

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **BILL DUNEHEW,**

5
6 *Applicant,*

7 **vs.**

8 **DON KEITH TRANSPORTATION;**
9 **CENTRAL CARTAGE COMPANY?**
10 **AARLA; STATE COMPENSATION**
11 **INSURANCE FUND,**

12 *Defendant(s).*

Case Nos. **ADJ4045682 (BAK 0131878)**
ADJ2806318 (BAK 0143903)
ADJ6769921

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

13 Defendant seeks reconsideration of the September 7, 2010 Opinion and Order Granting
14 Reconsideration and Decision after Reconsideration, wherein the Appeals Board amended the June
15 9, 2010 decisions of the workers' compensation administrative law judge (WCJ) to find that
16 defendant is not allowed a credit for permanent disability advances paid in ADJ2806318 against
17 the permanent disability owed in ADJ6769921.

18 Defendant contends that the Appeals Board erred in finding that defendant is not entitled to
19 a credit, arguing that defendant is penalized for complying with the law. Defendant also argues
20 that the equitable doctrine of estoppel applies to this case and that the applicant will be unjustly
21 enriched by our decision.

22 We have considered the petition for reconsideration, and we have reviewed the record in this
23 matter. For the reasons discussed both below and in our decision of September 7, 2010, which we
24 adopt and incorporate by reference, we will deny defendant's petition for reconsideration.

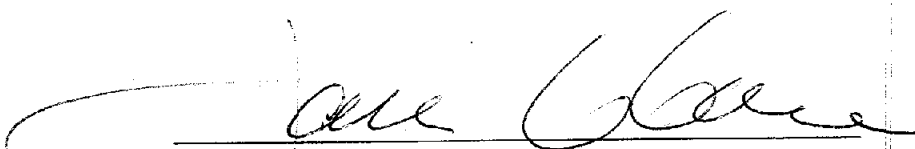
25 Labor Code section 4909 states that payments made by a defendant "may be taken into
26 account by the appeals board in fixing the amount of the compensation to be paid." (Emphasis
27 added.) The statute is discretionary. In this case, defendant is seeking a credit for payments made

1 for one injury against payments due for a separate and distinct injury. We decline to exercise our
2 discretion to allow defendant a credit, given our analysis of the equities we discussed in our prior
3 opinion.

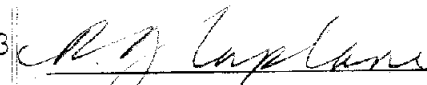
4 For the foregoing reasons,

5 **IT IS ORDERED** that defendant's Petition for Reconsideration of the September 7, 2010
6 Opinion and Order Granting Reconsideration and Decision after Reconsideration is **DENIED**.

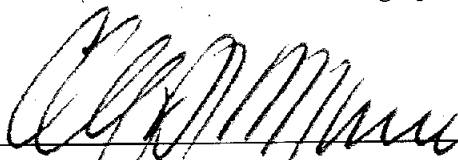
7 **WORKERS' COMPENSATION APPEALS BOARD**

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11 **JAMES C. CUNEO**

12 **I CONCUR.**

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14 **RONNIE G. CAPLANE**

15 **I DISSENT.** (See attached dissenting opinion)

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18 **ALFONSO J. MORESI**



19 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

20 **NOV 29 2010**

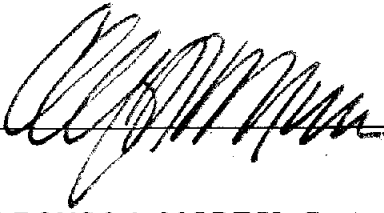
21 **SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT**
22 **THEIR ADDRESSES AS SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD:**

23 **BILL DUNEHEW**
24 **LEVITON, DIAZ & GINOCCHIO, INC.**
25 **LAW OFFICES OF RICHARD YRULEGIS**
26 **STATE COMPENSATION INSURANCE FUND**
27 **PARKER KERN**

27 **MWH/ebc** 

1 **DISSENTING OPINION**

2 I dissent. For the reasons stated in my dissent from the September 7, 2010 Opinion and
3 Order Granting Reconsideration and Decision after Reconsideration, I would grant reconsideration
4 and reinstate the June 9, 2010 Second Findings and Awards.

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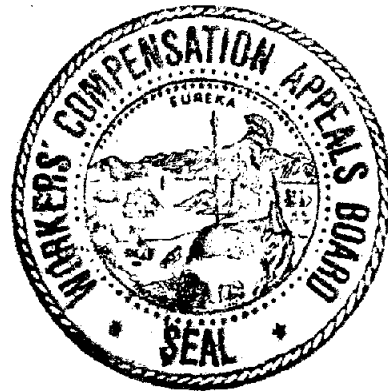
8 **ALFONSO J. MORESI, Commissioner**

9
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