

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

**LUCILA CANO GARCIA, *Applicant***

**vs.**

**PACIFIC GOLD FARMS, INC.; INSURANCE COMPANY OF THE WEST, *Defendants***

**Adjudication Numbers: ADJ10801649, ADJ12472531  
Salinas District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto.<sup>1</sup> Based on our review of the record, for the reasons stated in the WCJ's report, which we adopt and incorporate, and for the reasons stated below, we will deny the petition.

Here, the Petition raises two issues: first, that applicant's attorney did not include applicant in settlement discussions, and second, that applicant was awarded benefits payable over time rather than as a lump sum.<sup>2</sup>

On the first point, we emphasize that applicant's case was not settled via negotiations between her attorney and defense counsel. Instead, the WCJ issued applicant an award after trial. Because the WCJ awarded applicant the benefits she sought after trial, any failure to include her in settlement negotiations could not have harmed her recovery. Therefore, she is not aggrieved, and there is no basis for reconsideration.

On the second point, applicant was awarded benefits payable bi-weekly over time because that is what the law requires. (See Labor Code, § 4650(c).) However, applicant may seek to have her award commuted to a lump-sum payment by filing a Petition for Commutation with the WCJ if she believes she meets the financial hardship requirements. (See Labor Code, § 5100.) If

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<sup>1</sup> Applicant filed a translation of the Petition for Reconsideration on the same day the Petition for Reconsideration was filed. We will accept this filing as a Supplemental Petition, pursuant to WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964).

<sup>2</sup> Applicant dismissed her attorney after receiving her award, but prior to filing this Petition.

applicant wishes to explore this option, we encourage her to contact the Information and Assistance Unit at the Salinas District Office for further assistance.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**KATHERINE A. ZALEWSKI, CHAIR**  
**CONCURRING NOT SIGNING**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**July 9, 2024**

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

**LUCILA CANO GARCIA  
D'ANDRE LAW**

**AW/pm**

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

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION**

**INTRODUCTION**

Applicant, in pro per as of May 10, 2024, filed a timely, verified, Petition for Reconsideration on May 13, 2024, alleging the attorneys in the case were negotiating and in making a decision, her lawyer did not consult with her. Petitioner also disputes that disability payments will be paid out over four years. Boilerplate language on Petition for Reconsideration indicates petitioner is aggrieved by the decision of April 19, 2024.

**I. BACKGROUND**

Trial of March 28, 2024, was set on applicant's petitions for new and further disability filed in the above-referenced cases. Applicant's counsel was granted permission on March 27, 2024, to appear remotely by virtue of teleconference system, due to extenuating circumstances. There was no objection by defendant. Applicant, Lucila Cano Garcia, was present and available remotely, but was not called to testify. The matter was submitted for decision on the record.

The WCJ herein awarded all that was claimed by applicant; namely, in ADJ10801649, applicant sustained new and further disability to her low back, sustained injury in the form of a temporary aggravation of hemorrhoids due to the effects of industrial medications and sustained a compensable consequence injury to her left shoulder.

In ADJ12472531, applicant did not sustain new and further disability to her bilateral knees but did sustain injury in the form of a temporary aggravation of hemorrhoids due to the effects of industrial medications and sustained a compensable consequence injury to her left shoulder.

While no permanent disability was awarded (nor claimed) for the left shoulder, an award for future medical treatment for the left shoulder was granted in both cases. There was no permanent disability for the temporary aggravation of hemorrhoids nor a need for medical treatment on an industrial basis in either case.

The parties stipulated to a rating of permanent disability should the WCJ find substantial medical evidence of new and further disability. The WCJ found the report of PQME Baroumand dated September 26, 2023 (J-9) to be substantial medical evidence and incorporated stipulated

rating of the parties as consistent with Dr. Baroumand's report. In ADJ10801649, an award of an increase in permanent disability from 62% to 74%, plus a life pension increasing annually in accordance with LC 4659(c), less credit for permanent disability advances in conjunction with prior award and less reasonable attorney fee of 15% of the net difference between prior and current award.

As above, it was also found applicant sustained a compensable consequence left shoulder injury with an award for medical treatment in both cases.

## II. DISCUSSION

### PETITIONER IS NOT AGGRIEVED BY FINDINGS AND AWARD

Petitioner states:

*"The reason I am appealing is because the lawyers were negotiating and they did not include me. My lawyer did not tell me anything about what they were negotiating. I think that in order to make a decision between the two lawyers, my lawyer had to include me. And, I also do not agree that they going to give me disability payments in 4 years."*

Petitioner does not enumerate any grounds on which she is aggrieved by the Findings & Award issued herein. Rather, her concerns are limited to a lack of communication from her attorneys and receiving bi-weekly payments versus a lump sum settlement.

Petitioner's issues are limited to communications with her attorney whom she has since dismissed. She is free to negotiate a lump sum settlement with defendant at this time.

Petitioner dismissed her attorney on May 10, 2024, and filed the petition herein on May 13, 2024. Former applicant's counsel developed the record on the issues of new and further disability permanent disability, additional body part claims, and obtained a favorable award for applicant. The Findings & Award of April 19, 2024, and award of attorney fees were supported by the evidentiary record.

### **III. RECOMMENDATION**

Applicant is not aggrieved by the Findings and Award. It is recommended that the WCAB deny defendant's Petition for Reconsideration.

Date: May 15, 2024

**Kathleen A. Chassion**

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE