

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

**LUZ VAZQUEZ, *Applicant***

**vs.**

**PITMAN FAMILY FARMS, permissibly self-insured,  
and self-administered, *Defendant***

**Adjudication Numbers: ADJ12932798**

**Fresno District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR RECONSIDERATION**

Applicant seeks reconsideration of the “Findings and Order” (F&O) issued on October 25, 2024, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that defendant was entitled to take credit for permanent disability advances (PDAs) of \$9,031.43, which were paid to applicant after she signed a Compromise and Release (C&R), but prior to the C&R being approved.

Applicant argues that the WCJ failed to follow an order of a prior WCJ, which denied defendant’s petition to set aside the C&R based upon mutual mistake. Applicant further argues that the parties had agreed to stop payment of PDAs so that defendant’s continued payment should not be credited. Applicant further argues that the C&R did not contain a clause allowing credit for continued PDAs after the date stated in the C&R. Lastly, applicant argues that defendant caused delays to payment warranting an award of penalties, interest, and attorney’s fees.

We received an answer from defendant.

The WCJ filed a Report recommending that the Petition for Reconsideration be denied.

We have considered the allegations in the Petition for Reconsideration, the Answer, the contents of the Report, and we have reviewed the record. Based upon our review of the record, we will deny reconsideration.

## FACTS

Applicant worked on April 9, 2019, when she sustained an industrial injury to her left shoulder. (Minutes of Hearing and Summary of Evidence, October 9, 2024, p. 2, lines 4-6.)

The parties settled this matter via C&R, which was countersigned by defendant on September 20, 2022 and filed on October 25, 2022; however, it appears that the initial C&R may have had action suspended.<sup>1</sup> An amended C&R was approved on January 19, 2023. (Applicant's Exhibit 1, Amended Compromise and Release, September 20, 2022.)<sup>2</sup> The C&R was for \$40,000.00 total, from which the parties deducted \$6,000.00 for attorney's fees and \$15,000.00 for permanent disability advances through June 16, 2022. (*Id.* at p. 6.) The C&R represented that \$18,850.00 of permanent disability had been paid through June 16, 2022. (*Id.* at p. 5.) According to the parties' correspondence, defendant waived a portion of credit for permanent disability advances in reaching a settlement. (See Applicant's Exhibit 2, Email Exchange Re: Settlement.)

During the course of negotiations, applicant requested that defendant cease paying permanent disability advances as applicant wished to receive the settlement in a lump sum. (*Ibid.*) However, defendant continued to pay permanent disability advances from June 16, 2022 and continuing until the settlement was approved in January 2023, which totaled \$9,031.43 in additional permanent disability advances. (MOH/SOE, *supra*, p. 2, lines 8-21.)

The C&R submitted contains the standard form language on paragraph 7, which states, in pertinent part: "LEAVING A BALANCE OF \$19,000.00, after deducting the amounts set forth above and less further permanent disability advances made after the date set forth above." (Applicant's Exhibit 1, p. 6.)

On February 7, 2023, defendant filed a petition to set aside the Order Approving Compromise and Release. Defendant noted that there was a several month gap between the parties signing the Compromise and Release and defendant filing the document because defendant needed to negotiate a lien of EDD. (Petition to Set Aside, February 7, 2023, p. 2, lines 12-14.)

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<sup>1</sup> EAMS contains a proof of service for an order suspending action (OSA), but the actual order is not in the Appeals Board's file. It further appears that the OSA may have involved an unresolved lien of EDD.

<sup>2</sup> The January 19, 2023 C&R appears identical to the prior C&R and does not appear to contain any resolution of EDD's lien. However, defendant separately filed a clearance letter from EDD, which indicated that the lien was withdrawn. .

No party sought a hearing on the petition to set aside. Instead, on March 29, 2023, defendant wrote to the court requesting that a decision on its petition summarily issue. On June 19, 2023, a WCJ returned the letter to the parties with the following written notation:

Denied. Petitioner's characterization that this is a "mutual mistake" is in error. Steps were not taken to protect petitioner's interests and the court now lacks jurisdiction to alter the settlement, absent applicant's concurrence.

(Order Denying Petition to Set Aside, June 19, 2023.)

Notwithstanding the WCJ's order, defendant thereafter asserted a credit against the amount owed under the C&R, and reduced applicant's net recovery by the amount of PDAs paid after June 16, 2022.

The matter proceeded to trial upon the issue of whether defendant properly asserted a credit for the additional PDAs issued beyond June 16, 2022. (*Id.* at p. 2, lines 27-38.)

## DISCUSSION

### I.

Former Labor Code section 5909<sup>3</sup> provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(§ 5909.)

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in

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<sup>3</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on November 20, 2024, and 60 days from the date of transmission is Sunday, January 19, 2025, which by operation of law means this decision is due by Tuesday January 21, 2025. (Cal. Code Regs., tit. 8, § 10600.) This decision is issued by or on January 21, 2025, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on November 20, 2024, and the case was transmitted to the Appeals Board on November 20, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on November 20, 2024.

## II.

Applicant first argues that the WCJ failed to follow an order of a prior WCJ, which denied defendant’s petition to set aside the C&R based upon mutual mistake. The WCJ declined to address this argument in the Report because the WCJ believed the argument was not raised at trial. While the only issue listed on the Minutes of Hearing is whether defendant was entitled to take a credit, applicant argued in both pre-trial and post-trial briefing that defendant should be precluded from asserting such a credit because of the prior ruling denying its petition to set aside. We would further note that the issue was listed on the pre-trial conference statement and the minutes of hearing are silent as to why the issue was not listed. Applicant raised the argument on the PTCS and briefed

the argument in her trial brief as a direct response to the issue of why a credit should not be awarded. Thus, the argument was not waived.

However, we do not view the denial of defendant's petition to set aside the C&R as res judicata on the issue of whether defendant may take a credit. The fact that the C&R was not set aside only means that the C&R still exists and must be interpreted as it exists. The WCJ issued no order denying credit for further PDAs. The WCJ's order denying the petition to set aside is not res judicata on the issue of credit for PDAs.

Next, applicant argues that the parties had agreed to stop payment of PDAs so that defendant's continued payment should not be credited. No actual agreement exists in the record. Applicant's attorney requested that defendant stop issuance of PDAs. However, the emails in evidence do not indicate any response from defendant indicating an agreement to stop PDAs. The parties' conduct indicated that no such agreement was reached. Defendant continued to issue PDAs and more importantly, *applicant continued to cash the checks*. Had applicant wished to stop receiving PDAs, she could have stopped cashing the checks and waited for a lump sum settlement to issue.

Applicant further argues that the C&R did not contain a clause allowing credit for continued PDAs after the date stated in the C&R. This is contrary to the form language of every C&R that issues. When properly filled out, every C&R should state the amount of PDAs issued up to a certain date, which is written in paragraph 7. On the line that describes the balance due, it expressly states: ". . . and less further permanent disability advances made after the date set forth above[.]" To allow applicant to receive PDAs, while denying defendant credit for such PDAs would violate the terms of the C&R and result in applicant being unjustly enriched.

Applicant cites to multiple cases where PDAs issued after the C&R was signed were not awarded, however those cases are easily distinguishable. Per the petition for reconsideration:

*See Ovalle v. Shaw Diversified Services, Inc.*, 2009 Cal. Wrk. Comp. P.D. LEXIS 362 (the WCAB held that the defendant was not entitled to a credit for further PDAs despite the template language in Paragraph 7 of the C&R, **when it left blank the end date of the PDAs and instead inserted the words "and continuing"**); *see also Santiago v. West Star North Dairy*, 2021 Cal. Wrk. Comp. P.D. LEXIS 32 (despite paragraph 7 of the C&R, the WCAB did not allow the defendant to take a credit for PDAs **since that line was left blank** and there was no addenda addressing PDAs).

(Petition for Reconsideration, November 19, 2024, p. 8, lines 10-17 (emphasis added).)

The cases cited by applicant involve C&Rs where the parties failed to insert a date for when PDAs ended. Unlike the cases cited by applicant, the C&R in this case was properly filled out and contained the date of June 16, 2022. Accordingly, and by the form language of the C&R, defendant was entitled to take credit for all PDAs issued after June 16, 2022, up through the date the settlement was approved.

Lastly, applicant argues that defendant caused delays to payment warranting an award of penalties, interest, and attorney's fees. However, on this point, applicant has not filed any such petition for penalties in EAMS. Furthermore, the issues of penalties, interest, or attorney's fees was not listed on the pre-trial conference statement or set as issues for trial. This is a separate and distinct issue apart from the issue of credit, which applicant did not raise on the PTCS, nor on the minutes at trial, and thus, that issue is not properly before us.

Accordingly, we deny applicant's petition for reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's petition for reconsideration of the F&O issued on October 25, 2024, is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**ANNE SCHMITZ, DEPUTY COMMISSIONER**  
**PARTICIPATING BUT NOT SIGNING**

**DATED AND FILED AT SAN FRANCISCO, CALIFOR** \_\_\_\_

**January 21, 2025**

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

**LUZ VAZQUEZ**  
**ALVANDI LAW GROUP, P.C.**  
**MICHAEL SULLIVAN & ASSOCIATES LLP**

**EDL/mc**



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