

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

MOISES VASQUEZ, *Applicant*

vs.

**MAGUNSEN TIRE PROS; administered by
MID-CENTURY INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ8227110
Long Beach District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

We have considered the allegations of defendant's Petition for Reconsideration¹ 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 for the reasons stated in the WCJ's Report, which we adopt and incorporate only to the extent set forth in the attachment to this opinion, and the Opinion on Decision, which we adopt incorporate in its entirety, we will deny reconsideration.

¹ Defendant filed the Petition for Reconsideration on January 3, 2024, which was unverified. Defendant filed a supplemental Petition for Reconsideration on January 4, 2024, which was verified. We will not consider the issue of supplemental pleadings further, however, because we deny the Petition on other grounds.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 20, 2024

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

**MOISES VASQUEZ
PERONA, LANGER, SERBIN, BECK & HARRISON
LAW OFFICES OF SCOTT STRATMAN**

JB/cs

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

**REPORT AND RECOMMENDATION OF
WORKERS' COMPENSATION JUDGE
ON PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

1. Applicant's Occupation: Tire changer
 Applicant's Age: 29 at DOI
 Date of injury: January 9, 2012
 Parts of Body Injured: Various
2. Identity of Petitioner: Defendant
 Timeliness: Yes
 Verification: No
3. Date of Order: December 4, 2023
4. Petitioner's Contentions: That despite answering ready for the underlying trial and obtaining a Finding and Award without knowing the Applicant's whereabouts, that Defendant should now be able to suspend payment of the Award.

**II
STATEMENT OF THE CASE AND FACTS**

The applicant sustained an admitted specific injury. Substantial discovery took place given the seriousness of the injury. Sometime before the Findings and Award on the underlying case, it appears the Applicant became unavailable. Counsel for both parties appeared at trial on May 2, 2022, and expressed their joint desire to go on the record to obtain an Award. The undersigned continued the proceedings with notice on the Minutes of Hearing that Applicant should appear, otherwise his case could be heard without his participation.

At the continued trial of June 15, 2022, the undersigned instead ordered on the Minutes of Hearing that the Applicant appear at the next hearing, otherwise the matter would proceed forward. At the August 1, 2022, trial, the matter proceeded on the record and a Findings and Award issued in this matter. Defendant subsequently petitioned the court to suspend payment of the Award on February 9, 2023, as payments of the Award were going uncashed and unreturned.

The undersigned issued a Notice of Intention (NOI), dated March 20, 2023, to modify payment of the Award, essentially having Defendant void all outstanding payments, issue payments to a bank account created for the Applicant, and to have the parties file a quarterly accounting of the account and their efforts to locate the Applicant. Defendant objected to this NOI on March 29, 2023. From these pleadings, the matter eventually went to trial on September 18, 2023, and the undersigned issued a Findings and Order (F&O) along with Opinion on Decision (Opinion), dated December 4, 2023. The F&O was consistent with the previously issued NOI. It is from this F&O that Defendant, through counsel, files a timely, but unverified, Petition for Reconsideration (Recon).

III **DISCUSSION**

The Court's F&O is a better method of protecting the Applicant than suspending payment of the Award.

The Appeals Board has continuing jurisdiction over all its orders, decisions, and awards.⁷ Awards may subsequently be amended after notice and opportunity to be heard.⁸ The manner of payment may be specified by the Appeals Board.⁹ The legislature has granted broad latitude to the Appeals Board to implement the workers' compensation system's laws.¹⁰ Moreover, workers' compensation laws "shall be liberally construed" to protect injured workers.¹¹

As discussed in the Opinion, there are concerns regarding Defendant's proposal to suspend payment of the Award. The money from the Award is now the Applicant's, not the carriers. Although money is "held in trust" at times in our proceedings, that frequently arises for attorney fee splits which are resolved fairly quickly and between sophisticated parties, not a severely injured Applicant. In this instance, it is uncertain if the Applicant will resurface tomorrow, next week, next year, or ever. The fact is that there is now an Award that has not been challenged by any party and it is now the Applicant's money. Placing the proceeds in an independent FDIC insured bank account protects the money. The F&O also incentivizes the parties to actually locate the Applicant.

⁷ Labor Code 5803

⁸ Id.

⁹ Labor Code 5801

¹⁰ Labor Code 133

¹¹ Labor Code 3202

The Labor Code provides “broad authority” to the Appeals Board to implement workers’ compensation laws in the state.¹² Ordering payments voided and paid out to an account addresses the concerns of Defendant in having checks “out in the wild.” It also accomplishes substantial justice by protecting Applicant’s Award from any business disruption with Defendant. The Recon also asserts that payment of “any fees/costs” is unfair to Defendant. The undersigned appreciates how this might be the initial impression; however, that is the very way the system itself is set up. Defendant is already responsible for numerous ancillary costs in administering a claim, e.g., parking at medical appointments.

The Recon also asserts that there is no time limitation on the F&O. While it is true that the F&O does not “expire” on its face, the undersigned notes specifically that the F&O would remain in effect until the Order is rescinded.¹³ It would be unfair to put a definite time limit on the F&O given that the Award deals with a Life Pension, which by its nature has no defined duration and only expires upon the Applicant’s death. Defendant maintains its right to bring a new petition and revisit the issue. The undersigned could reasonably foresee Defendant bringing a petition in the future, after having produced the required quarterly reports and continued efforts to locate the Applicant, and having a more compelling argument at that time to possibly rescind the F&O and suspend payment of the Award.¹⁴ Due Process rights for Defendant are protected in this instance as Defendant could renew its arguments with a new Petition after having made further documented efforts to locate the Applicant. The F&O and this mechanism specifically protects the Due Process rights of both sides.

The Recon also asserts that Applicant must be held responsible for failing to participate in the proceedings, as well as not cashing any of the checks or making his whereabouts known.¹⁵ The undersigned notes that the parties appeared at three trial settings before submitting the matter on the record before the Award issued. Defendant assented to the matter going forward and did not challenge the Award at any time. The time to properly raise challenges to Applicant’s whereabouts would have been prior to engaging the Court’s time on the matter. The District Office has now devoted time to two trials, a petition, NOI, objection, and now the Recon. These concerns

¹² Labor Code 133

¹³ F&O, Order C

¹⁴ Right now the Award is still relatively new and continued efforts to locate the Applicant would be reasonable; however, in the future, the balancing of equities might shift in Defendant’s favor.

¹⁵ Recon, Page 6, Lines 21-23

should have been raised prior to the underlying trial, not after agreeing to allow the matter to go forward and obtaining a favorable result in the Award, given the range of the underlying evidence. Defendant cannot agree to the Award, then argue it is unfairly prejudiced when payment becomes an issue.

IV **CONCLUSION**

The undersigned respectfully recommends that the Petition for Reconsideration be DENIED for the reasons set forth above.

Date: January 3, 2024

/s/ Michael Joy

Michael Joy
WORKERS' COMPENSATION JUDGE

OPINION ON DECISION

Defendant's Petition / Court's Notice of Intention

The Appeals Board has continuing jurisdiction over all its orders, decisions, and awards.¹ Awards may subsequently be amended after notice and opportunity to be heard.² The manner of payment may be specified by the Appeals Board.³ The legislature has granted broad latitude to the Appeals Board to implement the workers' compensation system's laws.⁴ Moreover, workers' compensation laws "shall be liberally construed" to protect injured workers.⁵

The issue is essentially how to handle the Applicant's Award payments as the Applicant now appears to be absent. The parties previously answered ready at trial and the undersigned issued a Findings and Award, dated October 21, 2022.⁶

Defendant's Petition asks that the undersigned suspend payments of the Award.⁷ The undersigned is not inclined to do this for a variety of reasons. Although Defendant is a large insurance carrier, there is a possibility still that they may become insolvent or undergo some form of business disruption that may make it difficult for the Applicant to receive his Award. Additionally, the Award is now the Applicant's money, not the carrier's money. It would be inequitable for the carrier to hold onto Applicant's money post-Award. Moreover, concerns about the Applicant's whereabouts should have been raised prior to proceeding on the record. It is not appropriate to litigate these concerns post-Award.

The undersigned's prior Notice of Intention, dated March 20, 2023, is more closely aligned with the statutory authority and principles outlined above.⁸ The NOI would have the money placed in a separate bank account, subject to FDIC insurance. This would protect Applicant's money from any insolvency or business disruption. The NOI ensures that the entirety of the accrued Award, and continuing, would go into the bank account. The NOI lastly places additional onus on the parties to locate the Applicant and provide the undersigned with an update as to that process.

¹ Labor Code 5803

² Id.

³ Labor Code 5801

⁴ Labor Code 133

⁵ Labor Code 3202

⁶ The undersigned notes that the parties do not have any belief that the Applicant might be deceased. Assuredly, the parties would not have answered ready for a trial with any reasonable belief that the Applicant was deceased. 7 EAMS DOC ID 45203566

⁷ EAMS DOC ID 45203566

⁸ EAMS DOC ID 76541328

The NOI is crafted in such a way to protect the Applicant, the Applicant's Award, and accomplish substantial justice. As a result, the undersigned will issue an order consistent with the NOI.

Date: December 4, 2023

/s/ Michael Joy

Michael Joy
WORKERS' COMPENSATION JUDGE