

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

**ANGEL CASARRUBIAS, *Applicant***

**vs.**

**CM LAUNDRY, LLC; ARCH INSURANCE COMPANY, adjusted by CORVEL,  
*Defendants***

**Adjudication Number: ADJ10590450  
Marina del Rey District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We granted reconsideration in order to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the Findings of Fact and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on June 8, 2022. By the F&A, the WCJ found in relevant part that applicant is entitled to temporary disability from September 27, 2016 through "June 20, 201"<sup>1</sup> with jurisdiction reserved regarding payment of these benefits, attorney's fees and possible reimbursement to the Employment Development Department (EDD).

Defendant contends that the temporary disability award is unlawful because applicant cannot receive more than 104 weeks of this species of benefits and the award is not supported by the record. Defendant also contends that applicant is entitled to temporary disability only from September 27, 2016 through June 20, 2017 and requests the F&A be revised to reflect this period. Lastly, defendant contends that it is entitled to a credit for the overpayment made by EDD.

We received an answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we amend the F&A to find that applicant is entitled to temporary disability from September 27, 2016 through February 15, 2018, but otherwise deny defendant's Petition.

We have considered the allegations of defendant's Petition for Reconsideration, applicant's answer and the contents of the WCJ's Report with respect thereto. Based on our review of the

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<sup>1</sup> The F&A provides an end date of "June 20, 201" so it is unclear when the period of temporary disability ends.

record and for the reasons discussed below, we will amend the F&A to reflect entitlement to temporary disability from September 27, 2016 through June 20, 2017 (Finding of Fact No. 5) and a permanent and stationary date of June 21, 2017 (Finding of Fact No. 6), but otherwise affirm the F&A.

### **FACTUAL BACKGROUND**

The following includes only those facts relevant to the issues raised by defendant in its Petition.

Applicant claims injury to his lumbar spine, bilateral shoulders, elbow, neck, feet, hypertension, headaches and wrists through September 26, 2016 while employed as a garment dyeing person by CM Laundry LLC.

Charles Schwarz, M.D. evaluated applicant as the orthopedic qualified medical evaluator (QME) on July 11, 2017. (Joint Exhibit JJ, Medical report from Dr. Charles Schwarz, July 11, 2017.) In his July 11, 2017 report, Dr. Schwarz did not find applicant's condition to have reached maximum medical improvement yet and requested additional medical records. (*Id.* at p. 21.) Additional medical records were sent to Dr. Schwarz and he issued a supplemental report dated February 15, 2018. He found applicant's condition to have reached maximum medical improvement as of June 21, 2017, the date found by applicant's treating physician, Dr. Waleed Jean Kattar. (Joint Exhibit GG, Medical report from Dr. Charles Schwarz, February 15, 2018, p. 18.)

Omar Tirmizi, M.D. evaluated applicant as the internal medicine QME. Dr. Tirmizi diagnosed applicant with hypertensive cardiovascular disease, which he considered industrially related. (Joint Exhibit BB, Medical report from Syed Omar Tirmizi, January 24, 2018, p. 16.) Dr. Tirmizi did not find any periods of temporary disability related to applicant's hypertension. (*Id.*)

The matter proceeded to trial on several issues including temporary disability with applicant claiming temporary disability from September 27, 2016 through February 15, 2018. (Minutes of Hearing, November 18, 2021, p. 2.) The other issues included the permanent and stationary date with applicant claiming a date of February 15, 2018. (*Id.*) Liens were deferred with the exception of the EDD lien. (*Id.* at p. 3.)

The WCJ issued the F&A as outlined above. In the Opinion on Decision, the WCJ explained her findings regarding temporary disability and the permanent and stationary date as

follows:

**TEMPORARY DISABILITY:**

Based upon the medical reporting of Panel Qualified Medical Evaluator Dr. Charles Schwarz, it is found that Applicant was temporary disabled from September 27, 2016 through June 20, 2021. It is found that Applicant is entitled to temporary disability indemnity during this period of time based upon his average weekly earnings of \$566.93 less attorney fees. As judicial notice was taken at the time of trial of the lien filed by the Employment Development Department, jurisdiction is reserved regarding the payment of temporary disability indemnity benefits, attorney fees and possible reimbursement to the Employment Development Department.

**PERMANENT AND STATIONARY DATE:**

Based upon the medical reporting of Panel Qualified Medical Evaluator Dr. Charles Schwarz, it is found that Applicant was permanent and stationary on June 21, 2021.

(Opinion on Decision, June 8, 2022, p. 3.)

**DISCUSSION**

Temporary disability indemnity is a workers' compensation benefit which is paid during the time an injured employee is unable to work because of a work-related injury and is primarily intended to substitute for lost wages. (*Gonzales v. Workers' Comp. Appeals Board* (1998) 68 Cal.App.4th 843 [63 Cal.Comp.Cases 1477]; *J. T. Thorp, Inc. v. Workers' Comp. Appeals Bd. (Butler)* (1984) 153 Cal.App.3d 327, 333 [49 Cal.Comp.Cases 224].) Generally, a defendant's liability for temporary disability payments ceases when the employee returns to work, is deemed medically able to return to work, or becomes permanent and stationary. (Lab. Code, §§ 4650-4657;<sup>2</sup> *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 868 [44 Cal.Comp.Cases 798]; *Bethlehem Steel Co. v. I.A.C. (Lemons)* (1942) 54 Cal.App.2d 585, 586-587 [7 Cal.Comp.Cases 250]; *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 236 [58 Cal.Comp.Cases 323].) A disability is permanent and stationary when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment. (Cal. Code Regs., tit. 8, §§ 9785(a)(8), 10152; *Austin, supra*, 16 Cal.App.4th

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<sup>2</sup> All further statutory references are to the Labor Code unless otherwise stated.

at p. 235.)

Applicant's injury occurred in 2016 and is subject to the statutory cap of 104 compensable weeks for aggregate temporary disability payments per section 4656(c)(2). (Lab. Code, § 4656(c)(2).)<sup>3</sup> The medical record reflects that his orthopedic condition was considered permanent and stationary as of June 21, 2017 per the orthopedic QME Dr. Schwarz. The WCJ explained in her Opinion on Decision that she based her decision regarding temporary disability and the permanent and stationary date on Dr. Schwarz's reporting. It appears that she inadvertently did not include the full year for the temporary disability end date in Finding of Fact No. 5 and also inadvertently stated 2021 as the permanent and stationary date in Finding of Fact No. 6.<sup>4</sup> The record supports a finding that applicant was temporarily totally disabled from September 27, 2016 through June 20, 2017, with June 21, 2017 as the date his condition became permanent and stationary. We will consequently amend the F&A to reflect the correct temporary disability period and permanent and stationary date.

With respect to defendant's assertion of a credit for payments made by EDD, the F&A reserved jurisdiction regarding payment of temporary disability indemnity benefits and possible reimbursement to EDD. We will retain this language in the amended F&A. If the parties are unable to informally resolve the amount of temporary disability payable to applicant or reimbursement to EDD, further proceedings to address those disputes may be conducted at the trial level in the first instance.<sup>5</sup>

In conclusion, we will amend the F&A as outlined herein and otherwise affirm the F&A.

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<sup>3</sup> Section 4656(c)(2) states:

Aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury.

(Lab. Code, § 4656(c)(2).)

<sup>4</sup> The Opinion on Decision provides the rationale for the F&A, but the actual findings of fact must be contained in the F&A. (Lab. Code, § 5313.)

<sup>5</sup> It is noted that EDD calculates state disability benefits differently than how an employee's temporary disability indemnity rate is calculated. (See Unemp. Ins. Code, §§ 940, 2655.) EDD's reimbursement for payments made when an employee was temporarily totally disabled is generally limited to the temporary disability indemnity rate. (See Lab. Code, §§ 4903, 4904.)

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Award issued by the WCJ on June 8, 2022 is **AFFIRMED** except that it is **AMENDED** as follows:

**FINDINGS OF FACT**

\* \* \*

5. It is found that Applicant was temporarily disabled from September 27, 2016 through June 20, 2017 and is entitled to temporary disability indemnity during this period, based upon his average weekly earnings of \$566.93, less attorney fees. Jurisdiction is reserved regarding payment of temporary disability indemnity benefits, attorney fees and possible reimbursement to the Employment Development Department.

6. Applicant's condition became permanent and stationary on June 21, 2017.

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**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**November 10, 2022**

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

**ANGEL CASARRUBIAS  
STOCKWELL HARRIS WOOLVERTON & HELPHREY  
WACHTEL LAW**

***AI/pc***

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