

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

LUISA GUERRERO, *Applicant*

vs.

**WALMART; ACE AMERICAN INSURANCE COMPANY adjusted by SEDGWICK,
*Defendants***

**Adjudication Numbers: ADJ7033773; ADJ10568223
Los Angeles District Office**

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

Defendant, National Union Fire Insurance Company, seeks reconsideration of the Joint Findings, Award & Order (F&O) issued by a workers' compensation administrative law judge on September 13, 2023. By the F&O, the WCJ ordered defendant to pay applicant temporary disability (TD) benefits of \$324 per week for the period May 26, 2011 to November 8, 2011, plus a 10% increase pursuant to Labor Code section 4650(d)¹ for failure to previously pay this amount. The WCJ also ordered defendant to reimburse the Employment Development Department (EDD) for unemployment compensation benefits paid to applicant in the amount of \$85 per week during the same period. Lastly, the WCJ found that, due to applicant's unknown whereabouts and multiple failures to appear during the proceeding, her benefits were to be held in trust, and that, in the absence of a timely petition to release the funds, defendant must dispose of the funds pursuant to California's unclaimed property laws. (Code Civ. Proc., § 1300 et seq.)

Defendant contends that all payments due to EDD were resolved in "full and final satisfaction" for \$6,767.58 via lien settlement agreement signed on August 1, 2023. Defendant

¹ Unless otherwise noted, all further statutory references are to the Labor Code.

also contends that, in order to avoid unjustly enriching applicant for failing to appear during the proceeding, the compensation benefits held in trust on her behalf should not accrue interest.

We did not receive an Answer. The WCJ filed a Report and Recommendation on Reconsideration (Report), recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant the Petition for Reconsideration, and as our Decision After Reconsideration, we will rescind the portion of F&O relating to the disposal of applicant's benefits pursuant to California's unclaimed property laws, and otherwise affirm the F&O.

BACKGROUND

The parties stipulated that applicant, while employed on June 19, 2009 as a Stocker by defendant, sustained specific injury arising out of and in the course of employment (AOE/COE) to her back, neck, psyche, and stomach, and claimed to have sustained injury AOE/COE to her head, eye, shoulders, legs, foot, sleep, headaches, GERD, IBS, and urinary incontinence. (MOH, August 1, 2023, pp. 2-3.) The parties also stipulated to a TD rate of \$324 per week and a permanent disability rate of \$230 per week. (MOH, August 1, 2023, pp. 3-4.)

On August 1, 2023, the parties proceeded to trial on various issues, including applicant's permanent and stationary date, attorney fees, and EDD's claim for reimbursement of payments made to applicant in the amount of \$85 per week.

On September 13, 2023, the WCJ issued the disputed F&O. The WCJ awarded applicant TD benefits at the agreed rate of \$324 per week, plus a 10% penalty pursuant to section 4650(d). The WCJ also awarded EDD \$2,027.86 in reimbursement for payments made to applicant during the period May 26, 2011 to November 8, 2011.

Defendant filed a timely Petition for Reconsideration of the September 13, 2023 F&O.

DISCUSSION

Defendant first contends that the WCJ erred in awarding EDD reimbursement for the period May 26, 2011 to November 8, 2011, payable at \$85 per week. Defendant contends that EDD's claim for reimbursement was settled in "full and final satisfaction" for \$6,767.58 by a lien settlement agreement signed by defendant and EDD on August 1, 2023. (Petition, p. 2.)

Pursuant to section 5001, “No release of liability or compromise agreement is valid unless it is approved by the appeals board or referee.” (Lab. Code, § 5001; see also Lab. Code, § 5002; Cal. Code Regs., tit. 8, § 10700.)

Here, the lien settlement agreement cited by defendant was not approved by the WCJ in accordance with section 5001. Indeed, the settlement agreement is nowhere to be found in the evidentiary record, and as explained in the WCJ’s Report, the WCJ was not even aware of the agreement until it appeared as an attachment to defendant’s current Petition for Reconsideration. (Report, p. 6.) The language of section 5001 is unequivocal. Again, it states: “No release of liability or compromise agreement is valid *unless it is approved by the appeals board or referee.*” (Lab. Code, § 5001, emphasis added.) Because the settlement agreement between defendant and EDD was not approved by the WCJ, it is not enforceable. Defendant provides us with no additional basis to set aside the WCJ’s decision to award EDD reimbursement for payments made to applicant in the amount of \$2,027.86. Thus, we will deny reconsideration on this issue.

Defendant also contends that the benefits owed to applicant should not accrue interest while they are held in trust. (Petition, pp. 4-5.) Defendant argues that “[g]enerally, if funds are to be held in trust, they would accrue interest...If interest were to accrue, it would equate to rewarding the applicant for their consistent absenteeism and would be against public policy. Additionally, it would unjustly enrich the applicant for the mere basis of not pursuing their claim.” (Petition, p. 5.) However, as the WCJ states in his Report, there is nothing in the F&O related to the accrual of interest on the benefits held in trust, and there is nothing in the record that would give us reason to believe that interest will, in fact, accrue on these funds. (Report, p. 7.) Additionally, general policy matters are not a valid basis for reconsideration under section 5903, which provides:

At any time within 20 days after the service of any final order, decision, or award...any person aggrieved thereby may petition for reconsideration upon one or more of the following grounds *and no other*:

- (a) That by the order, decision, or award made and filed by the appeals board or the workers’ compensation judge, the appeals board acted without or in excess of its powers.
- (b) That the order, decision, or award was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.

(e) That the findings of fact do not support the order, decision, or award.

(Lab. Code, § 5903, emphasis added.)

Based on the foregoing, defendant's argument relating to the accrual of interest on the benefits held in trust is rejected.

We do, however, conclude that the WCJ exceeded his powers in violation of section 5903(a) insofar as the Order requires defendant to treat the benefits in accordance with the unclaimed property laws contained in Part 3 of the Code of Civil Procedure. (F&O, p. 3, Ordering Para. (b).)

Article 14, § 4 of the California Constitution vests the Legislature with "plenary power" "to create, and enforce a complete system of workers' compensation, by appropriate legislation, and...to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability...." The Legislature is also authorized to create an administrative body, i.e., the Appeals Board, "to determine any dispute or matter arising under such legislation...." Accordingly, the Legislature enacted section 5301, formally prescribing the Appeals Board's jurisdiction and vesting it "with full power, authority and jurisdiction to try and determine finally all the matters specified in Section 5300...." (Lab. Code, § 5301.) Section 5300, in turn, provides that the Board has exclusive jurisdiction (i.e. to the exclusion of the courts, except in matters of review) over proceedings "[f]or the recovery of compensation, or concerning any right or liability arising out of or incidental thereto...For obtaining any order which by Division 4 the appeals board is authorized to make." (Lab. Code, § 5300.)

As a creature of the Legislature, the Board has no powers beyond those conferred on it. (*State Comp. Ins. Fund v. Ind. Acc. Com.* (1942) 20 Cal.2d 264, 266 [7 Cal.Comp.Cases 102]; *State Comp. Ins. Fund v. Ind. Acc. Com.* (1949) 89 Cal.App.2d 821, 824 [14 Cal.Comp. Cases 23].) The question here is whether sections 5300 and 5301 confer jurisdiction on the Appeals Board or the WCJ to order an employer to deposit benefits owed to an applicant with the state pursuant to the unclaimed property laws set forth in Part 3 of the Code of Civil Procedure. (Code Civ. Proc., § 1300 et seq.) The determination of this issue requires a brief review of the pertinent provisions of the Workmen's Compensation Act and California's unclaimed property laws.

We begin with the lien provisions of the Labor Code, as set forth in sections 4901 and 4903. (Lab. Code, §§ 4901, 4903.) Section 4901 provides: "No claim for compensation nor compensation awarded, adjudged, or paid, is subject to be taken for the debts of the party entitled

to such compensation except as hereinafter provided.” (Lab. Code, § 4901.) Section 4903 itemizes the “debts” that may be allowed as liens against a compensation award by the Appeals Board. (Lab. Code, § 4903.) The Supreme Court of California has explained that: “[t]hese two sections indicate a clear legislative intent to remove such awards from the operation of the usual remedies available to creditors, to limit and regulate the kinds of debts which may be allowed, and to insure that the award is made available to the injured employee for his recovery and rehabilitation in accordance with the purposes of the act.” (*Ogdon v. Workmen’s Comp. Appeals Bd. (Ogdon)* (1974) 11 Cal.3d 192, 196-197 [39 Cal.Comp.Cases 297].)

Section 4903 is a procedural statute. (*Lohman v. Barker Bros. Corp.* (1957) 22 Cal.Comp.Cases 247.) In order to assert a lien against a compensation award, there must be a valid debt and the debt must be within one of the classes enumerated in the statute for which a lien may be lawfully declared in that proceeding. (*Los Angeles v. Ind. Acc. Com.* (1926) 76 Cal.App. 639.) Government entities are entitled to assert section 4903 liens (*Pac. Employers Ins. Co. v. Ind. Acc. Com.* (1959) 24 Cal.Comp.Cases 38, cert. den., 359 U.S. 911), however, their liens must be statutorily conferred. (*Fifield Manor v. Finston* (1960) 54 Cal.2d 632, 642.)

Here, by finding that, absent a timely petition by applicant, the benefits held in trust must be deposited with the state in accordance with the unclaimed property laws, the WCJ effectively allowed the state a lien against applicant’s award. However, section 4903 does not mention the unclaimed property laws set forth in the Code of Civil Procedure. In the absence of a statutorily conferred lien, the WCJ lacked the power to allow the state a debt against applicant’s benefits held in trust pursuant to the unclaimed property laws. (Lab. Code, § 4903; *Ogdon, supra*, 11 Cal.3d at p. 207.) Based on the foregoing, we will rescind this portion of the F&O, contained in Ordering Paragraph (b). (F&O, p. 3, Ordering Para. (b).) The remaining portions of the F&O are affirmed.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the September 13, 2023 F&O is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the September 13, 2023 F&O is **AFFIRMED, EXCEPT** that Ordering Paragraph (b) is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



KATHERINE A. ZALEWSKI, CHAIR
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 4, 2023

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

**LUISA GUERRERO
GRAIWER & KAPLAN
HANNA, BROPHY, MacLEAN, McALEER & JENSEN
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