



LEXSEE 72 CAL COMP CASES 1008

CALIFORNIA COMPENSATION CASES
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California Insurance Guarantee Association, administered by Broadspire Services, Inc.,
on behalf of Superior National Insurance Company, in liquidation, insurer for Total
Woman, Inc., Petitioner v. Workers' Compensation Appeals Board, **Kelly Faris**,
Respondents

Civil No. B196215--

Court of Appeal, Second Appellate District, Division Four

72 Cal. Comp. Cas 1008; 2007 Cal. Wrk. Comp. LEXIS 193

June 25, 2007

PRIOR HISTORY: [**1]

Prior History: W.C.A.B. No. VNO 0405189--WCJ Robert P. Sprott (VNO); WCAB Panel: Commissioners Brass, Cuneo, Caplane (dissenting)

DISPOSITION: *Disposition:* Petition for writ of review denied

HEADNOTE: California Insurance Guarantee Association--Covered Claims--Employment Development Department Liens--WCAB reversed WCJ's decision and held that California Insurance Guarantee Association was liable to [*1009] applicant for temporary disability indemnity at rate of \$490 per week for period 3/26/2000 through 4/16/2001, less credit for \$8,173.88 paid to Employment Development Department in settlement of its \$25,000 lien for benefits paid to applicant during period 4/2/2000 through 4/1/2001, and that California Insurance Guarantee Association was bound by its stipulation to period of applicant's temporary disability that it entered into with knowledge of prior settlement of Employment Development Department lien. [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d §§ 2.84[3][d], 7.04[9], 30.08, 30.25.]

Applicant sustained industrial injuries to her neck, spine, right upper extremity, and right lower extremity on 3/17/2000, resulting in TD for the period 3/26/2000 through [**2] 4/16/2001 and 39-percent PD. At the time of Applicant's injury, her employer, Defendant Total Woman, Inc., was insured for workers' compensation by Superior National Insurance Group (Superior National), now defunct with its covered claims being handled by CIGA.

For the period 4/2/2000 through 4/1/2001, Applicant received payments from EDD at the TD rate of \$490 per week. Applicant did not receive TD or EDD payments for the periods 3/26/2000 through 4/1/2000, and 4/2/2001 through 4/16/2001. By a 4/19/2001 stipulation entered into between EDD and Superior National, EDD's lien claim of \$25,480 was settled for the reduced sum of \$8,173.88. CIGA stipulated to the period of Applicant's TD. However, the matter proceeded to a hearing on the issue of whether CIGA was entitled to a credit for payments made by EDD during a portion of the TD period when EDD's lien was settled prior to the stipulation. By the time of the hearing, Applicant and CIGA had stipulated that Applicant's earnings were sufficient to justify a TTD rate of \$490 per week.

On 7/7/2006, the WCJ issued an F&O, in which he found that the payment by EDD satisfied Applicant's entitlement to TD for the period 4/2/2000 [**3] through 4/1/2001, and that Applicant was entitled to TD for only the periods of TD during which neither TD nor unemployment compensation disability (UCD) was paid. Thus, the WCJ awarded Applicant TD at the rate of \$490 per week, less credit for benefits already paid, payable by CIGA.

Applicant filed a Petition for Reconsideration, contending in relevant portion that CIGA should have been found liable for TD for the entire period of TD, and that the payments made by EDD should not be deemed to have satisfied CIGA's obligation. The WCJ recommended that reconsideration be denied.

The WCAB granted reconsideration and, in an opinion of the panel majority, rescinded the WCJ's decision, stating in relevant respects:

" We note that in a situation where EDD's lien remains active, the EDD's lien is allowed for overlapping periods of temporary disability. (*Labor Code sections 4903(f), 4904.*) Furthermore, EDD payments do not relieve a defendant of its duty to pay temporary disability where warranted, and payment of UCD benefits by EDD during a temporary [*1010] disability period does not shield a defendant [**4] from a potential *Labor Code section 5814* penalty for an unreasonable delay. Moreover, there is no specific provision for a credit to be allowed for UCD payments, when the lien has been settled and where it is subsequently determined that temporary disability is owed during that overlapping period of payments. [*WCAB's footnote: "In an ordinary case, the stipulation settling the EDD's lien may be reopened for good cause, to avoid a double payment, but in this case, CIGA would not be liable to EDD in any event. (See California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (White/Torres) (2006) 136 Cal.App.4th 1528 [71 Cal.Comp.Cases 139].)*] But CIGA is not relieved of liability for stipulated judgments entered into with knowledge of a prior EDD lien settlement."] In a case such as this one, where EDD's lien is settled, the existence of the settlement means that there is no lien to be allowed against any of that period, and thus the subsequent findings are directed at whether or not there was industrial temporary disability for specified periods. Accordingly, CIGA is entitled to credit for any [**5] payments it in fact made to EDD against this liability for temporary disability.

In this case, therefore, concerning the \$25,000.00 lien filed by EDD, which was settled for the reduced sum of \$8,173.88, we conclude that CIGA is entitled to a credit of \$8,173.88 against its liability for the temporary disability indemnity it owes. Thus, we find that CIGA must pay the applicant temporary disability indemnity for the period March 24, 2000 through April 16, 2001 at the rate of \$490.00 per week, less credit for the \$8,173.88 that was paid to EDD by the now-defunct carrier, Superior National.

In so doing, we are merely enforcing the stipulations made by the parties at various stages of the case. Superior National settled with EDD on April 19, 2001, Superior National subsequently became insolvent and CIGA stepped in, and then CIGA settled applicant's case-in-chief, with CIGA stipulating to temporary disability to be paid to applicant from March 24, 2000 through April 16, 2001, with the TDI rate left for further agreement (which never happened) or further litigation. CIGA is bound by its stipulation to temporary disability, which it entered into with knowledge of the prior settlement [**6] of the EDD lien. (See *Johnson v. Workers' Comp. Appeals Bd. (1970) 2 Cal.3d 964 [35 Cal. Comp. Cases 362].*)

Moreover, since CIGA is being given credit for Superior National's settlement of the EDD lien, CIGA is paying applicant what it owes applicant for temporary disability indemnity, which is clearly a "covered claim." (*Insurance Code section 1063.1(c)(1)(vi).*) And the fact that applicant may receive double payment does not affect CIGA's liability to pay temporary disability indemnity pursuant to stipulations [*1011] CIGA entered into, with the applicant, after EDD's lien had already been settled. Any issue of

double payment that exists, exists between applicant and EDD."

The WCAB concluded that CIGA was liable to Applicant and had to pay TD at the rate of \$490 per week for the period 3/26/2000 through 4/16/2001, less credit to CIGA for the \$8,173.88 paid to EDD.

Commissioner Caplane dissented from the majority's opinion, pointing out that, even though Superior National negotiated a favorable settlement of its liability to EDD, the settlement essentially covered a full year [**7] of liability at the weekly TD rate of \$490. According to Commissioner Caplane, by ordering CIGA to pay TD at \$490 per week for the period 3/26/2000 through 4/16/2001, with credit only for EDD's lien in the amount of \$8,173.88, the majority allowed Applicant a double recovery. Finally, Commissioner Caplane noted that the workers' compensation and EDD systems are coordinated benefit systems, and that CIGA's liability is typically reduced whenever possible.

Both Applicant and CIGA sought reconsideration of the WCAB's decision. Applicant substantially contended that the WCAB failed to issue an actual award of TD benefits and erred in not allowing any attorney's fee against those benefits. CIGA contended in relevant part that EDD was not entitled to additional reimbursement for its payment of TD to Applicant, other than the already agreed upon \$8,173.33 pursuant to the 4/19/2001 stipulation, and that Applicant was not entitled to additional TD for the period 3/26/2000 through 4/16/2001.

The WCAB denied CIGA's Petition, noting that CIGA's contention that the settlement of the EDD lien on 4/19/2001 was effectuated on behalf of CIGA and was after Superior National's liquidation [**8] added further weight to the WCAB's finding that CIGA was bound by its stipulation to pay TD, which it entered into with knowledge of the prior settlement of the EDD lien. The WCAB pointed out that it was not allowing CIGA to avoid its liability by paying a portion of it to EDD, nor was it ordering Applicant to pay EDD since EDD agreed to accept the \$8,173.88 in full satisfaction of its lien and had no further reimbursement rights. Moreover, the WCAB stated that its prior decision did not result in CIGA making a double payment because the decision provided CIGA credit for its payment to EDD. Therefore, the fact that Applicant could receive double recovery due to CIGA's stipulations and decision to pay a portion of a lien for which it had no liability was not relevant here.

Regarding Applicant's Petition, the WCAB agreed that its prior decision needed clarification to include an award of TD and a reasonable attorney's fee payable by CIGA.

Commissioner Caplane dissented from the majority's opinion for the reasons stated in her prior dissenting opinion. Commissioner Caplane would grant CIGA's Petition and reinstate the WCJ's decision. [**1012]

CIGA filed a Petition for [**9] Writ of Review, contending in relevant portion that: (1) by integrating the UCD and workers' compensation schemes, the legislature plainly intended to provide a temporarily disabled worker with a single, rather than a double, recovery; (2) the WCAB's implicit rescission of the WCJ's finding that Applicant had been fully compensated by EDD was not based on any evidence and ignored the facts; (3) the WCAB erroneously interpreted the parties' stipulations; (4) limiting credit to the amount paid to EDD, rather than the amount paid to Applicant, discouraged prompt resolution of EDD liens; (5) the legislature's purpose in creating CIGA was to provide financial protection limited to otherwise unprotected insured persons and to injured workers; (6) to achieve the legislative goal, CIGA is statutorily liable only for "covered claims" of the insolvent insurer, and EDD reimbursement claims are excluded from "covered claims;" and (7) the compensation of an injured worker more due to insolvency than to benefits owed makes no sense.

Applicant filed an Answer, contending in pertinent portion that, when an injured employee pays into a state disability system, the employee is entitled to [**10] her full award of TD, notwithstanding the fact that the employee received disability benefits from EDD and that the employer/insurer negotiated a reduction of the EDD lien. Applicant also requested an award of attorney's fees pursuant to *Labor Code* § 5801 and costs under *Labor Code* § 5811.

WRIT DENIED and applicant's request for an award of attorney's fees and costs DENIED June 25, 2007.

COUNSEL: *Counsel:* For petitioner--Guilford, Steiner, Sarvas & Carbonara, by Richard E. Guilford
For respondent employee--Malter Law Corporation, by Mark M. Malter