

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

CHRISTOPHER GOWEN, *Applicant*

vs.

**CITY OF LOS ANGELES POLICE DEPARTMENT;
permissibly SELF-INSURED, *Defendants***

**Adjudication Number: ADJ19302164
Van Nuys 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 Arbitrator with respect thereto. Based on our review of the record, and for the reasons stated in the Arbitrator's Report, which we adopt and incorporate, we will deny reconsideration.

We note that former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

¹ All further statutory references are to the Labor Code, unless otherwise noted.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on August 14, 2025 and 60 days from the date of transmission is October 13, 2025. This decision is issued by or on October 6, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative arbitrator, the Report was served on March 12, 2025, and the case was transmitted to the Appeals Board on August 14, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under Labor Code section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on August 14, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by Labor Code section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on August 14, 2025.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 13, 2025

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

**CHRISTOPHER GOWEN
LEWIS, MARENSTEIN, WICKE, SHERWIN & LEE LLP
CITY ATTORNEY, LOS ANGELES
MARK KHAN**

PAG/bp

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

ARBITRATORS REPORT AND RECOMMENDATION ON RECONSIDERATION

I.

INTRODUCTION

The above-captioned matter was set for Arbitration before Mark L. Kahn, Arbitrator, on January 29, 2025, regarding the issue of Applicant's Petition for Commutation.

On February 4, 2025, the Arbitrator issues the following Amended Findings and Award:
The Arbitrator found as follows:

Based on the testimony of the applicant, Labor Code §5100, and relevant case law, the Arbitrator, exercising the discretion permitted by law, rules that a commutation of a lesser amount than requested are in the best interest of the applicant. Therefore, the request for commutation is granted for a portion of the entire disability award, while the request for commutation of the life pension is denied.

The Arbitrator found the Petition for Commutation filed by the applicant is granted and for commutation of the entire Award of permanent disability remaining outstanding commuted to a present value at 3 %.

The Arbitrator found the Petition for Commutation filed by the applicant for commutation of part of the life pension was denied.

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The Arbitrator found the life pension remains payable on the date upon which permanent disability payments would have ceased had there been no commutation. The Arbitrator declines to advance the life pension payments and that the payments remains payable after the completion of the time upon which permanent disability would have been paid.

The Arbitrator determined that the issue of attorney fees for services rendered during the commutation will be adjudicated after the applicant's attorney files a Petition for Attorney Fees, including an itemization of work performed, with the Arbitrator retaining jurisdiction over this matter.

The Arbitrator Awarded as follows:

An Award is granted in favor of the applicant for a commutation, with the entire outstanding award for permanent disability being converted to a present value at 3%, payable immediately.

The City of Los Angeles now files this Petition for Reconsideration on the issue of the Arbitrator finding and awarding Petition for Commutation filed by the applicant is granted and the entire award of permanent disability remaining outstanding is commuted to a present value at 3 % on the following grounds:

1. The commutation should not have been granted because the loan obligations appeared to have been incurred after the applicant's date of injury.
2. The applicant received \$120,000.00 by cashing out his entire retirement, which he obtained shortly before taking out various loans.
3. The Petition for Commutation lacked substantial detail for the basis for the commutation.
4. There is no substantial evidence supporting specifics of how and why the debts were incurred and why emergency pressing debts warranted commutation and why the commutation is in the best interest of the applicant.

5. Allowing a commutation for reduction debt or for an emergency is not circumstances that the legislature intended for commutations.

6. Allowing commutations to help the applicant with poor financial management does not comply with the purposes for commutation.

II. **FACTS**

At the arbitration on January 29, 2025, the following issues were agreed upon:
(Arbitration transcript, pages 5 - 7)

ISSUES

1. The Petition for Computation filed by the applicant's attorney claiming commutation for automobile loan of \$48,858.60, unsecured Loan 8504 in the amount of \$29,019.95, PA Freedom B loan 9336 in the amount of \$5442.60, 2021 Summer Fun loan of \$10,572.47, and bill from Gamblin Lumbar Company in the amount of \$31,478.09 for building materials to finish his residence home in Missouri.

2. Adequacy of the Petition for lack of detail.

3. The amounts an approximation, the actual amount subject to proof in this arbitration.

4. Attorney fees.

The following exhibits were admitted into evidence:

EXHIBITS:

APPLICANT'S EXHIBITS (Arbitration transcript, pages 9 through 11)

1. The Petition for Commutation filed by Applicant.

2. Auto Payments.

3. Unsecured Loan.

4. PA Freedom B loan.

5. 2021 Summer Fun Loan.

DEFENDANT'S EXHIBITS (Arbitration transcript page 9)

1. Benefit printout.

The applicant testified at the arbitration hearing on January 29, 2025, as follows:

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1. His income as a Police Officer was approximately \$120,000.00 - 145,000.00 a year depending on overtime. After the injury there was a drop in his income.

2. Following the injury his income was reduced by \$90,000.00 and later by much more.

3. There is an outstanding balance on loan for a Ford F-150, approximately \$46,000.00. He is paying interest on this loan.

4. Applicant Exhibit 3 is a personal unsecured loan from the credit union with a balance of \$29,019.95.

5. The PA Freedom Loan and the Summer Fund Loans both also are loans from the credit union which he relied on to stay afloat.

6. All the loans have interest.
7. The purpose of the loans was that he was a little more in debt and relied on the loans from the credit union to sustain his payments, pay interest and stay afloat.
8. His financial status keeps dropping because of the loss of income from the industrial injury.
9. He could not stay in California and sustain his life.
10. He moved to Missouri and built a home to sustain his life on his reduced income. He moved to Missouri in 2021.
11. When he moved to Missouri, he built a home that was supposed to cost \$300,000.00 and it ended up going over that amount. He had a construction loan for only \$280,000.
12. The bill from Gamblin Lumber Company was for building materials that he could not cover with the construction loan. This bill has accrued a significant amount of interest. He has been making interest-only payments to keep the loan from going into arrears and paying it off would be a great help. The interest on the loan is approximately \$400.00 per month.
13. If he receives the commutation, the commutation will positively affect his financial outlook and life in general.
14. The commutation would relieve him of the burden of his interest payments.
15. The applicant is paying several thousand dollars a month in interest.
16. He receives \$450.00 from the settlement every two weeks. However, he is negative because of the loans and interest on the loans.
17. He retired 2 ½ to 3 years ago. He retired roughly on July 29, 2022.
18. He moved to Missouri in December 2021.
19. He started building a house in Missouri in 2021.
20. He currently works doing freelance consultant work. He is trying to build up his business
21. He received a pension because he opted for a lump sum payment of \$120,000.00, which he will receive 30 to 60 days after his retirement date.
22. He has a mortgage on the property in Missouri, approximately \$3,500.00 a month.
23. He earned less than \$3,000.00 from his outside consulting business.
24. There is \$46,000.00 on the auto loan. He purchased the vehicle 2 ½ to 3 years ago.
25. He used the loans for living expenses.
26. The loan balances are \$23,707.55, \$9,181.02 and \$3,434.33.
27. He tried to cut the cost of living by moving to Missouri.
28. He still owes approximately \$30,000.00 to the lumber company.
29. He thinks in the next six months his consulting business will start going.

The applicant, based on the testimony and exhibits presented above, requested a commutation of \$48,858.60 for his automobile loan, as well as commutations for the following loan balances: \$29,019.95 for Loan 8504, \$5,442.66 for the PA Freedom Loan, \$10,572.47 for the Summer Fun Loan, and \$31,478.09 for the construction of his home from Gamblin Lumber Company.

The Petition for Commutation requested commutation for a total amount of of \$116,000.00.

The amount of the commutation was requested from the remainder of the permanent disability award and life pension.

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According to the Stipulations with Request for Award and Award, the applicant was owed a permanent disability payment of \$130,282.50, minus a reasonable attorney fee of \$19,442 to be paid from the permanent disability Award. Additionally, a life pension of \$85.04 is owed, less an attorney fee of \$10,013.14, with both attorney fees deducted from the total amount of the Award.

According to the benefit printout, the applicant received permanent disability payments from December 19, 2021, through February 8, 2025, totaling \$63,947.52, which includes payment for attorney fees.

The applicant, as of February 8, 2025, was owed approximately \$66,334.98 for permanent disability, in addition to a life pension.

On February 4, 2025, the Arbitrator found as to the commutation as follows:

1. The Arbitrator finds the Petition for Commutation filed by the applicant is granted and the entire Award of permanent disability remaining outstanding is commuted to a present value at 3%. (\$66,334.98)
2. The Arbitrator finds the Petition for Commutation filed by the applicant for commutation of part of the life pension was denied.

An Award was made in favor of the applicant of a commutation the entire Award of permanent disability remaining outstanding and commuted to a present value at 3% and payable forthwith.

The Arbitrator granted commutation of the remaining outstanding permanent disability Award commuted to a present value at 3% or a commutation of approximately \$66,334.98

The remainder of the requested communication was denied.

Defendants now Petition for Reconsideration on the grounds set forth above.

III. **DISCUSSION**

The defendant city of Los Angeles now Petitions for Reconsideration of the Order of partial commutation of approximately \$66,334.98.

Labor Code §5100 provides that the appeals board to consider these criteria when determining if commutation is to be allowed:

1. The commutation must be necessary for the protection or best interest of the applicant (LC 5100(a)).
2. The general financial condition of the applicant must be assessed, including but not limited to, his or her ability to live without periodic indemnity payments and to discharge debts incurred prior to the date of injury (LC 5100(a)).
3. The commutation must avoid inequity and will not cause undue expense or hardship to the applicant (LC 5100 (b)).
4. The employer has sold or otherwise disposed of the greater part of its assets or is about to do so (LC 5100 (c)).
5. The employer is not a resident of this state (LC 5100 (d)).

If any of these criteria apply, Labor Code §5100 provides that commutation may be ordered by the appeals board.

Pursuant to the case of *Paquette v. City of Ventura* (1978) (43 CCC 1129, 1133) (Hulse v, WCAB (4 CCC 691) and other relevant case law the following principles apply to granting or denying Petitions for commutation:

An order of commutation rests with the board's discretion.

The appeals board is not required to Order Commutation of the full amount requested by the applicant but has discretion to commute a smaller amount.

The appeals board's decision to grant or deny a request for commutation is reviewed by appellate courts only to determine if there is an abuse of discretion.

Commutation should be ordered when an applicant has a legitimate need for a lump sum payment.

A commutation is generally not allowed to pay off debts. *Paquette v. City of Ventura* (1978)(43 CCC 1129, 1133)

A commutation to purchase a home or payoff a mortgage may be allowed within the sound discretion of the Appeals Board depending on the facts of the case. (*Rogue v. State of California* (2015 Cal. Wrk. Comp. LEXIS 103)

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The Arbitrator, based on applicant's testimony found that the applicant moved to Missouri because his industrial injuries resulted in a substantial loss of income.

The applicant decided to purchase a lot in Missouri and build a home. He took out a loan to pay for building the home.

When he moved to Missouri, he built a home that was supposed to cost \$300,000.00 and it ended up going over that amount. He had a construction loan for only \$280,000.00. Therefore, \$20,000.00 was not covered by the construction loan.

According to applicant's testimony the loan came up short of the cost to finish the home.

According to applicant's testimony the loan came up short of the cost to finish the home and to make up some of the difference, he purchased the remaining materials from the lumber yard and owes \$31,478.09 at a substantial interest rate.

Based on these facts the Arbitrator found that \$31,478.09 should be commuted to pay off this building material loan to allow the applicant to be relieved from the substantial interest payments and to complete the building of his home within the amount of the construction loan. The burden on the applicant for paying this loan at a substantial interest rate and only being able to pay interest makes it impossible for the applicant to pay off this amount owed for building his house.

Based on the above facts and case law the commutation to pay off the building material to complete the building of his residence home is in the applicant's best interest, is within the discretion of the appeals board, and the applicant has a legitimate need for the lump sum payment. The Arbitrator allowed an additional commutation of approximately \$34,856.89.

The applicant moved to Missouri in December 2021 because of his reduction in income to lessen his cost of living.

He purchased a lot and built a house which he started building in Missouri in 2021 and was completed sometime in 2024.

The applicant obtained a construction loan of \$280,000.00, while the original cost to build the home was \$300,000, resulting in a shortfall of \$20,000.

In addition, the house ended up going over that amount.

Therefore, there was additional money owed to complete the construction of the house.

The bill from the lumber company for building materials used to finish the house was made in February 2024.

The construction on the house was still not completed in 2024.

A commutation to purchase a home or payoff a mortgage may be allowed within the sound discretion of the appeals board depending on the facts of the case. (*Rogue v. State of California* (2015 Cal. Wrk. Comp. LEXIS 103))

The Arbitrator allowed an additional commutation of \$34,856.89 to pay \$20,000.00 difference for the purchase and building of the house over the construction loan and to cover additional over runs on construction of the home not covered by the lumber company bill.

The remainder of the amount requested by applicant for commutation was denied because the request for commutation violated the principles in the case *Paquette v. City of Ventura* (1978) (43 CCC 1129, 1133) and (*Hulse v. WCAB* (4 CCC 691)), because the request was to pay off debt.

The Arbitrator specifically answering the arguments in defendants Petition for Reconsideration responds as follows:

Regarding the argument that the Petition for Commutation lacked substantial detail to support the request, the Arbitrator determined that the commutation was not granted solely based on the Petition for Contribution. Instead, it was granted based on the arbitration hearing, along with the testimony and evidence presented during that hearing. The defendant was present at the hearing, cross-examined the applicant, and had the opportunity to present rebuttal evidence. When a Petition for Contribution is granted based on an arbitration hearing and the evidence submitted during that hearing, any deficiencies in the Petition for Contribution do not serve as a valid basis to deny contribution.

Regarding the defendant's argument that commutation should not be permitted because the loan obligations seemed to have been incurred after the applicant's date of injury, the Arbitrator found no case law or provisions in Labor Code §5100 that stipulate that the expenses for which commutation is granted must precede the date of the injury.

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In the case of *Jenkins v. WCAB* (40 CCC 329) most of the granted requests for commutation occurred after the date of injury.

The only requirements for Commutation are set forth in the case of *Paquette v. City of Ventura* (1978) (43 CCC 1129, 1133) and make no mention of the need for commutation occurring before the date of injury, also see Jenkins above.

If the defendant were correct a commutation such as the one Jenkins where the applicant develops issues after the date of injury that creates a need for a commutation, such as cancer developing after the date of injury, and needed money to pay for treatment would have to be denied.

As the argument of defendant that commutation should not be allowed because the commutation is for reduction debt, is not for an emergency, and is for poor financial management and does not comply with the purposes of commutation, the Arbitrator is in agreement with some of these arguments and has explained above that is why the much of the request for commutation was denied.

The commutation was only granted to cover the costs for construction of the residence house in Missouri and which are proper legal basis for commutation.

In response to the defendant's argument that commutation should not be permitted because the applicant cashed out his entire retirement for \$120,000.00 shortly after taking out various loans, there is no evidence presented by the defendant-beyond the mere fact that the applicant received this money-that suggests it undermined his entitlement to the partial commutation that was granted.

The defendant had the opportunity to ask the applicant what he used this money for and did not ask. The only argument the defendant made was the applicant got the money and therefore

the commutation should be denied. This argument is without merit. The Applicant had a substantial drop in income after the injury and testified he used all the money to sustain his life on his reduced income.

As the argument of defendant that commutation should not be allowed because there is no substantial evidence supporting specifics of how and why the debts were incurred, why emergency pressing debts are warranted and why the commutation is in the best interest the applicant, the Arbitrator, responds that only a partial commutation was granted to cover the the costs completing his residence house in Missouri and paying for overpayments in building the house.

IV. **RECOMMENDATION**

For the foregoing it is recommended that Reconsideration be denied.

DATED: March 12, 2025

Respectfully submitted,

MARK L. KAHN,
ARBITRATOR