

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

**CHRISTINE CARDONE, *Applicant***

**vs.**

**COLONY PALMS OPERATIONS, LLC; AMGUARD INSURANCE COMPANY,  
administered by GUARD INSURANCE, *Defendants***

**Adjudication Number: ADJ9014207  
Riverside District Office**

**OPINION AND ORDERS  
DENYING PETITION FOR RECONSIDERATION,  
GRANTING RECONSIDERATION AND  
DECISION AFTER RECONSIDERATION**

Defendant Colony Palms Operations, by and through its insurer AmGuard Insurance Company, seeks reconsideration of the February 26, 2021 Findings and Award, wherein a workers' compensation administrative law judge (WCJ) found that applicant Christine Cardone, while employed as a waitress on July 9, 2013, sustained an industrial injury from heat stroke and/or heat exhaustion which caused injuries to her parts and conditions related to fibromyalgia and rhabdomyolysis including internal, eyes, neurological, sleep, headaches and psyche, resulting in 100% permanent disability without apportionment. The WCJ deferred whether applicant sustained injuries to additional body parts on a compensable basis. The WCJ awarded permanent disability indemnity at the rate of \$712.53 per week starting October 19, 2018, subject to adjustments per Labor Code section 4659(c).

Defendant contends the WCJ erred in finding applicant to be permanently totally disabled, arguing that the WCJ failed to account for medical evidence that applicant could work with medical treatment, and that he reached this determination based on his own unqualified opinion that defendant's failure to authorize appropriate medical treatment contributed to applicant's condition. Defendant further argues that the WCJ erred by basing his determination on his finding that applicant was a credible witness, asserting the WCJ ignored applicant's inconsistent statements and untruthful testimony. Finally, defendant argues the psychiatric reports of Dr.

Friedman are not substantial medical evidence, asserting that his opinion was based on an inaccurate history.

We have received an Answer from applicant, which raises an issue with regard to the date she is entitled to begin receiving permanent total disability indemnity. The WCJ prepared a Report and Recommendation on Petition for Reconsideration, recommending that the Findings and Award be affirmed, except with regard to the issue raised in applicant's Answer.

We have considered the allegations and arguments of the Petition for Reconsideration, as well as the Answer thereto, and have reviewed the record in this matter and the WCJ's Report and Recommendation on Petition for Reconsideration of March 25, 2021, which considers, and responds to, each of the defendant's contentions. Based upon our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate as the decision of the Board, we will affirm the WCJ's Findings and Award, and deny defendant's Petition for Reconsideration.

Additionally, we will grant reconsideration as recommended by the WCJ, to amend Finding of Fact number 6, to award permanent total disability indemnity payments as of the date defendant stopped payment of temporary disability indemnity in 2015. The WCJ recognized that defendant met its obligation to initiate payment of permanent disability benefits when it terminated temporary disability indemnity payments in 2015. However, as the Appeals Board held *en banc* in *Brower v. David Jones Construction* (2014) 79 Cal.Comp.Cases 550,

When an injured worker who is receiving permanent partial disability payments pursuant to section 4650(b)(1) becomes permanent and stationary and is determined to be permanently totally disabled, the defendant shall pay permanent total disability indemnity retroactive to the date its statutory obligation to pay temporary disability indemnity terminated.

Therefore, applicant is entitled to permanent disability payments retroactive to the date it commenced permanent partial disability advances pursuant to Labor Code section 4650(b) on September 22, 2015. We will amend Finding of Fact number 6 accordingly.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the February 26, 2021 Findings and Award is **DENIED**.

**IT IS FURTHER ORDERED** that reconsideration of the of the February 26, 2021 Findings and Award is **GRANTED**, and as the Decision After Reconsideration of the Workers' Compensation Appeals Board, Finding of Fact number 6 is **AMENDED** to read as follows:

6. As a result of said injury, applicant is permanently totally disabled (100%), entitling applicant to permanent disability based on her temporary disability rate of \$712.53, commencing September 22, 2015, subject to consideration of adjustments pursuant to Labor Code section 4659(c), and less credit for sums paid as permanent disability advances.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

**I CONCUR,**

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



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

**May 14, 2021**

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

**CHRISTINE CARDONE  
HINDEN & BRESLAVSKY  
ALBERT & MACKENZI**

***SV/pc***

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