WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

AMANDA PEREZ, *Applicant*

vs.

CDCR; STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Numbers: ADJ3345421 (BAK 0144525), ADJ3709124 (BAK 0150236), ADJ2925427 (BAK 0144602)
Fresno District Office

OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION

Lien Claimant CCPOA Benefit Trust Fund seeks reconsideration of the July 17, 2026 Joint Findings of Fact, Award, Order, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that lien claimant is entitled to reimbursement in the amount of $6,621.34 from State Compensation Insurance Fund (SCIF).

Lien claimant contends that it is entitled to $82,989.34 in reimbursement for all living expenses it paid applicant Amanda Perez during any period in which defendant SCIF is liable to applicant for temporary disability or industrial disability leave.

We received an answer from applicant. We received lien claimant's supplemental petition for reconsideration, petition for leave to file same, and two declarations in support of same. WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964) states that supplemental petitions, pleadings, or responses shall be considered only when specifically requested or approved by the Appeals Board. We accept and review lien claimant's supplemental brief.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, the supplemental petition, other pleadings, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we deny reconsideration.[1]

This is the fourth petition for reconsideration in this matter. The question presented is whether lien claimant is entitled to reimbursement for benefits it paid for the same days that the employer *paid* applicant temporary disability and/or industrial disability leave, or whether lien claimant is only entitled to reimbursement for benefits it paid for the same days in which temporary disability is *awarded*.

Labor Code[2], section 4903.1(a)(3)(A) provides:

> (3)(A) If the appeals board issues an award finding that an injury or illness arises out of and in the course of employment and makes an award for temporary disability indemnity, the appeals board shall allow a lien as living expense under Section 4903, for benefits paid by a group disability policy providing loss-of-time benefits and for loss-of-time benefits paid by a self-insured employee welfare benefit plan. The lien shall be allowed to the extent that benefits have been paid for the same day or days for which temporary disability indemnity is awarded and shall not exceed the award for temporary disability indemnity. A lien shall not be allowed hereunder unless the group disability policy or self-insured employee welfare benefit plan provides for reduction, exclusion, or coordination of loss-of-time benefits on account of workers' compensation benefits. (§ 4903.1(a)(3)(A); emphasis added.)

In our February 6, 2016 and December 15, 2020 Opinions and Decisions After Reconsideration, we concluded that section 4903.1(a)(3)(A) requires a finding of industrial injury and the *existence of an award* of temporary disability in order for lien claimant to qualify for reimbursement. The only issue remaining after the December 15, 2020 Opinion was whether there were additional periods of an award of temporary disability during which lien claimant may have paid benefits to applicant. We returned the matter to the trial level directing the WCJ: (1) to order lien claimant to produce a verified accounting detailing the exact time periods and amounts that lien claimant paid benefits to applicant and for which reimbursement is claimed, and (2) to order

[1] Commissioner Lowe, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

[2] All statutory references are to the Labor Code unless otherwise indicated.

the parties to produce copies of any and all *awards* of temporary disability and/or industrial leave disability that have been issued in applicant's three cases here.

At trial, the parties stipulated that industrial leave disability was *paid* as follows:

- 6/1/04 to 6/4/04 in ADJ3709124;
- 6/20/04 to 10/18/04 in ADJ3709124;
- 10/19/04 to 4/20/05 in ADJ2925427;
- 5/16/06 to 11/11/06 in ADJ2925427; and
- 11/6/06 to 11/07/06 in ADJ3709124.

The parties also stipulated that applicant was *awarded* temporary disability as follows:

- 11/12/07 to 11/11/08 in ADJ3709124 held in trust.

(Minutes of Hearing and Summary of Evidence (MOHSOE) dated June 15, 2026, pp. 2:9-13, 2:16-17, 4:12-22; Joint Findings of Fact, Award, and Order dated July 17, 2026, Stipulations 4 in ADJ2925427, Stipulations 4 in ADJ3709124.) The parties stipulated that there are no other awards of temporary disability besides the one in ADJ3709124. (Joint Findings of Fact, Award, and Order dated July 17, 20206, Stipulations 6a in ADJ2925427.)

With respect to the time period and amounts lien claimant paid benefits to applicant, lien claimant claims that it paid benefits as follows:

- 8/8/04 to 6/19/05 - $23,018.09
- 6/15/06 to 6/14/08 - $59,971.25.

(Joint Findings of Fact, Award, and Order dated July 17, 2026, Issue 1 in ADJ2925427, Issue 1 in ADJ3345421, Issue 1 in ADJ3709124.)

Applicant does not challenge lien claimant's claim that it paid benefits for the period of 11/12/07 to 6/14/08 (the beginning of the temporary disability award and the last day lien claimant alleges to have paid benefits). (Answer, p. 3:2-9 ["CCPOA made no showing or offer of proof at trial as to what period of CCPOA benefits overlapped with the period of temporary disability awarded in ADJ3709124. Judge McClelland followed the prior stipulation to the amount of $6,621.34 and the award of Judge Ellis concluding the overlapping amount owed CCPOA is $6,621.34. PEREZ does not challenge this finding; however, when looking at the 'verified accounting' mentioned in CCPOA' s Petition for Reconsideration, the amount of CCPOA benefits paid during the awarded temporary disability period appears to be $3,990.00."].)

In the June 6, 2016, June 29, 2017, October 18, 2018, and July 17, 2026 Joint Findings of Fact, Award, and Order, it was found that based on the Benefit Paid Log attached to lien claimant's lien, lien claimant paid $6,621.34 during this time period. (See Joint Findings of Fact, Award, and Order dated October 18, 2018, p. 3 and June 29, 2016, p. 5.) In its petition, lien claimant does not contest this finding. Lien claimant mainly contends that it is entitled to reimbursement for a larger time period. (See Petition dated June 8, 2018; Petition dated July 5, 2017; Petition dated November 8, 2018; and Petition dated August 6, 2026, p. 23:5-8.) Furthermore, there is nothing in the record supporting a different amount for this time period and lien claimant has not proven that it is entitled to a higher amount during this time period.[3] As such, we will not disturb this finding and affirm the July 17, 2026 Joint Findings of Fact, Award, and Order, that lien claimant is entitled to reimbursement in the amount of $6,621.34 for the time period of 11/12/07 to 6/14/08.

Lastly, for the same reasons explained in our December 15, 2020 Opinion and Decision After Reconsideration, we do not, and cannot, reach the issue of unjust enrichment here because this issue was not litigated at trial and there is no finding on this issue. (Report, p. 4 ["Only Lien Claimant signed the listed issues in the two-page addendum attached to the Joint Pre-Trial Conference Statement. None of the issues listed in the Addendum [e.g. unjust enrichment] were jointly identified by the parties as disputed trial issues, and Defendant objected to the addendum. Therefore, the issues were not properly framed, and Due Process prevented those issues from being heard at trial pursuant to LC 5502(d)(3)."].)

[3] Lien claimant claims that Exhibit 13, which was not admitted into evidence, provides an accounting of lien claimant's payments. (Petition dated August 6, 2026, pp. 11:28-12:1.) A review of Exhibit 13 shows that lien claimant paid applicant less than the $6,621.34 it was awarded. Exhibit 13 shows lien claimant paid $360.00 on November 12, 2007 and $3,600.00 on November 15, 2007, for a total of $3,960.00. There are no payments after November 15, 2007 according to Exhibit 13.

For the foregoing reasons,

IT IS ORDERED that CCPOA Benefit Trust Fund's Petition for Reconsideration of the July 17, 2026 Joint Findings of Fact, Award, Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

I DISSENT. (See attached Dissenting Opinion.)

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 16, 2026

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

AMANDA PEREZ
LAW OFFICE OF MARIANI-PITALO & PITALO
LEGAL SERVICE BUREAU
STATE COMPENSATION INSURANCE FUND
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LSM/*ara*

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

DISSENTING OPINION OF COMMISSIONER JOSE H. RAZO

I dissented in our last Opinion and Decision After Reconsideration dated December 15, 2020. I dissent here for the same reasons:

> I concurred in this panel's prior decision (February 6, 2018), but I am now persuaded that if CCPOA is denied full reimbursement, applicant will receive an impermissible double recovery. It appears the duplicate benefits may not be a trifling sum, perhaps in the neighborhood of $76,000.00. Just as an employer is not liable for workers' compensation benefits voluntarily paid but not legally owed (Lab. Code, § 4909), CCPOA should not forfeit reimbursement for trust fund benefits voluntarily paid but not legally owed. Therefore, I dissent.
>
> Although Labor Code section 4903.1(a)(3)(A) refers to the requirement of an award of temporary disability to support a CCPOA lien for overlapping trust fund benefits it has paid, I believe there is no material difference whether the TTD/IDL is voluntarily paid by defendant, which apparently happened here, or whether the TTD/IDL is subsequently acknowledged in, or paid pursuant to, an award. In either case, applicant receives the full value of workers' compensation benefits to which she is entitled. However, if CCPOA is not awarded reimbursement for trust fund benefits it paid applicant "for the same day or days" of temporary disability per section 4903.1(a)(3)(A), she effectively secures a double recovery. (See *Speaks v. Workers' Compensation Appeals Bd.* (2010) 75 Cal.Comp.Cases 542 (writ den.) [under Labor Code §§ 4903(c) and 4903.1(a)(3), CCPOA entitled to recover on its living-expense lien for the same days applicant received TTD/IDL]; *Stanton v. Workers' Compensation Appeals Bd.* (1994) 59 Cal.Comp.Cases 801 (writ den.) [Lab. Code § 4903.1(a)(3) obligated Board to allow employer's lien for long-term disability payments against award of temporary disability indemnity payable for same period, though defendant failed to raise issue until petition for reconsideration].)

To repeat, there is no question that IDL is the equivalent of TTD benefits paid by the employer, whether the benefits are voluntarily paid or paid pursuant to an award. In either case, applicant receives a double recovery absent allowance of CCPOA's lien for trust fund benefits paid for the same periods. I would amend the WCJ's decision to allow CCPOA's lien not only for the trust fund benefits it paid applicant within the period November 12, 2007 through November 11, 2008, but also for all trust fund benefits paid by CCPOA during any periods in which defendant voluntarily paid applicant IDL/TTD benefits. (Opinion and Decision After Reconsideration dated December 15, 2020, Dissenting Opinion of Commissioner Jose H. Razo, p. 8.)

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

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LSM/*ara*

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