

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

RAMONA SANCHEZ, *Applicant*

vs.

**LYNEER STAFFING SOLUTIONS, LLC;
STATE NATIONAL INSURANCE COMPANY,
administered by CANNON COCHRAN
MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ14533829
Long Beach 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 for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

We strongly admonish defense attorney Vivian Elias, with the law firm of Domingo Elias & Vu, for violating WCAB Rule 10945 (Cal. Code Regs., tit. 8, § 10945) as described by the WCJ in the Report. The failure to comply with the WCAB's rules in the future may lead to the imposition of sanctions.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 21, 2022

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

**RAMONA SANCHEZ
BELAL HAMIDEH LAW
DOMINGO ELIAS & VU**

PAG/abs

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

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION

I INTRODUCTION

LYNEER STAFFING SOLUTIONS, LLC., insured by STATE NAT'L INS. CO, administered by CANNON COCHRAN, hereinafter "Petitioner", through its legal representative, filed a timely and verified Petition for Reconsideration to the November 5, 2021, Findings and Award granting retroactive temporary disability benefits to the applicant based on the un rebutted report of Dr. Balian.

Petitioner is in violation of 8 Cal. Code §10205.12(a)(10), 8 Cal. Code Regs. §10945(c), and Labor Code §5902. The Petition filing totals 120 pages. Copies of documents that have been received in evidence or that have been made part of the adjudication file must not be attached as exhibits to Petitions for Reconsideration. Documents attached in violation of this rule may be detached from the petition and discarded. Subsection (c)(2) states that a document that is not part of the adjudication file shall not be attached to or filed with a Petition for Reconsideration or answer. A party may be sanctioned under Labor Code §5813 for violating this rule. See *Daniels v. Piedmont Engineers*, 2011 Cal. Wrk. Comp. P.D. LEXIS 14.

Despite the myriad of "issues" listed by Petitioner on pages 1, 2 and 8, the real issue is whether applicant is entitled to temporary disability indemnity on an accepted claim when the un rebutted panel report of Dr. Balian indicates a period of temporary partial disability and the employer did not meet its burden in proving a bona fide offer of alternative/modified duty was available to the applicant during that period. The Petition essentially asserts that the Court acted in excess of its powers in that 1) Petitioner was denied Due Process, 2) the evidence does not justify the Findings and Award, 3) Labor Code § 4650(d) and §5800 should not apply.

The Court relies upon the reasoning and analysis set forth in its November 5, 2021, Opinion on Decision, but also sets forth supplemental analysis below in support of its Award.

II FACTS

Contrary to Petitioner's assertions, the issue was neither "defective" nor "moot." The Application was filed on April 20, 2021. The claim is admitted and no benefits have been paid. Subsequent to reporting the injury the applicant was terminated. The applicant applied for and received unemployment benefits from the State. The parties confirmed telephonically with the Employment Development Department (EDD) on the day of trial that no disability benefits were being asserted against this claim.

The applicant was previously deemed temporarily partially disabled, and then having reached maximum medical improvement (MMI) by a treating physician within a short span of

time. The parties engaged in the panel process under Labor Code §4062.2 to resolve all outstanding medical disputes, including the MMI date. Applicant filed Declaration of Readiness (DOR) upon receipt of the Panel Qualified Medical Evaluator's (QME) report, filed September 7, 2021. Petitioner filed an objection to the DOR, as well as a response to the original unsigned Petition for Temporary Disability benefits. There was no objection to the QME report, and no argument made regarding efforts for further discovery or either party seeking supplemental opinion from the QME. When the Court inquired with Petitioner as to whether additional time to confer on the matter would be productive, both parties presented a pre-trial conference statement and agreed to submit the issue for determination. Petitioner is now unhappy with the Court's determination that it must pay indemnity on an accepted claim.

III DISCUSSION

Petitioner may not appeal the Opinion on Decision, only the Findings and Award. Petitioner provides a myriad of mixed and disorganized arguments without legal justification in support of its position. It is not the Court's duty to parcel out the arguments, or make the arguments on Petitioner's behalf on appeal. *See Dills v. Redwoods Associates, Ltd.* (1994) 23 Cal.App.4th 888, 890, fn1. What issues the Court can glean from the Petition, it addresses below.

1. Due Process

Labor Code §5502 (b) states in pertinent part, “[t]he administrative director shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the declaration of readiness to proceed is filed...” Subsection (4) indicates the reasons for proceeding to expedited hearing include disputes over the employee's entitlement to, or the amount of, temporary disability indemnity payments.

Petitioner fails to recognize that, regardless of the applicant's petition for retroactive temporary disability benefits, the Court proceeded on the issue of temporary disability cited in the Declaration of Readiness to Proceed to Expedited Hearing, and in its Award, granted benefits to the applicant that were due under the law for an accepted claim. Even if the applicant's filing of its petition for retroactive temporary disability benefits and Labor Code §5814 increases was premature, the need to determine the rights and obligations of the parties for which the hearing was set was still very relevant. When asked by the Court, Petitioner made it very clear that it would not resolve the issue amicably. Furthermore, Petitioner admits it had already filed a Response to the original Petition on September 13, 2021. The matter was already continued twice due to calendar conflicts, which gave the parties additional time to meet and confer on the issue, or in the alternative, secure a cross-examination of the QME or witnesses for Trial. Petitioner simply argues that the Expedited Hearing should not have gone forward, but the issue would have remained outstanding and applicant still would not have received benefits on an accepted claim. There is no denial of Due Process here and the issue was not “moot” as Petitioner suggests.

2. No Rebuttal Evidence

Petitioner's assertion that the evidence did not support the Court's Findings and Award are unfounded and lack any legal or factual support. Cal. Labor Code §3202.5 states that "All parties ... shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence." The *only* medical evidence offered at trial was that of the QME, indicating a period of temporary disability for this admitted claim. The issue at Expedited Trial was temporary disability. In reviewing the treating physician's reports, the QME found an additional period of temporary partial disability that exceeded the original MMI date. Petitioner provided no substantial evidence upon which the Court could rely showing that alternative or modified duty was available for this period of temporary disability, or, substantial rebuttal evidence in support of its position that no temporary disability is due.

Petitioner cites no authority with which Petitioner may substitute unemployment benefits with temporary disability indemnity, two different classes of benefit, from different sources, authorized by two completely different Codes (Labor Code and Unemployment Ins. Code). The EDD confirmed it was not asserting a disability lien, and, there was no indication that unemployment benefits were improperly paid. In order for Petitioner to assert a credit for same, not only would there have to be finding that benefits under the Unemployment Ins. Code (UIC) were improperly paid, a lien would have to be filed, the employer would have to reimburse the EDD within 60 days of an Award by the WCAB, and penalties and interest would still apply. *See* UIC §2629.1(e) and (f). Petitioner's argument lacks merit.

3. Where Compensation is due but remains unpaid, additional sums are due under the law

Where indemnity is due, but remains unpaid, Labor Code §4650 applies to all late payment. Petitioner has not cited any case law or statute that implies otherwise in this case.

Petitioner correctly cites Labor Code §5800, but fails to provide any legal justification, in statute or case law, to support its position that interest does not accrue on indemnity left unpaid for an accepted claim.

IV **RECOMMENDATION**

Based on the foregoing, the Court respectfully requests that the Petition be Denied, and the Board considers sanctions under Labor Code §5813, as stated above.

DATE: December 2, 2021

Julie Feng
Workers' Compensation Judge