

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

PAMELA BENNETT, *Applicant*

vs.

**DOLLAR TREE STORES; SAFETY NATIONAL CASUALTY CORP.
administered by SEDGWICK, *Defendants***

**Adjudication Numbers: ADJ16161110, ADJ16161057, ADJ16161093
Redding District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the workers' compensation administrative law judge's (WCJ) "Order Granting Petition for Credit due to Overpayment of Temporary Disability Benefits Pursuant to Labor Code § 4909" (Order) issued on April 23, 2024, wherein the WCJ summarily granted defendant's petition for credit.

Applicant alleges that the WCJ violated her right to due process.

Applicant's attorney further seeks to disqualify the WCJ in this matter.¹

The WCJ filed a Report and Recommendation on Petition for Reconsideration / Removal, which recommends that reconsideration be denied.

We have not received an Answer from defendant.

We have considered the allegations of the Petition and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons stated below, as our Decision After Reconsideration we will rescind the April 23, 2024 Order and return this matter to the trial level for further proceedings.

¹ Applicant uses the term 'removal' to describe removing the WCJ from hearing the case. We have interpreted applicant's request as a petition to disqualify the WCJ. The petitions for removal and disqualification were disposed of by stipulation of the parties and dismissed by a separate order in the consolidated proceedings of *Hoddinott, et. al. v. Bravo Security Services, Inc., et. al.*, (2024) 89 Cal.Comp.Cases ___ (Appeals Board en banc).

The WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (§ 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).)

Labor Code section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

Here, the WCJ summarily issued an order awarding credit for alleged overpayment of temporary disability. The order issued in response to a petition, which is appropriate, but only when the parties do not object. Here, applicant clearly objected and requested an evidentiary hearing. As no such hearing was held and no evidence was presented, there is no record for us to determine whether a credit is due. Accordingly, we are compelled to return this matter to the trial level so that the parties may proceed to an evidentiary hearing.

Finally, the WCJ suggests that the petition for reconsideration was not timely in this matter. The order granting credit was served on April 24, 2024. Twenty-five days from that date is Sunday, May 19, 2024. The petition for reconsideration was filed on May 20, 2024, which is timely. (Cal. Code Regs., tit. 8, § 10600(b) [“(b) Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.”].)

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Granting Petition for Credit due to Overpayment of Temporary Disability Benefits Pursuant to Labor Code § 4909 issued on April 23, 2024 is **RESCINDED**.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 14, 2024

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

**PAMELA BENNETT
GORMAN LAW
PARK | GUENHART
RILEY LAW**

EDL/abs

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