

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

**RODOLFO MALTOS, *Applicant***

**vs.**

**SUPERIOR AIR HANDLING CORP.; THE HARTFORD INSURANCE COMPANY,  
*Defendants***

**Adjudication Number: ADJ3149625 (FRE 0249956)  
Fresno 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 as quoted below, we will deny reconsideration.

We adopt and incorporate the following quote from the WCJ's report:

Defendants, Superior Air Handling Corporation and The Hartford Insurance Company (hereafter collectively referred to "Petitioners"), through counsel, filed a timely and verified Petition for Reconsideration challenging the undersigned's August 11, 2021 Findings of Fact and Order granting, in part, Applicant's petition for commutation of funds.

**DISCUSSION**

The sole issues presented for Trial was Applicant's Petition for Commutation. Petitioners contend that the undersigned's ruling was not supported by the facts and, therefore, should be set aside and an order denying the commutation should enter in its stead.

**BACKGROUND**

The facts underlying this case are not in dispute. However, for a complete record, it should be noted that Applicant was employed by Petitioners as a sheet metal fabricator.

Applicant, as a union employee would receive job assignments from the Local 462 Sheet Metal Workers Union at the Fresno Local Hall. His last employer was Superior Air Handling Company, one of the Petitioners herein.

His work typically was on large-scale commercial projects, such as schools or hospitals. Applicant reported experiencing “respiratory distress on a daily basis” that he believed was due to exposure to airborne dust and ground metals, smoke, paint, and solvent fumes.

In November 2007, Applicant was first diagnosed with “work environmental exposure COPD emphysema.” Since that time, he has undergone multiple lung transplants. Although his pulmonary condition may have improved, Applicant has worsened cognitively. At Trial, medical evidence clearly showed that he was totally and permanently disabled, entitling him to lifetime medical and indemnity benefits.

Due to “financial hardship,” Applicant petitioned for a commutation of benefits, contending that he has had to refinance the family home “several times,” had to pay for their children's education and college costs, needed a “reliable vehicle” and wants to undertake “home improvement projects for safety and accessibility,”

### **DISCUSSION**

The law mandates that the Labor Code be “liberally construed by the courts” to allow for extension of benefits for injured workers. (Labor Code§ 3202.)

While the law allows a mechanism to request a commutation of indemnity benefits, the burden of proof rests with Applicant to show that “such commutation is necessary for the protection of the person entitled thereto, or for the best interests of the applicant. In determining what is in the best interests of the applicant, the appeals board shall consider the general financial condition of the applicant, including but not limited to, applicant’s ability live without periodic indemnity payments and to discharge debts incurred prior to the date of injury.” (Labor Code§ 5100(a).)

Such a petition should give grounds for the commutation. Where disputed, a hearing is required. (*Robert G. Beloud, Inc. v. WCAB* (1975) 40 CCC 505; *Spatafore & Wheeler v. WCAB (Marston)* (1987) 52 CCC 412.) The Board has continuing jurisdiction over the Award and may take action to alter the same. (*Hood Corp. v. WCAB (Lopez)* (1999) 64 CCC 92; *Hodge v. WCAB* (1981) 46 CCC 1034.) Lastly, the Court has discretion in ordering any commutation, including ordering lesser sums than those requested, if it is Applicant's best interests. (*Toth Electric, Inc. v. WCAB (Smith)* (2004) 69 CCC 1175.)

In this instance, Applicant requested a \$1 million commutation to aid with (1) mortgage relief (\$177,592.20), (2) home remodeling (\$149,366.72), (3) credit card retirement (\$37,027.34), (4) home solar system purchase (\$34,700.00), (5)-(6) vehicle purchases (\$40,300.00 and \$37,998.00, respectively); (7) student loans (\$14,460.25), and (8) daily living costs (\$508,555.49.)

It was the undersigned's finding that there was no evidence to support several of the categories, specifically, the retirement of the credit debt and student loans, the large "daily living costs", solar system purchase and home remodel, which had already largely been completed.

Based on the testimony provided by Applicant's wife, the parties purchased the 2019 Toyota Highlander SUV to be a reliable vehicle. Extrapolating from his medical records, it is clear that a reliable "daily driver" vehicle is imperative and, using judicial discretion, it was determined that this portion of the commutation was reasonable and necessary.

Finally, based on the testimony that paying off the mortgage would free up their monthly working capital, it was reasonable for the commutation to relieve these family financial stressors. Based on that, it was ordered that sums sufficient to generate \$150,000.00 be commuted from the "side" of the Award. Defendants were granted credit as allowed by law. (Labor Code § 5101(b).)

....

### **RECOMMENDATION**

For all the above reasons, it is therefore recommended that the Petition for Reconsideration be denied.

(Report, at pp. 1-4.)

Rather than the removal standard of substantial prejudice and irreparable harm mentioned by the WCJ in the report, the correct standard on reconsideration is that any decision of the Workers' Compensation Appeals Board must be supported by substantial evidence. (Lab. Code,<sup>1</sup> §§ 5903, 5952; *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) Moreover, section 5100 allows the WCJ discretion to commute

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

compensation if he or she determines that the commutation is necessary for the applicant's protection or in his best interest. We see no abuse of discretion here.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**NOVEMBER 2, 2021**

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

**RODOLFO MALTOS  
BOSQUEZ SIEMENS  
LAUGHLIN FALBO  
LYDIA NEWCOMB  
ALBERT MACKENZIE  
4600 GROUP  
BOEHM ASSOCIATES  
BRADFORD BARTHEL  
CONVERGENT  
KEYES KIRKORIAN  
LAURA CHAPMAN  
MCNAMARA DRASS  
SHAW JACOBSMEYER  
SKEBBA ISAAC**

**PAG/bea**

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