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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SHAHIN MOTALLEBI,

Applicant,

vs.

**ASTRO BUSINESS SOLUTIONS, INC.;;
CANON USA; YASUDA FIRE & MARINE
INSURANCE,**

Defendant(s).

**Case No. VNO 368013; VNO 368014;
VNO 368015; VNO 368016;
VNO 368017; VNO 368018**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The appeals board granted reconsideration to enable us to consider the facts and law of this case. This is our decision after reconsideration.

In this case, we find that the Workers' Compensation Appeals Board (WCAB) does not have jurisdiction to determine an applicant's liability for repayment of unemployment compensation disability (UCD) benefits that were received from the Employment Development Department (EDD), if the following conditions exist:

- (1) EDD initially determines that the applicant is not entitled to UCD benefits;
- (2) EDD enters into an agreement with the applicant to continue benefits during the appeal process, with the further agreement that the applicant will repay the continued benefits if the appeal is unsuccessful;
- (3) EDD's determination is upheld by the California Unemployment Insurance Appeals Board (CUIAB); and
- (4) EDD has not filed a lien claim for the period of continued benefits.

1 Applicant, Shahin Montallebi, sought reconsideration of the
2 Findings of Fact issued by a workers' compensation administrative
3 law judge (WCJ) on December 11, 2002, in which the WCJ found that
4 the WCAB does not have jurisdiction to determine applicant's
5 liability for repayment of UCD benefits that he received from
6 EDD during the period from May 8, 1998 to September 9, 1998.
7 The WCJ further found that EDD is not estopped from seeking
8 repayment of UCD benefits by either the settlement of its lien
9 claim on June 4, 2001, or by its failure to object to the
10 compromise and release agreement between the parties.

11 Applicant contends (1) that the WCJ failed to consider the
12 WCAB's vesting of full power, authority, and jurisdiction which
13 arose when EDD filed its Notice of Lien Claim; (2) that the WCJ's
14 finding that the matter was res judicata after proceedings before
15 the California Unemployment Insurance Appeals Board (CUIAB) is not
16 justified because EDD provided no evidence that applicant was ever
17 served with the reasons supporting the judge's decision;
18 (3) that the WCJ failed to address the elements of estoppel;
19 (4) that the finding that EDD is not estopped from seeking
20 repayment of UCD benefits is not justified because the compromise
21 and release provided that EDD's lien and "bills" were part of the
22 agreement; and (5) that the WCJ failed to consider whether the
23 benefits were received without fault on the part of applicant
24 and recovery would be against equity and good conscience.
25 EDD has filed an answer to the petition for reconsideration.

26 Applicant claimed to have sustained specific and cumulative
27 industrial injuries to the back, respiratory system, and other

1 body parts. His claims were resolved by an Order Approving
2 Compromise and Release (OACR) issued by the WCJ on June 4, 2001,
3 approving the parties' agreement to resolve the matter by
4 payment of \$30,000.00. Defendant further agreed to pay, adjust,
5 or litigate all outstanding lien claims, including EDD's lien
6 claim.

7 EDD paid applicant UCD benefits from February 24, 1998
8 through October 14, 1998. EDD filed a WCAB lien claim only for
9 the periods of February 24, 1998 to May 7, 1998, and
10 September 10, 1998 to October 14, 1998. EDD did not file a lien
11 claim for the period of May 8, 1998 to September 9, 1998, the
12 period of the CUIAB appeal. The workers' compensation lien claim
13 was settled by defendant on June 4, 2001, the same day as the OACR
14 was issued. EDD thereafter sought recovery from applicant of the
15 UCD benefits paid during the period for which no lien claim was
16 filed.

17 The proceedings before EDD were independent of the WCAB
18 proceedings leading to the OACR. On May 22, 1998, EDD, apparently
19 having determined that applicant was ineligible for UCD benefits,¹
20 sent applicant a "Notice of Right to Continue Disability Benefits
21 Pending Appeal." (Exh. AA.) Applicant elected to continue
22 receiving benefits, by signing and returning the notice after
23 marking the paragraph, which stated:

24
25 ¹ Neither the original determination nor the CUIAB determination on appeal is
26 in the record before us on reconsideration. At the hearing of June 18, 2002,
27 the parties stipulated that there was a decision from the CUIAB denying
applicant UCD benefits for the period of May 8, 1998 to September 9, 1998.
(Minutes of Hearing and Summary of Evidence, June 18, 2002, p.2.)

1 "I want the Department to pay me disability
2 benefits until the decision on my appeal. To
3 receive these benefits, I understand that I
4 must continue to file the continued claims
5 forwarded to me by the Department and
6 otherwise be eligible to receive benefits. I
7 also understand that if the decision on the
8 appeal is against me, I may be required to
9 repay such benefits, unless it is found I
10 received the overpayment without fault on my
11 part, and it would be against equity and good
12 conscience to require repayment."

13 On September 18, 1998, CUIAB issued a decision denying
14 applicant UCD benefits for the period from May 8, 1998 through
15 September 9, 1998. Thereafter, EDD paid additional UCD benefits
16 for the period from September 10, 1998 through October 14, 1998.
17 Applicant did not further appeal the CUIAB decision. (Exh. BB.)

18 On September 20, 2001, EDD sent applicant a letter, stating
19 in part:

20 "EDD did settle the EDD lien totaling \$6144.00
21 for \$3,962.29 for the period 2/24/98 - 5/7/98
22 only.

23 "Although you have not specifically inquired,
24 it would appear that your interest in this
25 matter may relate to your own obligation to
26 EDD for the period 5/8/98 - 9/9/98.

27 "You still have an outstanding bill due to EDD
of \$4,742.00. Your initial billing was
\$6,000.00 (toward which you have made payments
totaling \$1,258.00), based on your signed
agreement to reimburse EDD to [sic] payments
advanced during your appeal if the appeals
judge agreed with the IME doctor to which EDD
sent you. This amount was never included in
the lien on your workers' compensation case as
it was previously litigated via the appeals
judge with a finding made in favor of EDD."
(Exh. 3.)

1 On November 13, 2001, applicant filed a Declaration of
2 Readiness to Proceed (DOR), stating that he was "unable to resolve
3 dispute with EDD."

4 The matter was heard on June 18, 2002 and November 7, 2002.
5 Applicant and EDD's statewide manager of its workers' compensation
6 unit testified, and various documents were admitted into evidence,
7 after which the case was submitted for decision.

8 On December 11, 2002, the WCJ issued the Findings of Fact,
9 finding that the WCAB does not have jurisdiction to determine
10 applicant's liability for repayment of UCD benefits that he
11 received from EDD during the period from May 8, 1998 to
12 September 9, 1998. The WCJ further found that EDD is not estopped
13 from seeking repayment of UCD benefits by either the settlement of
14 its lien claim on June 4, 2001, or by its failure to object to the
15 compromise and release agreement between the parties.

16 After reviewing the record of this matter, we see no
17 error in the WCJ's findings. Therefore, as our decision after
18 reconsideration, we will affirm the Findings of Fact. We reach
19 this conclusion for the following reasons.

20 EDD and CUIAB are statewide administrative agencies created
21 by statute; their jurisdiction arises under the Unemployment
22 Insurance Code. (Unemp. Ins. Code §§301, 401.) UCD benefits are
23 payable to individuals who are deemed disabled on any day when a
24 physical or mental condition makes the person unable to perform
25 his or her regular or customary work, (Unemp. Ins. Code §§2625,
26 2626, 2627), and when he or she is not receiving temporary
27 disability indemnity under workers' compensation law (Unemp. Ins.

1 Code. §2629). A disabled individual may be required to submit to
2 reasonable medical examinations for the purpose of determining
3 disability. (Unemp. Ins. Code §2627(c).) In a case where an
4 injured worker is receiving UCD benefits, EDD may challenge the
5 workers' continuing entitlement to such benefits. If the worker
6 is found to be ineligible for further UCD benefits, the worker and
7 EDD may enter into an agreement that EDD will continue to pay UCD
8 benefits during the period when an appeal is pending before CUIAB.
9 The agreement provides for acknowledgement by the worker that he
10 may be liable for repayment of the overpayment if he does not
11 prevail on appeal. (See, e.g., EDD Form DE 6315D, Exh. AA.)
12 A person who is overpaid any amount as benefits is liable for the
13 amount overpaid, unless the overpayment was not due to fraud,
14 misrepresentation, or willful nondisclosure by the recipient,
15 and unless "the overpayment was received without fault on the part
16 of the recipient and its recovery would be against equity and good
17 conscience." (Unemp. Ins. Code §2735.)

18 Appeals of EDD determinations concerning eligibility or
19 overpayment are heard by a CUIAB administrative law judge (ALJ).
20 (Unemp. Ins. Code §§404, 1377.) The ALJ's decision becomes final
21 if it is not appealed within 90 days. (Unemp. Ins. Code §1241.)
22 If the ALJ upholds the determination that the worker was not
23 eligible for UCD benefits and that the notice of overpayment is
24 proper, then EDD may proceed to recover the overpayment.
25 (Unemp. Ins. Code §1379.)

26 The WCAB exercises the judicial powers vested in it by the
27 Labor Code, and has the authority to try and make final

1 determinations of these matters. The WCAB has jurisdiction over
2 proceedings for the recovery of workers' compensation; for the
3 enforcement against the employer or an insurer of any liability
4 for compensation imposed upon the employer by Division 4 of the
5 Labor Code; for the determination of questions concerning
6 dependency and of the persons entitled to benefits under workers'
7 compensation law and the distribution of compensation among
8 dependents or other persons; and for the determination of any
9 other matter, jurisdiction over which is vested by
10 Division 4 in the Division of Workers' Compensation,
11 including the administrative director and the appeals board.
12 (Lab. Code §§111, 5300, 5301.)

13 The WCAB does not have jurisdiction over proceedings before
14 and decisions made by either EDD or CUIAB because those
15 proceedings arise under the Unemployment Insurance Code. However,
16 EDD may file a lien claim to invoke WCAB jurisdiction in
17 proceedings before the WCAB to recover EDD's benefit payments for
18 periods when an applicant receives concurrent workers'
19 compensation benefits. (Lab. Code §§4903, 4904; Cal. Code Regs.,
20 tit. 8, §10772.)

21 In the present case, EDD filed a lien claim for UCD benefits
22 paid from September 10, 1998 to October 14, 1998, and from
23 February 24, 1998 to May 7, 1998. EDD settled this lien claim
24 with defendant at the same time that the OACR was issued.
25 The period of extended benefits during the appeal was not
26 mentioned in the lien claim, the compromise and release, or
27 the OACR. Therefore, we see no basis for concluding that EDD is

1 estopped by the settlement agreement from pursuing its recovery of
2 UCD benefits.

3 By agreement between EDD and applicant, his UCD benefits were
4 extended for the period from May 8, 1998 through
5 September 9, 1998, after EDD initially determined that applicant
6 was not medically eligible. Applicant's appeal to CUIAB was
7 decided adversely to him.

8 Review of EDD and CUIAB actions or decisions is not within
9 the jurisdiction of the WCAB. Applicant's liability for repayment
10 arose in the agreement between him and EDD. Because EDD did not
11 file a lien claim for the period of benefit continuation,
12 no issues related to that period were properly before the WCAB.
13 The CUIAB determination that EDD was not liable for
14 benefits during the period was not appealed by applicant.
15 The determination became a final decision and EDD could proceed to
16 recover its provisionally paid benefits. The WCAB does not have
17 jurisdiction to consider applicant's liability for the benefits.

18 Applicant contends that the WCJ should have undertaken an
19 inquiry to determine whether the UCD benefits were received
20 without fault on the part of applicant and their recovery would
21 be against equity and good conscience, as urged by applicant.
22 This issue arises under Unemployment Insurance Code section 2735,
23 *supra*; it is not within the WCAB's jurisdiction, and is properly
24 heard in an appeal of the CUIAB decision. Similarly, the
25 contention that the CUIAB ALJ's decision was inadequate or
26 incomplete is properly attacked by an appeal pursuant to
27 Unemployment Insurance Code section 2737. Review of appeals from

1 overpayment determinations are made by CUIAB pursuant to
2 Unemployment Insurance Code section 2738.

3 In summary, EDD determined that applicant was not eligible
4 for UCD benefits during the period from May 8, 1998 to
5 September 9, 1998. Applicant entered into an agreement with EDD
6 to repay continued UCD benefits if he did not succeed on appeal
7 before CUIAB. CUIAB made a final determination that applicant was
8 not eligible for UCD benefits during the period. EDD did not file
9 a lien claim for this period. Under these circumstances,
10 the WCAB does not have jurisdiction to enquire into the repayment
11 agreement or EDD's enforcement of it.

12 We note that, in this case, the WCAB does not have
13 jurisdiction to hear and decide this issue. Therefore, we need
14 not, and will not, consider the further issues of whether the
15 doctrines of collateral estoppel and res judicata are applicable
16 to the CUIAB determination in this case. However, in a different
17 case, it is possible that EDD may have proceeded to a
18 determination that the applicant is liable for UCD payments made
19 during an appeal period, and that the applicant later comes before
20 the WCAB to litigate the issue of temporary disability during the
21 disputed period without the WCJ's knowledge of the EDD
22 proceedings. If the WCJ finds, contrary to the EDD determination,
23 that applicant was temporarily disabled during the period,
24 then EDD would have two sources for recovery of its benefit
25 repayment agreement: from applicant under the agreement and from
26 the employer pursuant to the WCJ's finding. (Unemp. Ins. Code
27 §1379; Lab. Code §§4903(f), 4904.) If EDD sought recovery of its

1 UCD payments in proceedings before the WCAB, then the issues of
2 collateral estoppel or res judicata could be addressed by the WCJ.

3 Finding no error in the WCJ's decision that the WCAB does
4 not have jurisdiction to determine applicant's liability for
5 repayment, as our decision after reconsideration, we will affirm
6 the WCJ's decision.

7 For the foregoing reasons,

8 **IT IS ORDERED**, as the Board's decision after reconsideration,
9 that the Findings of Fact issued December 11, 2002, is **AFFIRMED**.

10
11 WORKERS' COMPENSATION APPEALS BOARD

12
13 /s/ Merle C. Rabine

14
15 I CONCUR,

16
17 /s/ Frank M. Brass

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19
20 /s/ Janice J. Murray

21
22 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA
23 3/18/03

24 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL
25 ADDRESS RECORD, EXCEPT LIEN CLAIMANTS BUT INCLUDING EMPLOYMENT
26 DEVELOPMENT DEPARTMENT AND STAFF COUNSEL CHIAN HE.

27 **cs1**