

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

RONNIE PHELPS, *Applicant*

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS,
CA INSTITUTION FOR MEN , Legally Uninsured;
STATE COMPENSATION INSURANCE FUND/
STATE CONTRACT SERVICES, Adjusting Agency, *Defendants***

Adjudication Number: ADJ480835 (MF), ADJ1647176, ADJ1235058

Marina del Rey 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. Based on our review of the record, and as discussed below, we will deny reconsideration.

I.

Former Labor Code 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, Labor Code 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.

Under Labor Code 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 January 27, 2025 and 60 days from the date of transmission is Friday, March 28, 2025. This decision is issued by or on Friday, March 28, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 law judge, the Report was served on January 27, 2025, and the case was transmitted to the Appeals Board on January 27, 2025. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on January 27, 2025.

II.

As pertinent here, the WCJ states in his Report that:

SUMMARY OF FACTS

Ronnie Phelps, while employed on 12/12/2006 as a correctional officer sustained injury arising out of and in the course of employment to left knee, left elbow, lumbar spine cervical spine and erectile dysfunction. (ADJ480835).

Ronnie Phillips, while employed during the period of 7/6/1981- 12/11/2006, sustained injury arising out of and in the course of employment to upper gastrointestinal system, arousal headaches, (psychiatric), cervical spine, and lumbar spine, shoulders, left ankle, erectile dysfunction. (ADJ1647176).

The matter was tried on January 18, 2018.

On September 12, 2018, the Court issued an Amended Joint Finding of Fact and Award finding that applicant was 100% permanent and stationary and totally disabled, while employed.

On October 4, 2018, Petitioner filed a Petition for Reconsideration.

On November 29, 2018, the Recon Unit issued its Opinion After Reconsideration. The court affirmed the Amended Joint Findings of Fact and Award and deferred number 7, 16, 17, 20 and 23 of the Findings.

On June 13, 2019, the Court issued a Joint Findings of Fact and Award (Post Reconsideration) which found applicant to be entitled to a permanent disability award of 98%. The Court also awarded applicant's counsel attorney's fees in the amount of \$55,275.06 which was to be commuted and paid as a lump-sum per the Award. This fee was based upon 15% of the present value of the permanent disability and life pension awarded.

On June 27, 2019, Petitioners filed a request to correct clerical error as to the start of the 15% increase in permanent disability and life pension awarded. The WCAB treated this pleading as a petition for reconsideration. At that time, Petitioner also paid the 98% Award, including attorney's fees of \$53,727.96 and included \$165.65 in interest.

On July 5, 2019, applicant's counsel filed a Petition for Reconsideration alleging applicant was 100% permanently and totally disabled.

On July 19, 2019, applicant's counsel notified the court of applicant's death. Applicant passed away on May 13, 2019.

On June 25, 2019 and July 9, 2019 Petitioners paid attorney fees in the total amount of \$53,727.96 per the 98% award.

On August 22, 2019, the WCAB denied applicant's petition for reconsideration. The WCAB also granted Petitioners Petition For Reconsideration and otherwise affirmed the June 13, 2019 Award, except as to attorney fees which was listed as deferred.

On July 22, 2020, Petitioners wrote the court a letter requesting a decision on the outstanding attorney's fees issues.

On April 6, 2021, Applicant's counsel filed petition for attorney fees in the amount of \$11,756.57.

On April 15, 2021, Judge Walker issued a Joint Notice of Intention to grant Petition.

On April 21, 2021, Petitioner objected to the Notice of Intention to Grant the Petition and requested other restitution for amounts paid after \$11,756.57 in attorney's fees.

On September 25, 2024, this matter was tried and submitted on the issue of attorney's fees. Applicant received \$152,608.23 in permanent disability payments prior to his death. Petitioner paid applicant's counsel \$53,727.96 in attorney's fees. Petitioner requested restitution of \$30,836.73 in overpayment of attorney's fees.

On December 16, 2024, the Court issued a decision finding that Petitioners are barred by the Doctrine of Laches. The Court also found that applicant's attorney is entitled to attorney fees in the amount of \$53,727.96.

DISCUSSION

A. The Doctrine of Laches is inapplicable in this case.

On June 13, 2019, retired judge Jacqueline Walker issued an award for 98% PD. On July 5, 2019, applicant filed a Petition for Reconsideration of the joint findings and award issued by Judge Walker on 6/13/2019. On August 22, 2019, the WCAB issued an Opinion and Order Denying the Petition for Reconsideration and Granting Petition for Reconsideration and decision after Reconsideration and deferred the issue of attorney fees.

On August 29, 2023, defendant filed a DOR, which stated in pertinent part, the following:

“On July 19, 2019, AA notified the court of applicant's death. (Applicant passed on 5/13/19). Defendant paid AA fees on the 98% Award via two checks 6/25/19 and 7/9/19. AA has been paid \$53,727.96 per the 98% award. The issue is whether AA is entitled to this full fee or some other amount in light of applicant's untimely death.”

(Emphasis added).

Defendant waited from July 9, 2019 when the 2nd check was sent until August 29, 2023 to file a DOR on whether applicant's attorney is entitled to \$53,727.96 or some other amount. Petitioners missed another opportunity to file a DOR when on April 21, 2021, Petitioner objected to the Notice of Intention to Grant the Petition and requested other restitution for amounts paid after \$11,756.57 in attorney's fees. Petitioners give no excuse for the delay in pursuing this issue. There is no excuse for this four-year delay. [Defendant] sent AA \$53,727.96 when they knew the applicant had passed. The doctrine of laches is [inapplicable] here in that it bars a claim because of the delay in pursuing it. The doctrine of laches is a defense to a claim in which a delay has caused prejudice and asserting the right or claim. *Ryerson Concrete Company v. Workers Compensation Appeals Board (Pena)*

(1973) 38 CCC 649. *County of San Sacramento v. Workers' Compensation Appeals Board* (Stapp (1999- W/D 64 CCC 788) where the parties were acting in good faith and there was no fraud alleged or committed by the party receiving the payment and there was delay in raising the claim for overpayment.

B. Applicant's Attorney's fees are based upon percentage of the amount of permanent disability recovered by counsel on behalf of applicant prior to applicant's death.

In *George La Favor v. Arvin Union School District* (1980) CCC 289), en banc decision, stated the following:

"Attorney's fees are generally assessed against permanent disability indemnity more as a matter of necessity and WCAB practice than statutory requirement. Labor Code Section 4903 (a) Derring's provides that a reasonable attorney fee for legal services is allowable as a lien against any sum to be paid as compensation. A reasonable attorney's fees for legal services is allowable as a lien against any sum to be paid as compensation,"

"A single lump-sum payment of attorney's fees assures the attorneys are fully paid for their services, even if Applicant dies earlier than what would be expected based on his or her life expectancy under U. S. Life Tables. Assuring that attorney fees will be fully paid helps assure that competent attorneys will agree to represent industrially injured employees." (*City of Foster v. Work Compensation Appeals Board* (W-D 20010, 66 CCC 742).

The Benefit Printout provided for the two cases (EAMS ID #49609357 and (EAMS ID#49609357) for TTD, PD, and medical legal is close to \$350,000 of which 15% would be \$52,500 in attorney's fees.

Applicant's Attorney is entitled and should keep as paid \$53,727.96. . . .

We observe when a party asserts that the doctrine of laches applies, the party must be able to demonstrate that they had "clean hands." (*Truck Ins. Exchange v. Workers' Comp. Appeals Bd. (Kwok)* (2016) 2 Cal. App. 5th 394, 401.) Here, as the WCJ observed, defendant has put forth no evidence to support that laches applies, and in fact, based on our review, applicant may have a better argument that laches applies. Moreover, while defendant contends that restitution is appropriate, it provides scant legal support for that contention. In short, we agree with the WCJ that applicant's attorney is entitled to an attorney's fee, and we see no reason to disturb the WCJ's decision.

Accordingly, we deny the Petition for Reconsideration.

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/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 28, 2025

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

**RONNIE PHELPS
MALLERY & STERN, APC
STATE COMPENSATION INSURANCE FUND, LEGAL**

AS/mc

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