

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

**CARDELL STEWART, *Applicant***

**vs.**

**KENAN ADVANTAGE GROUP, INC.;  
OLD REPUBLIC INSURANCE GROUP ADMINISTERED BY GALLAGHER BASSETT  
SERVICES, INC., *Defendants***

**Adjudication Number: ADJ16153402  
Van Nuys 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 grant reconsideration, amend Order number 1, and otherwise affirm the findings and order.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of June 6, 2023 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of June 6, 2023 is **AMENDED** as follows:

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**ORDER**

1. The applicant is entitled to temporary total disability July 11, 2022 and ongoing, less credit for sums paid for temporary disability, temporary partial disability, and earnings at Red White Blue CDC Thriftstore, and subject to the provisions of Labor Code §4656(c)(2), at the rate of \$1,088.48, less 15% attorney's fees, payable to Howser Law, to be commuted from the far end of the award if necessary, and to be adjusted and administered by the parties, with jurisdiction reserved to the WCJ in the event of dispute.

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**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

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

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



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

**August 28, 2023**

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

**CARDELL STEWART  
COLEMAN CHAVEZ LAW FIRM  
HOWSER LAW**

**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 ON PETITION FOR  
RECONSIDERATION**

**I  
INTRODUCTION**

Applicant's Occupation: Driver-Fuel Hazmat  
Date of Injury: 02/18/2021  
Parts of Body Injured: Right shoulder  
Identity of Petitioner: **Defendant** filed the Petition.  
Timeliness: The Petition is timely filed.  
Verification: The Petition is verified.  
Date of Findings of Fact: 06/02/2023

**Petitioner's contentions:**

- (a) The Appeals Board acted without, and in excess of, its
- (b) The evidence does not justify the Findings of Fact;

**II.  
FACTS**

Cardell Stewart, while employed on February 18, 2021, as a Driver-Fuel Hazmat, at Simi Valley, California, by Kenan Advantage Group, Incorporated, sustained injury arising out of and in the course of employment to right shoulder. Defendants paid temporary disability for the period February 19, 2021 through August 10, 2022 at the rate of \$1,088.48, then temporary partial disability when the applicant commenced working at a modified, alternative work assignment. The temporary partial disability payments were subject to withholdings against a child support lien.

Mr. Stewart accepted the alternative work offered, by defendants, at a thrift store, working less than 40- hours per week, for \$15 per hour. At-issue for trial was the validity of the modified, alternative work offer, and whether the applicant was temporarily totally disabled as of July 11, 2022, per treating doctor, Dr. Mark Ganjianpour.

Findings and Order and Opinion on Decision issued, dated June 2, 2023. The Court determined the alternative work offered to be an invalid assignment, and accordingly, the applicant was temporarily totally disabled as of July 11, 2022, with credit for sums paid. It is from the Findings and Order that defendants now seeks relief.

### **III.** **DISCUSSION**

Defendant's first argument is that The Court erred in finding the applicant is owed temporary disability benefits for the period July 11, 2022 through present based on an inaccurate interpretation of the facts and law, and is not supported by the evidence.

Labor Code §4658.1 discusses regular, modified, and alternative work. Because these offers, inherently, must be for a duration of at least for a duration of 12-months, there is not an expectation of permanency, outside of the employment lasting at least one year. The Court agrees with defense in stating that they "have not offered the modified work as a permanent position," though for any offer of regular, modified, or alternative work, the duration requirement is, at a minimum, 12-months.

Defendant addresses the two offers of modified / alternative work offered to Mr. Stewart prior to the applicant accepting alternative employment at Red White Blue CDC Thrift Store in Quartz Hill, California, stating "the applicant failed to present any evidence that the job at Hope of the Valley Thrift Store was not within the restrictions provided by Dr. Ganjianpour." The issue of the applicant having been presented two job offers prior to accepting the third was raised at trial, but specific reasons for his rejection of these offers, and the validity of these offers was not a triable issue for purposes of this trial. There is every indication the parties agree the first two modified / alternative jobs had problems, leading to a third offer, Red White Blue CDC Thrift Store, which the applicant ultimately accepted.

Defendant's second argument is failure to allow credit. The Court agrees, credit is to be taken for wages earned during the period of September 6, 2022 through January 27, 2023, when the applicant performed work at Red White Blue CDC Thriftstore. This *is* accounted for in the Order, per the language "less sums paid ... to be adjusted and administered by the parties."

To ensure clarity, and, also noting the typographical errors that require revision, The Court requests to amend Findings and Order number 1 to now read as follows: "The applicant is entitled to temporary total disability July 11, 2022 and ongoing, less credit for sums paid for temporary disability, temporary partial disability, and earnings at Red White Blue CDC Thriftstore, and subject to the provisions of Labor Code §4656(c)(2), at the rate of \$1,088.48, less 15% attorney's fees, payable to Howser Law, to be commuted from the far end of the award if necessary, and to be adjusted and administered by the parties, with jurisdiction reserved by the WCAB.

**IV.**  
**RECOMMENDATION**

With consideration of the request to Amend Finding and Order number 1, thereafter, it is respectfully requested that the Petition for Reconsideration otherwise be denied.

DATED: July 10, 2023

**Jiblet Croft**  
Workers' Compensation  
Administrative Law Judge