

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

DARRELL PEEBLES, *Applicant*

vs.

**STANLEY AUTOMOTIVE ENTERPRISES, INC., and GAINES B. STANLEY, JR. and
VICKIE STANLEY, each individually and as a substantial shareholder of STANLEY
AUTOMOTIVE ENTERPRISES, INC., a TEXAS CORPORATION; DIRECTOR OF
INDUSTRIAL RELATIONS AS ADMINISTRATOR OF THE UNINSURED
EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ9902354
Sacramento District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.

In the Findings and Award of August 13, 2020, the workers' compensation judge (WCJ) adopted the stipulations of the parties that on November 5, 2014, applicant, while employed by Stanley Automotive Enterprises, Inc., and Gaines B. Stanley, Jr., and Vickie C. Stanley, each individually and as a substantial shareholder of Stanley Automotive Enterprises, Inc., a Texas corporation, sustained industrial injury to his low back, that at the time of injury, the employer was uninsured, and that applicant's earnings were \$1,896.77 per week. As for the disputed issue of temporary disability, the WCJ found that the injury of November 5, 2014 resulted in temporary disability from February 1, 2015 through August 4, 2015; from May 12, 2016 through July 9, 2016; from August 31, 2016 through September 30, 2016; and from October 5, 2016 through November 5, 2016, all payable at the temporary disability indemnity rate of \$1,264.58 per week pursuant to Labor Code section 4661.5. Although the WCJ did not make a finding on credit, the WCJ awarded temporary disability indemnity for the above periods, "less credit for any unemployment benefits received from the State of Texas..."

Applicant, and defendant Stanley Automotive Enterprises, Inc., both filed timely petitions for reconsideration of the WCJ's decision. Defendant contends that the evidence does not justify the finding that applicant was temporarily disabled from February 1, 2015 through August 4, 2015. Applicant contends that the WCJ erred in not finding temporary disability during the uninterrupted period February 1, 2015 through January 29, 2017, and that the WCJ erred in allowing credit for Texas unemployment benefits against applicant's award of temporary disability indemnity.

Stanley Automotive Enterprises, Inc. and the Uninsured Employers Benefits Trust Fund (UEBTF) both filed answers to applicant's petition for reconsideration.

The WCJ submitted a Report and Recommendation ("Report") addressing both petitions for reconsideration.

We note that on page five of his Report, the WCJ states that before trial, he "specifically pointed out that the Panel QME Dr. Amster never addressed periods of temporary disability and that there were large gaps in the treatment records. Despite pointing this out, applicant's attorney indicated that they wished to proceed to trial."

To the extent the WCJ suggests applicant's attorney waived additional periods of temporary disability (if any) by insisting upon trial, we disagree. In fact, it is well-settled that the WCAB "may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence." (*Telles Transport, Inc. v. Workers' Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159, 1164 [66 Cal.Comp.Cases 1290].)

Here, based upon the statements in the WCJ's Report that there is a lack of evidence on the issue of temporary disability, and given Dr. Amster's failure to address it in any meaningful way, we conclude that the WCJ's decision must be rescinded, and that this case must be returned to the trial level for further proceedings and new decision by the WCJ. We take this action to provide Dr. Amster an opportunity to supplement his medical opinion by fully addressing the issue of temporary disability. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 [Appeals Board en banc].)

Regarding the issue of credit for unemployment benefits paid by the State of Texas, we note that the issue was not specifically raised at trial on May 4, 2020, when the parties entered into what they apparently believed was a complete framing of the issues. In the interest of due process, we believe the parties should have further opportunity to fully address the issue of credit. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66

Cal.Comp.Cases 584]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157 [65 Cal.Comp.Cases 805]. See also, *Urlwin v. Workers' Comp. Appeals Bd.* (1981) 126 Cal.App.3d 466 [46 Cal.Comp.Cases 1276].) We express no final opinion on temporary disability or on credit. When the WCJ issues a new decision, any aggrieved party may seek reconsideration as set forth in Labor Code sections 5900 *et seq.*

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award of August 13, 2020 is **RESCINDED**, and this matter is **RETURNED** to the trial level for further proceedings and new decision by the WCJ, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

I DISSENT. (See Attached Dissenting Opinion)

/s/ MARGUERITE SWEENEY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 9, 2021

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

**DARRELL PEEBLES
OFFICE OF THE DIRECTOR-LEGAL UNIT
EASON & TAMBORNINI
TWOHY DARNEILLE & FRYE**

JTL/bea

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

DISSENTING OPINION OF COMMISSIONER MARGUERITE SWEENEY

I dissent. I have considered the allegations of both petitions for reconsideration, the contents of the WCJ's Report with respect thereto, and the contents of the WCJ's Opinion on Decision. Based on my review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, both of which I adopt and incorporate, I would deny the allegations of both petitions for reconsideration, and I would affirm the Findings and Award of August 13, 2020.

The WCJ's findings on temporary disability are supported by the medical records of three nurse practitioners, a physician's assistant, and two treating physicians, Dr. Shi-Bertch Dr. Nkadi, whose records were reviewed by Dr. Amster and considered by the WCJ in his Opinion on Decision. The consideration of these treatment records, taken as a totality, amount to a preponderance of the evidence supporting the periods of temporary disability found by the WCJ. (Lab. Code, § 3202.5.) Given the further delay inherent in supplementing the medical record for this 2014 injury, I am not persuaded that further development of the medical record to resolve the issue of temporary disability is justified under these circumstances.

On the issue of credit for the unemployment benefits paid by the State of Texas, I agree with the analysis in the WCJ's Report. The WCJ correctly treated the issue of credit as "part and parcel of applicant's claim for temporary disability." (See, e.g., *Bontempo v. Workers' Comp. Appeals Bd.* (2009) 173 Cal.App.4th 689, 704 (74 Cal.Comp.Cases 419): [Raising the issues of permanent disability (Lab. Code, § 4660) and apportionment (Lab. Code, §§ 4663, 4664) was sufficient to raise the 15% increase in permanent disability under Labor Code section 4658(d).].) As for the merits of the credit issue, the WCJ explains in his Report that since applicant believed he needed to search for work to receive unemployment benefits, he apparently felt capable of doing some work and therefore his temporary disability is properly characterized as temporary partial disability, not temporary total disability. Since a lien by the State of Texas is not specifically authorized by Labor Code section 4903, and given the California policy of avoiding double recovery, I believe the WCJ properly addressed the credit issue by analyzing it from a standpoint of temporary partial disability. I would affirm the WCJ's decision in all respects.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

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JTL/bea

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