

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

FRED VON GUNTEN III, (DEC), *Applicant*

vs.

**CHAMPION INDUSTRIAL CONTRACTORS;
ZURICH AMERICAN INS., *Defendants***

Adjudication Numbers: ADJ18453561

Lodi District Office

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of the “Findings of Fact and Award” (F&A) issued on November 12, 2024, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that Victoria Sandoval was a total dependent of Fred Von Gunten at the time of his death and awarded death benefits accordingly.

Defendant argues that Victoria Sandoval was not a total dependent at the time of death because she had regular and substantial earnings and because she was living in the home with the deceased’s parents at the time of his death.

We received an answer from applicant.

The WCJ filed a Report recommending that the Petition for Reconsideration be denied.

We have considered the allegations in the Petition for Reconsideration, the Answer, the contents of the Report, and we have reviewed the record. Based upon our review of the record, we will deny reconsideration.

FACTS

In this matter, it is stipulated that decedent, Fred Von Gunten III, sustained industrial injury resulting in his death. (Minutes of Hearing and Summary of Evidence (“MOH”), September 17, 2024, p. 2, lines 8-11.) Mr. Von Gunen III was 21 years old at the time of injury. (*Ibid.*) The sole issue for trial was the extent of dependency. (*Id.* at p. 3, lines 6-14.) The parties

stipulated that Victoria Sandoval was at a minimum a partial dependent; however, Ms. Sandoval claimed full dependency. (*Ibid.*)

Per the WCJ's Opinion on Decision:

Victoria Sandoval credibly testified that she was from North Carolina, had dated decedent since 2020, and that she moved to California in June of 2022, to be with him and live with his parents. (MOH pg 4, lines 29 -32).

She did not have a job until February 2023, at Jamba Juice. When she did not have a job, the decedent paid for everything. (MOH pg 4 lines 34 - 37). After she got the job decedent paid for most of it and she paid for little things. (MOH page 4 lines 42 – 43). She also started working at Maurices in September or October of 2023. After both Jamba Juice and Maurices she paid for some stuff but it really did not change. (MOH page 6 lines 15 – 16).

She felt his income supported her needs and she did not need to worry about spending money. They got engaged in Disneyland on September 27, 2023. (MOH page 5, lines 17 – 19).

Decedent passed away on October 25, 2023.

At trial she testified she was still working at Jamba Juice and living with decedent's parents but could not afford to pay them rent. (MOH page 5 lines 21 – 25). She cannot afford to live on her own and is moving back to North Carolina where her parents are planning on supporting her. (MOH page 5, lines 41 – 47).

It is clear Victoria Sandoval relied on the decedent for substantially all of her support. Without decedent's support she can no longer afford to pay rent or stay in California and must return to North Carolina where her parents are planning on supporting her. This is despite the fact she still works at Jamba Juice. The earnings at time of decedent's death are small, inconsequential, and tenuous and do not allow her to support herself.

(Opinion on Decision, November 12, 2024, p. 5.)

The parties stipulated that Victoria Sandoval's income at the time of decedent's death was \$353.63 per week. (MOH, *supra* at p. 2, line 34.)

DISCUSSION

I.

Former Labor Code section 5909¹ 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.

(§ 5909.)

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 December 16, 2024, and 60 days from the date of transmission is Friday, February 14, 2025. This decision is issued by or on February 14, 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

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on December 16, 2024, and the case was transmitted to the Appeals Board on December 16, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on December 16, 2024.

II.

Although Ms. Sandoval and Mr. Von Gunten, III were engaged at the time of his passing, they were not married; accordingly, we must examine dependency via section 3502, which states: “In all other cases, questions of entire or partial dependency and questions as to who are dependents and the extent of their dependency shall be determined in accordance with the facts as they exist at the time of the injury of the employee.” (§ 3502.)

In calculating the extent of dependency, the “nature and degree of dependency is determined as of the date of the employee's injury which results in death, not as of the date of death. (*Atlantic Richfield Co. v. Workers' Comp. Appeals Bd.* (1982) 31 Cal.3d 715, 722.) “Commencing with the entire earnings of the decedent, the computation of allowances for actual support should include those fixed expenses which are an integral and reasonable part of the standard of living enjoyed by the community.” (*Ibid.*) “By way of illustration, we note that expenses incurred for indebtedness and maintenance of the community residence or transportation expenses for the benefit of the community and the spouse may readily be recognized as 'actual support' to the survivor.” (*Ibid.*)

Ms. Sandoval earned \$353.63 per week. She lived with Mr. Von Gunten, III, at his parents' house. The record shows that Mr. Von Gunten III paid virtually all of their living expenses, including utilities and food. While Ms. Sandoval earned money, her earnings were ancillary to the support provided by Mr. Von Gunten III. Every fixed expense integral to Ms. Sandoval's standard of living was provided by Mr. Von Gunten III. The record clearly shows that Ms. Sandoval was entirely dependent upon Mr. Von Gunten III for support.

Defendant argues that Mr. Von Gunten III's parents were the ones who actually supported Ms. Sandoval. The record does not support this argument. The parents supported their son, who in turn supported Ms. Sandoval. The parents did not seek out to support Ms. Sandoval. Ms. Sandoval only lived at the parents' house because of her relationship to Mr. Von Gunten III. Following his passing, Ms. Sandoval is returning to North Carolina. Ms. Sandoval lived in the parents' house because that was shelter provided to her by Mr. Von Gunen III. This further demonstrates that Ms. Sandoval was reliant upon Mr. Von Gunen III for support. The fact that Mr. Von Gunten III received this shelter from his parents for free does not alter the analysis of Ms. Sandoval's dependency.

Accordingly, we deny defendant's petition for reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's petition for reconsideration of the F&A issued on November 12, 2024, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 14, 2025

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

**VICTORIA SANDOVAL
FRED VON GUNTEN JR
RIANA VON GUNTEN
BRANDON VON GUNTEN
GRACE VON GUNTEN
LAW OFFICES OF DOUGLAS G. MACKAY
KELLY, DUARTE, URSTOEGER & RUBLE, LLP
MCCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP**

EDL/mc

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