

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

3
4 **MARY LEON (Deceased)**

5 *Applicant,*

6 **vs.**

7 **DSS (IN HOME SUPPORT COUNTY OF LA),**
8 **legally uninsured and administered by YORK**
9 **RISK SERVICES GROUP; MEALS ON**
10 **WHEELS, insured by STATE**
11 **COMPENSATION INSURANCE FUND,**

12 *Defendants.*

Case No. ADJ8822343
(Los Angeles District Office)

OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION

13 The Death Without Dependents unit of the Department of Industrial Relations (DWD), seeks
14 reconsideration of the Findings and Order, issued June 17, 2019, in which a workers' compensation
15 administrative law judge (WCJ) found Maria Leon sustained an injury arising out of and occurring in the
16 course of her employment resulting in her death on November 20, 2012, while she was employed as a
17 caregiver by the Department of Social Services (DSS), and as a kitchen helper by Meals on Wheels. The
18 WCJ further found DWD failed to meet its burden of proof to establish Ms. Leon had no surviving
19 dependents, and that the defendants provided sufficient evidence to prove that at least Juan Vasquez and
20 his three children were the dependents of Ms. Leon prior to her death. The WCJ also held DWD's claim
21 as to employer DSS was time barred. The WCJ further held that a credit of \$599,311.17 for Mr. Vasquez'
22 civil recovery is applicable and would negate a claim for death benefits. The WCJ denied DWD's
23 application for death benefits, as well as the claims of Juan and Julian Vasquez, "as their applications were
24 dismissed and the third party credit would negate any award of death benefits herein."

25 DWD contests the WCJ's finding that it is not entitled to recover death benefits, arguing that in the
26 absence of a claim for, or showing of dependency, by Ms. Leon's sons at trial, DWD is entitled to receive
27 the statutory benefit. DWD argues that because the decedent's sons' claims for death benefits were
dismissed in 2016, there is no person entitled to receive the death benefit. DWD further argues that

defendant employers failed to establish that Ms. Leon had dependents as of the date of her death, in that there was no evidence to establish the extent of the financial support, if any, Ms. Leon provided to her sons within one year prior to her injury/death. DWD further contends the WCJ erred in finding no liability to DWD based upon the defendant employers' right to credit against the sums received by Ms. Leon's sons, as there has been no payment to a dependent to be offset by a credit. Defendant also argues that employer negligence contributed to Ms. Leon's injury, by their indifference to the known threats to Ms. Leon, thereby diminishing any credit to which they might otherwise be entitled. Finally, DWD contests the WCJ's finding that the claim against defendant DSS was barred by the statute of limitations.

Answers to DWD's Petition for Reconsideration have been filed by defendants SCIF and DSS. The WCJ has prepared a Report and Recommendation on Petition for Reconsideration, in which she recommends that reconsideration be denied.

As substantial evidence in the record establishes the existence of a dependent of the deceased, the WCJ properly determined, in Finding of Fact number 2, that DWD failed to meet its burden of proof to establish the absence of any dependents. Accordingly, we will affirm the WCJ's finding, but will grant reconsideration for the limited purpose of amending the Findings and Order to remove the findings regarding the lack of entitlement of the putative dependents to any recovery based on defendant's credit rights, in view of the absence of these parties in these proceedings. We will also remove the finding that the claim against DSS is barred by the statute of limitations as moot.

I.

The WCJ found that decedent, Maria Leon's death on November 20, 2012, arose out of and occurred in the course of her employment. DWD does not challenge that finding.

The WCJ found Ms. Leon was survived by two sons, Juan Manuel Vasquez and Julian Vasquez. Juan Vasquez filed an Application for Adjudication of Claim on March 15, 2013, which he amended on April 11, 2013, to reflect that he and Julian Vasquez were claiming a death benefit as dependents of Ms. Leon.

Julian Vasquez filed a petition dismissing his claim with prejudice on February 29, 2016. On the same date, the attorney for Juan Manuel Vasquez filed a petition to withdraw as attorney, citing Juan

1 Manuel Vasquez's failure to cooperate with his counsel in the prosecution of the claim.

2 An order was issued on March 24, 2016, dismissing with prejudice the "potential dependent Julian
3 Vasquez." The WCJ also issued an order relieving counsel representing Juan Manuel Vasquez.

4 On March 25, 2016, a settlement check in the sum of \$559,311.17, was issued to Juan Manuel
5 Vasquez from his attorney's Client Trust Fund account. (Exh. AAA.) Later, on October 25, 2016, an order
6 issued dismissing Juan Manuel Vasquez as a party applicant to the claim for death benefits.

7 In light of the dismissal of the claims of Julian Vasquez and Juan Manuel Vasquez, DWD sought
8 to proceed as an applicant to claim the statutory death benefit under Labor Code section 4706.5.

9 In order to establish its entitlement to receive the statutory death benefit, DWD is required to
10 establish the absence of any dependents of the deceased.

11 At trial, defendant employers offered evidence of the dependency, including the testimony of Laura
12 Bohm, the decedent's supervisor for her employment with Meals on Wheels. Ms. Bohm testified that Ms.
13 Leon told her that one of her sons and his three children lived with Ms. Leon since the youngest child was
14 an infant and the child's mother left them. Ms. Leon told Ms. Bohm that she was helping to support her
15 son's desire to be able to stay at home and help raise his children. Ms. Leon told Ms. Bohm that she helped
16 her son by providing living expenses such as food. (Summary of Evidence, 3/6/19, 4:24-25, 5:1-8.)

17 Ms. Leon's sons filed a civil action for negligence in LA County Superior Court against the
18 operators of Golden West Towers, the senior living center where Ms. Leon was murdered by a tenant of
19 the center, on April 22, 2013. Their complaint alleged they suffered economic damages as a result of the
20 loss of their mother's "care, comfort, affection, society, services and support." (Exh. GGG.)

21 In sworn responses to interrogatories in the civil action, Juan Manuel Vasquez, estimated that his
22 mother contributed approximately \$1,000 per month for his living expenses, assisting him with his cell
23 phone, auto and other expenses for his children. (Exh. BBB, 9/15/14.)

24 Juan Manuel Vasquez testified at deposition in the civil action that he and his daughter Jasmine
25 were living with his mother on the day she was killed. He had lived with his mother since he separated
26 from his wife in 2007. He estimated that in the five years prior to her death, the monthly financial support
27 his mother provided for himself and his daughter to be between \$500 and \$800, depending on the

1 circumstances. His mother paid 70% of the \$1,400 mortgage payment, and he had not been able to pay
2 the mortgage since her death. (Exh. CCC, 57:6-25; 58:1-4; 67:4-19; 68:6-9; 69:2-11; 97:19-25.)

3 In his sworn responses to interrogatories, Julian Vasquez stated that his "mother helped me by
4 giving me key financial support and by giving me strong emotional support. My mother helped me since
5 I was 18 years old helping me by giving me cash that paid approximately 20% of my monthly expenses,
6 approximately \$300 to \$475 per month. I used this money to pay my natural gas bills, gasoline costs, car
7 insurance payment, cell phone bills, buy my children's school uniforms, grocery expenses, and other
8 household expenses for myself and my family." (Exh. DDD, 9/17/13, 17:27-28; 18:1-4; Exh. EEE,
9 12/20/13, 4:11-21.)

10 II.

11 When an employee dies from an industrial injury, the employer is liable to pay a death benefit to
12 the dependents of the employee. (Labor Code section 4701(b).)

13 If an injury causes death, either with or without disability, the employer
14 shall be liable, in addition to any other benefits provided by this division,
for all of the following:

15 . . .
16 (b) A death benefit, to be allowed to the dependents when the employee
leaves any person dependent upon him or her for support.

17 Dependency is determined as of the time of injury, and may be found to be total or partial,
18 depending on the facts established. "Dependency may be defined as reliance upon another person for
19 support. Total dependents are those who at the time of injury are solely supported by the decedent, or who
20 have a legal right to look to him for their entire support. . . . Partial dependents are those who at the time
21 of injury have means of support other than the deceased's contributions . . ." (*Mendoza v. Workers' Comp.*
22 *Appeals Bd.* (1976) 54 Cal.App.3d 820 [41 Cal.Comp.Cases 71].)

23 However, if the employee dies and leaves no dependents, the death benefit escheats to the State of
24 California and is to be paid to the Death Without Dependents unit of the Department of Industrial Relations,
25 pursuant to Labor Code section 4706.5(a), which provides:

26 Whenever any fatal injury is suffered by an employee under circumstances
27 that would entitle the employee to compensation benefits, but for his or her
death, and the employee does not leave surviving any person entitled to a

1 dependency death benefit, the employer shall pay a sum to the Department
2 of Industrial Relations equal to the total dependency death benefit that
would be payable to a surviving spouse with no dependent minor children.

3 This provision has been held to require the DWD to affirmatively establish the absence of any
4 dependents, either total or partial, of the deceased. (*Travelers Ins. Co. v. Workers' Comp. Appeals Bd.*
5 (1982) 138 Cal.App.3d 244 [47 Cal.Comp.Cases 1401]; *State of California v. Workers' Comp. Appeals*
6 *Bd. (Butterworth)* (1980) 101 Cal.App.3d 673, 677 [45 Cal.Comp.Cases 166].) As stated in *Butterworth*,
7 Labor Code section 4706.5:

8 places a burden of proof upon the State as well to perfect its claim to prove
9 absence of dependency. By its language section 4706.5, subdivision (a)
10 provides that the State will only receive the funds payable as a result of a
fatal industrial injury in the absence of any dependent. Therefore, as
11 written, **the statute calls for the State to prove the absence of**
dependency of any class. In any case where the State is claiming benefits
12 under section 4706.5, subdivision (a), it has a burden of proof equal to that
of any other claimant to death benefits. That burden of proof is set forth in
13 the statute, **requiring the State to prove that 'such employee does not**
leave surviving any person entitled to a dependency death benefit.'
14 **Absent such proof, the State is entitled to no benefits under Labor Code**
section 4706.5, subdivision (a) on the basis that there are no dependents.
15 (Emphasis added.)

16 The evidence in the record, as discussed above, establishes that both Juan Manuel Vasquez and
17 Julian Vasquez were partially dependent upon Maria Leon for their support. Juan Manuel Vasquez
18 provided answers under oath that established that he and his daughter lived with his mother at the time of
19 her death, and that she had provided them with financial support for many years prior to her death. The
20 WCJ accepted this evidence as proof that Maria Leon left partial dependents as of the date of her death.

21 Here, DWD argues that because Juan Manuel Vasquez and Julian Vasquez chose not to pursue
22 their claims for death benefits, they must be found not to be entitled to the benefit and therefore DWD
23 should be found to be entitled to receive the benefit.

24 This, however, is not what the law requires. The law does not provide that the death benefit escheats
25 to DWD if a dependent, either partial or total, has not received the benefit. Rather, the law requires DWD
26 to establish that no "person entitled to a dependency death benefit" exists. DWD has not established that
27 Juan Manuel Vasquez or Julian Vasquez were not dependent upon their mother and had no claim to a death

1 benefit as partial dependents. Since Juan Manuel Vasquez and Julian Vasquez chose to receive a civil
2 settlement in an amount greater than the amount of the death benefit, and withdrew their claims for
3 workers' compensation death benefits, the WCJ properly found DWD did not meet its burden to establish
4 that "such employee does not leave surviving any person entitled to a dependency death benefit."
5 Accordingly, we will affirm Finding of Fact number 2, which finds DWD "has not met its burden of proof
6 that Ms. Leon had no surviving dependents."

7 As this finding is sufficient to make a final determination of the issue of DWD's entitlement to the
8 death benefit, the WCJ's additional findings are not necessary to the determination. We will therefore
9 amend the Findings and Order to reflect that the finding that DWD's claim as to defendant DSS is time
10 barred is moot, and that the finding that defendants' credit rights would negate recovery of a death benefit
11 by the decedent's dependents is not appropriate in light of the absence of any participation by Juan Manuel
12 Vasquez and Julian Vasquez as parties to these proceedings.

13 Accordingly, we affirm the Findings and Order that DWD is not entitled to recover against the
14 defendants, but will amend the Findings and Order to conform to the matters litigated and resolved in this
15 case.

16 For the foregoing reasons,

17 **IT IS ORDERED** that the Reconsideration of the June 17, 2019 Findings and Order is
18 **GRANTED**, and as our Decision After Reconsideration, the Findings and Order is **AFFIRMED** in part,
19 except that it is **AMENDED** as follows:

20 **FINDINGS OF FACT**

- 21 1. Maria Leon, decedent, born , , , while employed on November 20, 2012 as a
22 caregiver for the Department of Social Services and kitchen helper for Meals on Wheels, sustained
23 injury arising out of and in the course of employment resulting in her death.
- 24 2. Applicant, Death without Dependents, has not met its burden of proof that Ms. Leon had no
25 surviving dependents, and the defendants have provided sufficient evidence to prove that at least
26 Juan Vasquez and his three children were the dependents of Ms. Leon prior to her death.

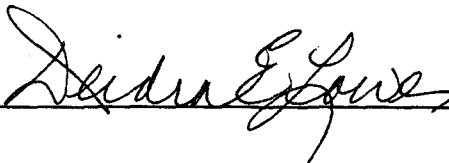
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ORDER

IT IS ORDERED that:

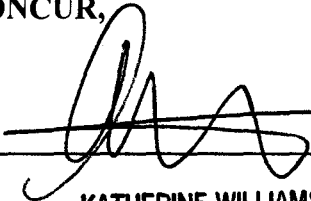
1. Applicant, Death Without Dependents Unit, take nothing on its application for death benefits against both defendants herein.

WORKERS' COMPENSATION APPEALS BOARD



DEIDRA E. LOWE

I CONCUR,



KATHERINE WILLIAMS DODD

CHAIR



KATHERINE ZALEWSKI



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUG 29 2019

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

DEATH WITHOUT DEPENDENTS (DWD)

JUAN MANUEL VASQUEZ

JULIAN VASQUEZ

OD-LEGAL, DWD UNIT, LOS ANGELES

LAW OFFICES OF SINGER & BENJUMEA

STATE COMPENSATION INSURANCE FUND

SV/bea

**STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board**

CASE NUMBER: ADJ8822343

**MARIA LEON (DECEASED);
Death Without Dependents
Unit**

-vs.-

**IHSS/DSS (IN HOME
SUPPORT COUNTY OF LA),
legally uninsured, administered
by YORK RISK SERVICES
GROUP; MEALS ON
WHEELS, insured by SCIF,**

Applicant(s)

Defendant(s)

**WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:**

Karinneh Aslanian

DATE OF INJURY/DEATH:

November 20, 2012

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Applicant, Death Without Dependents Unit (hereinafter "DWD"), has filed a timely, verified Petition for Reconsideration, challenging the undersigned workers' compensation administrative law judge's (hereinafter "WCJ") Findings and Order dated June 17, 2019. Therein, it was determined that the deceased applicant, Ms. Maria Leon, suffered an industrial death on November 20, 2012, while concurrently employed by Department of Social Services/In Home Support Services (hereinafter "IHSS") and Meals on Wheels. It was further determined that DWD did not meet its burden of proof that Ms. Leon had no surviving dependents, that DWD's claim against IHSS was statutorily time barred, and that any death benefits in the workers' compensation arena that would have been awarded would be negated by the credit obtained by Ms. Leon's heirs and dependents in the third party civil case. DWD's Petition does not challenged the AOE/COE finding, but does challenge the finding that DWD does not receive any monetary award, that Ms. Leon's family were dependents, that defendants were negligent and therefore do not get the benefit of a civil recovery credit, and that the statute of limitations barred DWD's claim as against defendant IHSS. For the

reasons set forth herein, and as outlined in the Defendants' Answers to Petition for Reconsideration, it is recommended that DWD's Petition for Reconsideration be denied.

II

FACTS

This WCJ found that Ms. Leon's death was related to her employment with both Meals on Wheels and IHSS. While neither Defendant filed its own Petition for Reconsideration on the ruling that Ms. Leon was a dual employee on the day she was killed, it appears they both address the issue in their Responses to DWD's Petition for Reconsideration, and thus, this issue is briefly summarized here as part of the facts. As outlined in this WCJ's Opinion on Decision, the finding of AOE/COE was partially based upon the credible testimony of Laurie Marie Bohm, Jodi McBroom, and Detective Ryan Galassi, as well as the deposition testimony of Ms. Leon's son, Juan Vasquez, the application of the special risk doctrine, specifically the 'zone of danger', and the evidence submitted regarding Ms. Leon's two jobs and her schedules with both employers, which were known by both employers, specifically that Ms. Leon would clock in and out of (or report for) each job, staying at the Golden West Towers premises in between both jobs, sometimes spending the night with her IHSS clients, and would be exposed to a threatening resident at the Towers, her murderer, Mr. Charles Christman. But for Ms. Leon's employment at both employers and but for those two employers assigning applicant to work exclusively at Golden West Towers, she would not have been at the Golden West Towers premises. And but for her daily exposure to the premises and Mr. Christman, she very likely would never have been killed by Mr. Christman.

While Mr. Christman specifically targeted Ms. Leon and Ms. Van Hagar on November 20, 2012, it is quite clear that had Ms. Leon not been an employee stationed at the Towers, Mr. Christman would not have sought her out at another location to kill her. Her work location was not merely a 'stage' for a personal vendetta by Christman, but was what facilitated him seeing her daily, constantly having contact with her, threatening her, and ultimately murdering her. Ms. Leon entered the zone of danger every single day while engaged in her duties at both Meals on Wheels and caregiving through IHSS for the senior residents at Golden West Towers. Both jobs involved a back-and-forth transition throughout the day while at the same physical location.

This WCJ opined that Ms. Leon was engaged in her normal work routine on the date of death

and was working for both employers at the time, that she had been threatened by Mr. Christman on countless previous occasions, that she had complained about it to Meals on Wheels and to the manager at Golden West Towers, Ms. Vanhagar, and that they knew there was this situation with Mr. Christman, to the point that Mr. Christman was almost evicted from the Towers in 2011 for his abusive language and aggressive behavior. Golden West Towers was not just a stage for a personal vendetta Mr. Christman had against Ms. Leon.

The evidence also reflected that Ms. Leon had the same work schedule for months, if not years, preceding her death, and there is no reason to doubt that, on the week and the specific day of her murder, she was engaged in the same exact activities she had done before. She would arrive around 8 a.m. to work with IHSS clients for 2 hours, then clock in at Meals on Wheels around 10 a.m. for 2 hours, then back to IHSS from about noon to 1 p.m., and then back to Meals on Wheels again around 1 p.m. for another 2 hours. Sometimes she would return to IHSS clients after 3 p.m. and even spend the night with clients. There was no evidence presented that Ms. Leon would leave the premises between these two jobs or that she was not assigned to IHSS clients on the day of her death. Her weekly time cards up to that point showed this consistent back and forth employment, with Golden West Towers being the location of it all. The only reason she did not turn in a time card for the end of November is because she was not alive to do so.

Regardless if her employers knew about the threats, or the extent of their knowledge of the threats, Ms. Leon had no option but to go to work every day at the Towers, for both employers, not knowing if that would be the day Mr. Christman decided to take action on his relentless threats. Ultimately, and unfortunately, on November 20, 2012, Mr. Christman did finally shoot and murder Ms. Leon, another person (Ms. Van Hagar), and then himself.

Ms. Leon left behind two sons and grandchildren. Her two sons filed an Application for death benefits at the WCAB, which were later dismissed. Juan Vasquez's Application at the WCAB was dismissed on October 25, 2016. Up until that time, Juan had a viable claim and Application pending at the WCAB. Juan received \$559,311.17 from Golden West Towers in a civil lawsuit. This WCJ found that applicant's sons, specifically Juan Vasquez, were dependents on the applicant and that they had a claim (and sufficient proof) of dependency. However, due to the large civil lawsuit recovery, any death benefit at the WCAB would be offset by the third party lawsuit's settlement.

III

DISCUSSION

Dependency

DWD argues in its Petition that it does not have to prove there are *no* dependents, but that the defendants must prove there *are* dependents. The defendants argue that DWD has to prove there are no dependents and that DWD failed to establish that because Mr. Vasquez's 'claim' was pending up until 2016. This WCJ found that the Application, although dismissed in 2016, did constitute a 'claim' that was in existence. Just because the deceased's dependent dismissed the Application at the WCAB (very likely because of the very large civil settlement and credit issues that would result at the WCAB level), there was not enough evidence submitted by DWD to *negate* the fact Mr. Vasquez was a dependent on the deceased. Mr. Vasquez was deposed, answered form interrogatories that were submitted under oath, and there was credible trial testimony provided by Ms. Bohm on March 6, 2019, wherein she confirmed Ms. Leon's living situation with Juan Vasquez and his children and that she supported him. *See MOH/SOE, 3/6/19, pg. 4, ln. 24 through pg. 5, ln. 8.*

While Mr. Vasquez dismissed his Application, there was sufficient evidence in the record to establish that he and his children were dependent on Ms. Leon's support. Labor Code §3502 indicates that questions of dependency, who are considered dependents, and what the extent is of their dependency, is an issue that is determined by facts that existed at the time of injury. Mr. Vasquez provided responses to Form Interrogatories as well as at deposition, both under penalty of perjury, that Ms. Leon was giving him money for him and his children of at least \$1,000 a month to help him out. She paid for his food, phone, utility bills, auto insurance, made the mortgage payments on the house they lived in, and provided other support for his children. Mr. Vasquez lived with Ms. Leon for years prior to and on the date of her death. She was also providing support for Mr. Vasquez's daughter, Jasmine, who lived with them. She had paid at least 20% of his monthly expenses, including the utility, gas, car insurance, cell phone, etc. This was enough documentation and information for this WCJ to find that Mr. Vasquez was a dependent on the deceased, and but for his Application being dismissed, he would have been awarded the death benefit (before the applicable third party credit). *See Defendants' Joint Exhibit BBB, Form Interrogatory response 9.1 and 9.2; Defendants' Joint Exhibit CCC (Deposition of Juan Vasquez), pg. 57 ln. 14-22, pg. 67 ln. 4-*

19, pg. 68 ln 6-15, and pg. 97 ln. 19 to pg. 98 ln. 2; Defendants' Joint Exhibit DDD, pg. 17 at question 9.1; Defendants' Joint Exhibit EEE, pg. 4, question 39; MOH/SOE dated 3/6/2019, Testimony of Laura Bolm, pg. 4 ln. 24, to pg. 5, ln. 8.

Based primarily on Mr. Vasquez's deposition testimony and answers to form interrogatories in the civil case, it is evident he was a dependent on the decedent. And contrary to DWD's assertion that the defendants have to prove dependency, Labor Code §4706.5(a) places the burden of proof on DWD to prove the absence of dependency. DWD must prove that the deceased does not have any person *entitled to a dependency death benefit*. In the absence of this proof, DWD would not be entitled to the benefit. State of California (Butterworth) v. WCAB (1980) 101 Cal. App. 3d 673, 161 Cal. Rptr. 821. DWD did not fulfill its affirmative duty to prove that there are no dependents, even though Ms. Leon's sons' cases were dismissed. They were still people entitled to a dependency death benefit and the fact they chose to pursue a civil case instead does not negate a finding of dependency here.

Credit

This WCJ opined that had Mr. Vasquez remained in the case as the claimed dependent, the result would have been zero dollars payable by the defendants anyway, due to the fact there would be a large credit from the civil settlement, \$559,311.17, and this amount would be applied towards a death benefit owed here, \$250,000.00.

DWD argues that there would be no subrogation rights because of employer negligence. However, this WCJ did not find any employer negligence. Negligence was not found in the civil case either, as that case was settled. Mr. Vasquez chose the civil venue when he had available to him an election of remedies. He chose to seek civil damages against the Towers, and that case settled. There was no judicial finding of negligence by the Towers at the civil level nor was there a finding of employer negligence at the WCAB. The negligence resulting from the third party's (Golden West Towers) actions contributed to applicant's death and to allow a double recovery to Ms. Leon's son (who dismissed the Application anyway and was now replaced by DWD) would fly in the face of Labor Code §§ 3852 and 4706.5.

DWD argues that the two employers were negligent and indifferent to applicant's complaints about Mr. Christman, and therefore, there should be a finding that the defendants do not reap the

benefit of the third party offset. However, this WCJ did not find that applicant's two employers was negligent. It was the Towers that had Mr. Christman as its resident, and it was the building that threatened applicant with eviction at least once, noting the complaints against him. There was no evidence presented that Applicant's two employers knew the extent of the complaints, that other residents of the Towers had complained about him, that he had nearly been evicted once or twice, and that the Towers' manager, Ms. Van Hagar, also knew of Mr. Christman's behavior and threats. Applicant's two employers are required to provide a safe working environment, but her employers cannot be held accountable for the actions of a third party, Mr. Christman, or the inaction of Mr. Christman's residence, Golden West Towers. Applicant complained before about Mr. Christman, but this does not give rise to the level of negligence on the part of IHSS and Meals on Wheels.

The issue of credit is applicable to the DWD even if DWD was not the actual recipient of the proceeds from the civil lawsuit. *Labor Code* §3852 allows an employer that pays DWD a death benefit per *Section 4706.5* to seek subrogation against the third party tortfeasor. Since Mr. Vasquez already recovered \$559,311.17, the employer would be entitled to a credit for that third party recovery against compensation that would otherwise be owed. Death benefits are considered compensation, so as in this case, liability was found against the third party tortfeasor. This would result in a credit being applicable in the workers' compensation arena as it arose out of the same shooting incident. Even if DWD were awarded the death benefit here, basically having DWD step into the shoes of Mr. Vasquez, the same credit would be applicable since it still stemmed from the same incident, or death. The fact that Mr. Vasquez chose not to pursue the death claim at the WCAB level did not negate the fact he was a dependent, and even assuming that DWD stepped into the shoes of Mr. Vasquez after he was removed from the case, that same third party credit arising out of the same death still existed. It did not simply vanish because one applicant stepped into the shoes of the other. Further, the fact that the defendants did not pay any compensation directly to Mr. Vasquez does not now mean there should be a duplicate recovery by DWD against the defendants.

Statute of Limitations

DWD argues that the statute of limitations does not bar its ability to seek death benefits from IHSS. However, its Application as to IHSS was untimely. First, there is the March 21, 2013 letter from Meals on Wheels to SCIF, indicating applicant had other work in the building, which was also

sent to the DIR-OD Legal and received by them October 1, 2013. Both SCIF and OD Legal were on notice as of October 1, 2013 that Ms. Leon had other employers in the building. Second, they were on notice, once the police report was generated, that Ms. Leon had dual employment in the building. Ms. Bohm from Meals on Wheels knew Ms. Leon was a caregiver for IHSS in the building. (See MOH/SOE, 3/6/19, pg.3, lines 2-4).

While DWD entered the case on December 16, 2013, and IHSS was joined on May 17, 2016, both Meals on Wheels c/o SCIF and DWD c/o OD Legal knew in October 2013 that applicant was working through IHSS at the Golden West Towers at the time of her 2012 death. The delay in filing against IHSS was beyond the one year statute of limitations to file the Application from the date of death, and it would appear the only reason DWD later filed against IHSS in 2016 was because Mr. Vasquez dismissed his Application. The fact is Ms. Leon's sons had already filed the death Application, and thus, there was evidence of there being surviving dependents, and IHSS was under no obligation to notify the Administrative Director of Ms. Leon's death. See Labor Code §4706.5(f) and 8 CCR §9900. Therefore, there was no tolling of the statute of limitations. Because there were these dependents with active and valid claims at the time, and even though Mr. Vasquez dismissed his Application on October 25, 2016, there was no valid reason DWD filed its claim against IHSS on or about May 17, 2016, when it was aware and had notice since 2013 of applicant's employment with IHSS. It would appear then that DWD would be time barred as to IHSS.

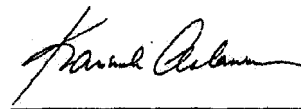
IV

CONCLUSION

It is respectfully recommended that the DWD's Petition for Reconsideration be denied.

Date: August 1, 2019

Respectfully submitted,



Karinneh Aslanian

Workers' Compensation Administrative Law Judge

Served by mail on interested parties listed on the
Official Address record

ON: 8/1/19 By: [Signature]