

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

**KAMI GONZALES, *Applicant***

**vs.**

**WALMART;  
SEDGWICK EL DORADO HILLS, *Defendants***

**Adjudication Number: ADJ8896804  
Anaheim District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
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 rescind and substitute the Findings and Award (F&A) to find that the start date of the permanent total disability award should have been April 25, 2015.

We add regarding the retroactive adjustment of permanent total disability indemnity, the Appeals Board has held that:

[T]he date on which an injured worker becomes entitled to receive permanent disability indemnity is fixed by sections 4650(b)(1) and 4650(b)(2). This provides the most uniform and fair date from which to calculate an applicant's COLAs. Accordingly, we hold that an injured worker's COLAs commence on the January 1 after the injured worker became entitled to receive permanent disability indemnity without regard to the indemnity rate or whether the employer actually paid permanent disability. (*Brower v. David Jones Construction (2014)* 79 Cal.Comp.Cases 550, 563 (Appeals Board en banc).); see also Lab. Code, § 4659(c.)

Accordingly, we will grant reconsideration, rescind and substitute the F&A and otherwise clarify the F&A.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of February 1, 2023 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of February 1, 2023 is **RESCINDED** and **SUBSTITUTED** as follows:

**Findings of Fact**

1. Applicant, Kami Gonzales sustained an injury arising out of and in the course of employment (AOE/COE) to her low back, psyche, internal, hypertension, urological, rectum and left shoulder on February 25, 2013.

2. Applicant did not sustain an injury arising out of and in the course of employment (AOE/COE) in the form of a sleep disorder.

3. It is found that Applicant's earnings were \$28.00 per hour.

4. Applicant is entitled to temporary disability based upon her earning as a nurse. Applicant's temporary disability rate is \$746.66 per week. Parties are to calculate the retroactive amount owing informally with jurisdiction reserved. Defendants are entitled to credit for all amounts paid. Applicant's attorney is entitled to attorney's fee of 15% of the retroactive temporary disability owing.

5. Applicant was Permanent and Stationary/MMI on April 25, 2015.

6. Applicant is one hundred percent (100%) disabled. Payment of permanent disability benefits shall commence as of April 25, 2015 and the adjustment for COLA shall commence as of January 1, 2016.

7. Applicant is entitled to an un-apportioned Award.

8. Applicant's attorney is entitled to attorney's fees of 15% to be commuted from the side of the Award sufficient to create a lump sum payment. The issue of the amount of attorney's fees is deferred pending DEU calculation.

9. Applicant is entitled to reasonable and necessary future medical care.

**Award**

**AWARD IS MADE** in favor of KAMI GONZALES against WALMART, INC.;  
WALMART,

of:

1. Retroactive temporary disability per finding number 4 with the parties to calculate the same informally with jurisdiction reserved to the WCJ in the event of a dispute with an attorney fee of 15% to be deducted from the retroactive temporary disability.

2. Permanent total disability of one hundred percent (100%) less attorney fees to be commuted from the side of the Award. The issue of the amount of reasonable attorney fees as set forth in finding number 8 is deferred.

3. Medical treatment in accordance with finding number 9.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**April 25, 2023**

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

**KAMI GONZALES  
JEFFREY BIGONGER LAW FIRM  
TESTAN LAW FIRM**

**LN/pm**

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

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

**I  
INTRODUCTION**

Applicant, while employed on February 25, 2013 as an inventory control clerk in Orange, California by Walmart, Inc. sustained an injury arising out of and in the course of employment (AOE/COE) to her low back, psyche, internal system, hypertension, urological system and rectum.

The case was tried over multiple dates with the last submission being December 1, 2022. The Findings and Award and Opinion on Decision issued February 1, 2023. Applicant's counsel has filed a timely and verified Petition for Reconsideration dated February 24, 2023 asserting that the start date of permanent total disability Awarded should have been April 25, 201[5] and that the Applicant's wages should have been based upon earning capacity as a registered nurse. Applicant asserts that the Findings and Award is not supported by substantial evidence and as such that the Judge acted without or in excess of her powers, that the evidence does not justify the Findings of Fact and that the Findings of Fact do not support the Order, Decision or Award.

**II  
FACTS**

Applicant was employed by Walmart as an inventory control clerk in Orange, California by Walmart, Inc. She sustained an admitted injury on February 25, 2013. At the time she was injured she had recently started training at the California Surgical Institute (also referenced at times as the Brea Surgical Institute.) She trained roughly three to three and a half (3 to 3 ½) hours per day and was there for approximately two (2) days (Summary of Evidence dated May 18, 2022, page 8). The Applicant testified that she was training after her shift was completed at Walmart and stopped training due to her injury.

It was found that the Applicant's earnings were best calculated at \$24.00 per hour based upon her earnings at the California Surgical Institute and that her earning capacity as a registered nurse was speculative. The Applicant was found to be one hundred (100%) percent disabled and that her MMI/Permanent and Stationary date was February 7, 2018 and that permanent disability was to begin as of that date.

Applicant has filed a timely and verified Petition for Reconsideration asserting in part that the commutation and beginning of permanent disability should have been April 25, 2015 when Defendants last paid permanent disability and that the Applicant's earnings should have been at the maximum rate based upon their

argument that she would have worked forty (40) hours per week for roughly thirty- seven (37) years as a registered nurse.

**III**  
**DISCUSSION**

Applicant is correct that the start date of the permanent total disability Award should have been April 25, 2015. It is recommended that the Award be amended to reflect the same and that the parties may request a commutation for the DEU. The matter does not need to be remanded on this issue.

DATED: May 7, 2023

Sallie G. Doyle  
Workers' Compensation  
Administrative Law Judge