

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

MARCELL BALL, *Applicant*

vs.

**QUALITY DRIVERS SOLUTIONS; ACE AMERICAN INSURANCE COMPANY,
care of CANNON COCHRAN MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ13972865
Riverside District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration 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 the following discussion, and for the reasons stated in the WCJ's report, we will deny reconsideration.

Defendant contends that it provided applicant, Marcell Ball, with two valid modified work offers with several nonprofit organizations in accordance with Rule 10116.9 (Cal. Code Regs., tit. 8, § 10116.9), and that applicant's refusal of the offers constituted grounds to deny him temporary total disability (TTD) benefits. Defendant also asserts that applicant's attorney "intentionally interfered" with the return-to-work process so that applicant could claim TTD, and that the offers should be treated as though they were not withdrawn.

Upon review, we conclude that the WCJ properly found that applicant's refusal of the modified work offers, which complied with Rule 10116.9, was on its face unreasonable, and that this would *ordinarily* justify denying applicant TTD benefits. However, as the WCJ noted, the issue became moot after the nonprofits withdrew their offers. We also agree with the WCJ that the nonprofits did not withdraw their offers as a result of any wrongful interference by applicant's attorney. Instead, as explained below, the evidence shows that, in communicating with each nonprofit, applicant's attorney was simply exercising due diligence on behalf of his client, rather than attempting to cause the nonprofits to renege.

First, in an email dated February 4, 2022, applicant's attorney contacted Todd Wallace, CEO of Buffet Ranch Animal Rescue, in order to confirm that Mr. Wallace was not interested in placing applicant within the organization, stating:

Mr. Todd Wallace:

I understand based on our conversation today with Ana Marie that you are the CEO for the nonprofit operating Brand Spankin Used Thrift Store in Yucca Valley, specifically Buffet Ranch No Kill Sanctuary.

So that the record is clear I am again attaching the medical reports for Mr. Ball. You indicated that your organization is not interested in this return-to-work program through Transition2Work nor utilizing Mr. Ball. Please confirm that this is the case.

Thank you for your attention to this matter and conversing with me.

Juan M. Armenta

English Lloyd & Armenta

(Applicant Exh. 5, p. 1.)

In a response email sent the same day, Mr. Wallace confirmed that this was the case.
(Applicant Exh. 5, p. 1.)

Applicant's attorney's contact with the other nonprofit, Habitat for Humanity, was equally benign. In an email dated March 23, 2022, which was provided to defense counsel roughly 24 hours later, applicant's attorney contacted the nonprofit to "inquir[e] about the status of Mr. Ball's involvement as a 'volunteer.'" (Applicant Exh. 4, p. 1; Applicant Exh. 1, p. 1.) We see nothing unethical or otherwise inappropriate about such an inquiry. The remaining evidence shows that defense counsel was included in all communications between applicant's attorney and CPC Logistics, Inc. (Quality Driver Solutions) regarding applicant's potential participation in the modified work opportunities. (Applicant Exh. 7.) Based upon the foregoing, we agree that applicant is entitled to claim TTD benefits despite his initial refusal of work offers that were subsequently withdrawn, and that there was no wrongful interference by, or undue influence by, applicant or his attorney.

Accordingly, we deny the petition for reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

MARGUERITE SWEENEY, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 25, 2022

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

**ENGLISH, LLOYD & ARMENTA
LOUIE STETTNER
MARCELL BALL**

AH/oo

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