

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

MICHAEL GARCIA, *Applicant*

vs.

**CITY OF SEASIDE, permissibly self-insured;
administered by ATHENS ADMINISTRATORS, *Defendants***

Adjudication Number: ADJ13458859

Salinas District Office

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted defendant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.¹

Defendant seeks reconsideration of the Findings of Fact (Findings) issued by the workers' compensation administrative law judge (WCJ) on May 2, 2022, wherein the WCJ found in pertinent part that defendant owed applicant Labor Code section 4850 benefits for the period beginning November 9, 2021, and continuing for one year, less any temporary disability indemnity or Labor Code section 4850 benefits paid during that period.²

Defendant contends that applicant's entitlement to section 4850 benefits ran concurrently under both the psychiatric cumulative injury claim (ADJ13458859) and the prior hypertension cumulative injury claim (ADJ11613231), during the period from November 2, 2020, through October 18, 2021, so applicant is not entitled to any additional Labor Code section 4850 benefits as a result of the psychiatric injury claim.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from applicant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, which

¹ Commissioners Sweeney, who was a member of that panel has since retired and another panel member has been assigned in her place. Also, Commissioner Dodd is not presently available to review the matter; a new panel member has been assigned in her place.

² All further statutory references are to the Labor Code unless otherwise noted.

we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will affirm the Findings.

BACKGROUND

Applicant claimed injury to his nervous system/psyche while employed by defendant as a firefighter during the period from December 20, 2018, through January 5, 2020 (ADJ13458859). He had previously claimed injury to his heart and cardiovascular system in the form of hypertension during the periods from July 17, 2016, through July 17, 2017 (ADJ11613231), and from December 20, 2017, through December 20, 2018 (ADJ11814983).

Applicant was deemed temporarily totally disabled (TTD) as a result of his psychiatric injury as of November 1, 2020. (Joint Exh. J1, Nadine La Fleur, Psy.D., March 12, 2021, p. 26; Def. Exh. D-2, Edward Duncan, Ph.D., August 1, 2021.) Defendant paid applicant section 4850 benefits for disability caused by his hypertension (ADJ11613231) during the period from November 2, 2020, through November 1, 2021. (Def. Exh. 4, Indemnity printout.)

The December 1, 2021 Findings of Fact included the finding that, “Defendant's payment of Labor Code section 4850 benefits on Applicant’s companion claim does not preclude section 4850 benefits in this claim.” (See Findings of Fact, December 1, 2021, Finding #10) Defendant’s Petition for Reconsideration was dismissed and the December 1, 2021 Findings became final.

At the March 29, 2022 Expedited Hearing issues regarding applicant’s entitlement to section 4850 benefits and temporary disability benefits were submitted for decision. (Minutes of Hearing, March 29, 2022, p. 2.)

DISCUSSION

Applicant was TTD for his psychiatric injury claim as of November 1, 2020, so if supported by the medical record, he would be entitled to section 4850 paid leave benefits for one year for the period beginning November 1, 2020. However, he received section 4850 benefits in case number ADJ11613231 including the period from November 2, 2020, through October, 18, 2021.

Having reviewed the record, and the applicable law, we agree with the WCJ that:

Defendant's payment of Labor Code section 4850 benefits on Applicant’s companion claim does not preclude section 4850 benefits in this claim. Applicant is entitled to up to one year of section 4850 benefits per injury. Labor Code section 4850(a) provides that “whenever” an eligible employee, such as Applicant, is disabled as a result of industrial injury, they are entitled to salary continuation benefits in lieu of TD payments. (Findings, p. 3, Opinion on Decision.)

Based thereon, under the circumstances of this matter as discussed above, the one year period during which applicant is entitled to section 4850 benefits in the present case is from October 19, 2021, through October 18, 2022. Thereafter, if supported by the medical record, applicant would be entitled to TDI benefits for the period ending October 30, 2022 (the remainder of the 104 weeks that started November 1, 2020). Any payments of section 4850 benefits or TDI for overlapping periods of temporary disability in case number ADJ11613231 would count towards the section 4656(c)(2) 104-week cap in this matter ADJ13458859).

We note that the last report from psychiatric treating physician is dated October 6, 2021 so section 4850 benefits/TDI benefits would be owed through the period ending November 20, 2021 (45 days after last report). Thereafter, if supported by the medical record, applicant is entitled to TDI benefits, during the period ending October 30, 2022. Again, as noted, these benefits would be subject to credit for benefits paid for overlapping periods of temporary disability in case number ADJ11613231.

Accordingly, we affirm the Findings.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 2, 2022 Findings of Fact is **AFFIRMED**

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 7, 2024

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

**MICHAEL GARCIA
BRITTANY HUYNH
MACINTYRE & WHITE**

TLH/mc

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Defendant has filed a timely, verified Petition for Reconsideration of the undersigned's 5/2/22 Findings of Fact issued after submission at Expedited Hearing.

II

FACTS

Applicant, Michael Garcia, while employed from 1/5/19 through 1/5/20 as a Firefighter, Occupational Group 490, at Seaside, California, by the City of Seaside, permissibly self-insured, sustained injury AOE/COE to his psyche in the form of PTSD and claims to have sustained injury AOE/COE to his back, knees, hips, and feet.

This matter was submitted for decision once before. In the court's 12/1/21 Findings of Fact, the court found that Applicant is entitled to up to one year of Labor Code section 4850 benefits per injury (Finding No. 9); Defendant's payment of Labor Code section 4850 benefits on Applicant's companion claim does not preclude section 4850 benefits in this claim (Finding No. 10); any payments of Labor Code section 4850 benefits or TD for overlapping periods of temporary disability in the companion case would count towards the Labor Code section 4656(c)(2) 104 week cap in this case and vice versa (Finding No. 11); and, the parties are to informally adjust the periods of benefits due, with jurisdiction reserved over any disputes (Finding No. 12). (Findings of Fact, 12/1/21, at p. 2.) Defendant filed a Petition for Reconsideration, but did not appeal any of these findings. Defendant appealed a "finding" taken from the undersigned's Opinion on Decision. (Findings of Fact, 12/1/21, Op. on Dec. p. 3.) The WCAB dismissed Defendant's Petition. (Opinion and Order Dismissing Petition for Reconsideration, 2/18/22.)

The parties were unable to adjust the TD and Labor Code section 4850 benefits informally, and the parties submitted the following issues for decision:

- 1) Which periods of 4850/TD benefits, if any, paid in Applicant's 7/17/17 hypertension claim overlap with periods of 4850/TD due in this claim (CT through 1/5/20)?

- 2) Whether Defendant may take credit for a claimed overpayment of 4850 benefits (from 10/18/21 through 11/1/21) in Applicant's 7/17/17 hypertension claim against 4850 benefits due under this claim. (Minutes of Hearing, 3/29/22.)

The court found that “Applicant’s 4850 benefits paid in the hypertension claim overlap with the TD periods in the psyche claim from 11/2/20 through 10/18/21. The 4850 benefits paid in the hypertension claim are to be credited toward the 104- week cap for TD in the psyche claim.” And, “[i]n claim number CJP039559SS (hypertension), Defendant has overpaid 4850 benefits from 10/19/21 through 11/1/20 and TD benefits from 11/2/21 through an unknown date.” (Findings of Fact 2 and 3, 5/2/22.)

Defendant petitions for reconsideration, alleging that the 4850 benefits paid in the hypertension claim completely overlap any 4850 benefits due in the psych claim.

III

DISCUSSION

To the extent that the undersigned failed to elaborate on her conclusions, they will be discussed below. (*Smales v. W.C.A.B.* ((1980) 45 Cal.Comp.Cases 1026.) Defendant paid Labor Code section 4850 benefits from 11/2/20 through 11/1/21 on Applicant’s hypertension claim (7/17/17 date of injury.) (Findings of Fact, Finding 7, 12/1/21.) Defendant picked up TD benefits in the 2017 claim as of 11/2/21. (DEFT'S EX. D-3: Temporary Total Disability Notices sent to Claimant, Sedgwick, 11/2/21.) Applicant became MMI for his hypertension claim as of 10/18/21. (JOINT EX. J-4: Report, Jonathan Ng, M.D., 10/19/21, p. 22.)

Thus, Defendant has overpaid 4850 benefits from 10/19/21 through 11/1/21. As well, per the 11/2/21 TD notice (DEFT’S Ex. D-3, *supra*), TTD benefits were started as of 11/2/21 in the hypertension claim, leading to an overpayment of TD in that claim. Credit against 4850 liability in the psyche claim (claim no. 4020060FEED-0001) for benefits paid in the hypertension claim (claim no. CJP039559SS) is appropriate.

Applicant was TTD for his psyche claim (CT through 1/5/20), per Dr. Duncan and Dr. LaFleur, as of 11/1/20. (JOINT EX. J-1: Report, Nadine La Fleur, Psy.D., 3/12/21, p. 26; DEFT'S EX. D-2: Reports, Edward Duncan, Ph.D., 8/1/21.) Applicant’s 4850 benefits paid in the hypertension claim overlap with the TD periods in the psyche claim from 11/2/20 through 10/18/21. The 4850 benefits paid in the hypertension claim are credited toward the 104-week cap for TD in the psyche claim. Applicant would be able to claim only 104 weeks of

TD/4850 benefits from 11/1/20 through 10/30/22 for the psyche claim. Section 4850 benefits in this claim would span from 10/19/21 through 10/18/22. Then, if due, TD benefits would be paid from 10/19/22 through 10/30/22.

In summary, 4850 benefits paid in the hypertension claim overlap with TD periods in the psyche claim from 11/2/20 through 10/18/21. In the psyche claim, one day of 4850 benefits for 11/1/20 is due, with 4850 benefits beginning again on 10/19/21 and continuing for up to one year. Defendant is entitled to credits for 4850 benefits and TD benefits paid in the hypertension claim beginning 10/19/21 against 4850/TD benefits due in the psyche claim.

Defendant's payment of Labor Code section 4850 benefits on Applicant's companion claim does not preclude section 4850 benefits in this claim. Applicant is entitled to up to one year of section 4850 benefits per injury. Labor Code section 4850(a) provides that "whenever" an eligible employee, such as Applicant, is disabled as a result of industrial injury, they are entitled to salary continuation benefits in lieu of TD payments. Persuasive authority supports the interpretation that Labor Code section 4850 benefits are payable on a per-injury basis. (*City of Oakland Fire Dep't v. WCAB* (2006) 71 Cal. Comp. Cases 1319, 1321-1320 (Cal. App. 1st Dist., writ den.); *City of Long Beach v. WCAB* (2004) 70 Cal. Comp. Cases 44, 45 (Cal.App.2d Dist., writ den.); *City of Montclair v. WCAB* (2001) 66 Cal. Comp. Cases 899, 900 (Cal. App. 4th Dist., writ den.).)

Any payments of Labor Code section 4850 benefits or TD for overlapping periods of temporary disability in the companion case would count towards the Labor Code section 4656(c)(2) 104-week cap in this case and vice versa. "Aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury." (Lab. Code section 4656(c)(2).) The Court of Appeal has held that "[w]here independent injuries result in concurrent periods of temporary disability, the 104[-]week/two[-]year limitation likewise runs concurrently." (*Foster v. WCAB* (2008) 161 Cal.App.4th 1505, 1513 (rev. den.); 73 Cal. Comp. Cases 466.)

The Court of Appeal in *Knittel* concluded that, "we think it is clear that section 4850 benefits paid for an injury causing temporary disability must count toward the 104-week limit absent a specific exclusion. Our conclusion is bolstered by the fact that when the Legislature added subdivision (c)(2), the case authority holding section 4850 payments are workers' compensation benefits was long standing and well established. (Citations omitted.) (*County of Alameda v. WCAB*

(*Knittel*) (2013) 213 Cal.App.4th 278, 286-287; 78 Cal. Comp. Cases 81; also, *County of San Diego v. WCAB* (2018) 21 Cal.App.5th 1, 11, fn. 10 (rev. den.); 83 Cal. Comp. Cases 465. [“It is settled that section 4850 benefits are ‘aggregate disability payments,’ subject to the 104-week limitation contained in section 4656, subdivision (c)(2).”].)

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

ROISILIN RILEY

Workers’ Compensation

Administrative Law Judge

06/20/2022