

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

DONNA DOWDEN, *Applicant*

vs.

**STATE OF CALIFORNIA/DEPARTMENT OF JUSTICE; STATE COMPENSATION
INSURANCE FUND; SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ14359855
Oakland District Office**

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

Defendant, State of California, Department of Justice, legally uninsured, adjusted by State Compensation Insurance Fund (SCIF), seeks reconsideration of the second amended Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on December 15, 2023. By the F&A, the WCJ issued, among other things, an award "in favor of Donna Dowden against SCIF State Employees" for permanent disability benefits, ongoing medical care, and attorney's fees.

Defendant contends that the findings of fact do not support the award, as State of California, Department of Justice, was applicant's employer at the time of her injury and therefore the party liable for the award. Defendant contends that SCIF simply renders adjustment and disposition services for the California Department of Justice, which operates as a legally uninsured state agency. Defendant thus requests that we grant reconsideration and issue a corrected award naming State of California, Department of Justice, as the party liable for the benefits awarded.

We did not receive an Answer. The WCJ prepared a Report and Recommendation on Petition for 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 reconsideration. As our Decision After Reconsideration, we will

affirm the F&A, except that we will amend the award to name State of California, Department of Justice as the party liable for the benefits awarded against SCIF.

BACKGROUND

The following factual background is uncontested:

The parties proceeded to trial on September 26, 2023. The parties stipulated to the following facts:

1. Applicant, Donna Dowden, born [], while employed during the cumulative trauma period through 1/15/21 as a Criminalist Supervisor...by State of California, Department of Justice, sustained injury AOE/COE to her bilateral knees, low back, and right elbow.
2. At the time of injury, the employer's workers' compensation adjusting agency, lawfully uninsured, was administered by State Compensation Insurance Fund. The employer was legally uninsured at the time.

(Minutes of Hearing (MOH), September 26, 2023, p. 2.)

Multiple issues were adjudicated, including: temporary disability; permanent disability (PD) and apportionment; applicant's need for further medical treatment; and attorney's fees. (MOH, September 26, 2023, pp. 2-3.)

On December 15, 2023, the WCJ issued the disputed F&A, issuing the following award:

AWARD IS MADE in favor of DONNA DOWDEN against SCIF State Employees of:

- a. A permanent disability award of 28% payable at the rate of \$290 per week beginning August 5, 2021 in the total amount of \$34,437.50 and less 15% attorney fee in the amount of \$5165.63 payable to Larson, Vandersloot & Rivers.
- b. Ongoing medical care for the bilateral knees, right elbow, and lumbar spine[.]

(F&A, December 15, 2023, p. 2.)¹

Thereafter, defendant filed a timely, verified petition seeking reconsideration of the December 15, 2023 F&A.

¹ The F&A also awarded permanent disability benefits and attorney's fees against the Subsequent Injuries Benefits Trust Fund (SIBTF). (F&A, December 15, 2023, p. 2.) However, defendant does not challenge this award in its Petition for Reconsideration.

DISCUSSION

In its Petition for Reconsideration, defendant contends that State of California, Department of Justice, not SCIF, is the party liable for the award issued in the F&A. Defendant requests that we therefore grant reconsideration and issue a corrected award naming State of California, Department of Justice, as the liable party.

Upon review, we agree with defendant that State of California, Department of Justice, was applicant's employer at the time of her injury and was the party liable for the benefits that the WCJ awarded against SCIF. (Petition, pp. 4-5; F&A, December 15, 2023, p. 2.) As defendant notes, SCIF simply provides adjustment and disposition services to legally uninsured state agencies (Ins. Code, § 11871), which include State of California, Department of Justice. (See, e.g., *Pearson v. State Dept. of Corrections* (September 1, 2015, ADJ700106 (SAL 0075388), ADJ4293270 (SAL 0067937), ADJ3847224 (SAL 0067938), ADJ1646200 (SAL 0011386) [2015 Cal. Wrk. Comp. P.D. LEXIS 502, *8-9]; 74 Ops.Cal.Atty.Gen. 132 (1991).)

The Appeals Board has the power to alter or amend any award at any time for good cause. (Lab. Code, § 5803.)² We conclude that the need to properly identify the party liable for benefits awarded is essential to the expeditious issuance of thereof, which creates good cause to amend the award. (Cal. Const., art. XIV, § 4 [compensation must be issued "expeditiously, inexpensively, and without incumbrance of any character..."].) As a result, we will grant reconsideration and amend the F&A to name State of California, Department of Justice as the party liable for the benefits awarded against SCIF. The F&A is otherwise affirmed.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the F&A dated December 15, 2023 is **GRANTED**.

² Section 5803 states: "The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division, and the decisions and orders of the rehabilitation unit established under Section 139.5. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor. This power includes the right to review, grant or regrant, diminish, increase, or terminate, within the limits prescribed by this division, any compensation awarded, upon the grounds that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated."

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the F&A dated December 15, 2023 is **AFFIRMED**, except that it is **AMENDED** as follows:

AWARD IS MADE in favor of DONNA DOWDEN against State of California, Department of Justice of:

- a. A permanent disability award of 28% payable at the rate of \$290 per week beginning August 5, 2021 in the total amount of \$34,437.50 and less 15% attorney fee in the amount of \$5165.63 payable to Larson, Vandersloot & Rivers.
- b. Ongoing medical care for the bilateral knees, right elbow, and lumbar spine.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 16, 2024

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

**DONNA DOWDEN
STATE COMPENSATION INSURANCE FUND
LARSON, VANDERSLOOT & RIVERS
OD LEGAL**

AH/cs

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