parties first submitted the matter, the court spent numerous hours attempting to make sense of Defendant's benefits paid printout. **Exhibit B.** Because the court could not make heads or tails of it, it ordered the record further developed to allow the defendant to properly categorize its benefits paid printout and put it in chronological order. Defendant did not file a Petition for Removal. In fact, Defendant did nothing. At the Mandatory Settlement Conference on 3/16/21, the court inquired about the benefits paid printout. Defense counsel represented that his client was unable to produce a coherent benefits paid printout. Therefore, the court ordered the claims examiner to appear at trial in order to testify to what amounts had been paid, for what periods, and to explain any missing payments. Again, Defendant did nothing. The court afforded defendant numerous opportunities to clarify its benefits paid printout. It appears the court may have extended this courtesy to the detriment of the Applicant.

The court based its decision on the evidence provided by the defendant. Page 13 of the benefits paid printout has the totals paid for each benefit. To say the court should have analyzed each and every transaction, when the defendant could not do it themselves, is again a disingenuous argument. The court was under the impression that the totals provided were an accurate representation since it did not want to provide additional information as requested.

**As to Defendant's contention that a penalty is not justified because there is a lack of proof that the Applicant is alive and because there were significant amounts paid incorrectly titled, yet collected by the Applicant, the court offers the following:**

The California Supreme Court has stated that "the only satisfactory excuse for delay in payment of disability benefits, whether prior to or subsequent to an award, is genuine doubt from a medical or legal standpoint as to liability for benefits, and that the burden is on the employer or his carrier to present substantial evidence on which a finding of such doubt may be based." *Kerley v. WCAB* (1971) 36 CCC 152, 157. The burden is on the employer, and in this matter, defendant did not provide evidence as to whether the Applicant was alive during the period in question.

Defendant also contends it paid a significant amount which the Applicant collected. However, there were several occasions where defendant stopped payment and missing checks. **Applicant's Exhibits 6, 7, 8, and 9.** Defendant offered no explanations for the missed payments. For example, the following periods do not appear to have been paid: 8/12/2011-9/8/2011, 10/7/2011-11/3/2011, 8/10/2012-9/6/2012, 2/21/2014-3/21/2014, 3/22/2014-4/3/2014. If the court had a legible and comprehensive benefits paid printout, it could have determined whether Applicant was properly paid.

#### **IV.** **RECOMMENDATION**

It has come to the court's attention that the Applicant passed away on 5/18/2021. Applicant's representative is in the process of obtaining a death certificate. The only change the court would request is any life pension benefits owed to the time of death be payable to the Applicant's estate.

It is the undersigned's recommendation that Defendant's Petition for Reconsideration be denied and the WCAB uphold and affirm the Findings and Order of the undersigned judge dated 7/1/2021.

DATE: August 5, 2021

**Katharine Holmes**  
WORKERS' COMPENSATION JUDGE