



LEXSEE 74 CAL COMP CASES 292

CALIFORNIA COMPENSATION CASES
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California Insurance Guarantee Association, administered by Cambridge Integrated Services, on behalf of Fremont Compensation Company, in liquidation, insurer for Chapman University, Petitioner v. Workers' Compensation Appeals Board, Chapman University, (**Jolinda Labua**), Respondents

Civil No. B209401--

Court of Appeal, Second Appellate District, Division Seven

74 Cal. Comp. Cas 292; 2009 Cal. Wrk. Comp. LEXIS 11

January 21, 2009

PRIOR HISTORY: [**1]

Prior History: W.C.A.B. Nos. SAC 0290492, SAC 0290493, SAC 0343286--WCJ Thomas W. Anthony, Jr. (SAC); WCAB Panel: Commissioners Caplane, Lowe, Deputy Commissioner Dietrich

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

HEADNOTE: California Insurance Guarantee Association--Claim for Credit--WCAB held that CIGA was not entitled to credit for state disability benefits paid to applicant/administrative assistant by EDD against benefits owed to applicant [*293] pursuant to 2/8/2006 award of temporary disability stemming from applicant's lumbar spine injuries on 1/5/2000 and during cumulative periods through 1/4/2000 and 5/18/2000, when EDD had no lien pending when 2/8/2006 award for temporary disability was issued that imposed liability on CIGA, and issue of CIGA's entitlement to credit was not addressed at hearing or in award, which became final and could not subsequently be amended to allow CIGA credit for EDD benefits paid to applicant. [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 2.84[3][c].]

Applicant sustained industrial injuries to her cervical and lumbar spine on 1/5/2000, and during cumulative periods through 1/4/2000 and 5/18/2000, while [**2] employed as an administrative assistant by Defendant Chapman University. At the time of Applicant's injuries, Defendant was insured for workers' compensation by Fremont Insurance Co., which became insolvent on 7/2/2003. Upon its insolvency, Fremont's covered claims were assumed by CIGA, adjusted by Cambridge Integrated Services (Cambridge).

Applicant received SDI benefits from EDD at \$337 per week from 5/26/2000 through 9/11/2000, and again from 12/4/2000 through 8/16/2001. EDD filed a lien on 11/21/2003 for \$17,524 in SDI benefits paid, but withdrew the lien on 12/9/2005. On 2/8/2006, following an expedited hearing, the WCJ issued an F&A, awarding Applicant TTD at the rate of \$417.31 per week for the periods 5/19/2000 through 8/31/2000 and 12/1/2000 through 5/19/2002, and TPD from 9/1/2000 through 11/30/2000. The issue of credit for the previously paid EDD benefits was not raised or addressed at the expedited hearing.

On 2/16/2006, CIGA/Cambridge sent a letter to Applicant, indicating that it was paying Applicant with a check for \$17,985.59 for TDI awarded, covering payments from 5/19/2000 to 9/11/2000 and from 12/1/2000 through 5/2/2002. CIGA/Cambridge sent another check [**3] to Applicant on 11/14/2006 for wage-loss TDI awarded for the period 9/11/2000 to 11/30/2000. No payments were made to EDD for reimbursement of monies paid to Applicant, since CIGA/Cambridge claimed it had no obligation to provide reimbursement because EDD's claim was not a "covered claim" under *Insurance Code § 1063.1(c)(4)*. CIGA/Cambridge also claimed a credit against compensation owed to Applicant for SDI paid to Applicant by EDD.

On 3/26/2008, the WCJ issued an F&O, finding that CIGA/Cambridge was not entitled to a credit for EDD benefits paid to Applicant and was liable for benefits pursuant to the 2/8/2006 F&A. CIGA/Cambridge filed a Petition for Reconsideration, contending in relevant part that the WCJ should have allowed a credit since the insolvent insurer would have received a credit were it not for its insolvency and since failure to award a credit allowed Applicant to receive a double recovery. CIGA/Cambridge further contended that denial of a credit was inappropriate since EDD had the right to re-file its lien.

The WCJ recommended that reconsideration be denied. According to the WCJ, he had correctly determined that CIGA/Cambridge [**4] was not entitled to a credit for [*294] EDD benefits paid to Applicant when EDD had withdrawn its lien prior to the award of TDI that imposed liability on CIGA/Cambridge and the issue of credit was not raised at the expedited hearing. The WCJ explained that the 2/8/2006 F&A had become final and that CIGA/Cambridge could not unilaterally amend the final award to allow itself a credit.

The WCJ distinguished this situation from a situation in which EDD is seeking to enforce lien rights against CIGA for reimbursement of benefits paid. Under such a circumstance, EDD's lien claim would not be a "covered claim" under *Insurance Code § 1063.1(c)(4)*, and CIGA would not be liable for payment. However, here, EDD did not have a lien on file at the time of trial and service of the award. The determination that CIGA was not entitled to a credit for EDD benefits paid was based on the fact that the award, which did not include a credit, was final and could not be altered. Pursuant to the award, CIGA/Cambridge was liable for Applicant's benefits. Regarding CIGA/Cambridge's assertion that failure to allow a credit improperly created a double recovery [**5] for Applicant, the WCJ pointed out that any issue of double payment existed between Applicant and EDD and does not affect CIGA/Cambridge's liability for benefits awarded to Applicant.

The WCAB denied reconsideration and adopted and incorporated the WCJ's report without further comment on the issues raised.

CIGA/Cambridge filed a Petition for Writ of Review, substantially contending that the WCAB erred in denying its request for a credit, that the WCAB had continuing jurisdiction under *Labor Code § 5803* to consider its post-award claim for credit, that EDD's withdrawal of its lien did not deprive the WCAB of jurisdiction to allow credit, that CIGA/Cambridge should be afforded the same rights as the insolvent insurer would have had, including the right to credit, and that failure to award a credit impermissibly allowed Applicant to receive a double recovery.

Applicant filed an Answer, essentially contending that the WCAB correctly denied CIGA/Cambridge's request for a credit, based on the fact the 2/8/2006 award, under which CIGA/Cambridge was liable for benefits, had become final.

WRIT DENIED January 21, 2009.

COUNSEL: *Counsel:* For [**6] petitioner--Guilford, Steiner, Sarvas & Carbonara, by Richard E. Guilford
For respondent employee--Law Office of Rex Smith, by Francis B. Wagner, Jr.