

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

LIDUVINA OCHOA, *Applicant*

vs.

**RANDSTAD NORTH AMERICA, INC.; ACE AMERICAN INSURANCE COMPANY,
*Defendants***

**Adjudication Number: ADJ13685275
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Amended Findings, Award and Order of Fact of September 25, 2023, wherein, as relevant to the instant Petition, it was found that while employed as a line worker during a cumulative period ending August 21, 2020, applicant sustained industrial injury to her wrists, hands and neck causing temporary disability from December 1, 2022 to the present and continuing.

Defendant contends that the WCJ erred in finding temporary disability from December 1, 2022 to the present and continuing. We have received an Answer from applicant, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will deny the defendant's Petition.

Applicant was evaluated by agreed medical evaluator orthopedist Joel Renbaum, M.D. In his initial report of May 3, 2021, he described applicant's regular job duties as being required to "continuously stand, walk, frequently climb, grip, reach, reach overhead, bend squat, push/pull, kneel, lift up to fifty pounds, and occasionally crawl." (May 3, 2021 report at p. 2.) In a report of December 1, 2022, Dr. Renbaum found it "medically probable that the patient's bilateral wrist/hand condition is related to her ongoing work activities" and also "medically probable that the patient sustained a[n] industrially based cumulative trauma injury to the neck spine as a result of her work activities through August 21, 2020." (December 1, 2022 report at p. 8.) While applicant's wrist/hand condition was found permanent and stationary, Dr. Renbaum wrote, "the

patient is not permanent and stationary with regard to her cervical spine.” (December 1, 2022 report at p. 8.)

While Dr. Renbaum does not expressly state that applicant is temporarily disabled, he writes in his December 1, 2022 report:

As before, I do not feel that Ms. Ochoa would be capable of returning to her regular work activities as a material handler for Randstad North America (at Metro Logistics USA) due to the physical requirements of the position.

She is again permanently precluded from repetitive forceful gripping, pushing, pulling or lifting more than 20 pounds.

(December 1, 2022 report at p. 9.)

Temporary disability indemnity is a workers’ compensation benefit which is paid during the time an injured worker is unable to work because of a work-related injury and is primarily intended to substitute for lost wages. (*Gonzales v. Workers’ Comp. Appeals Bd.* (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].) The purpose of temporary disability indemnity is to provide a steady source of income during the time the injured worker is off work. (*Gonzales, supra*, at p. 1478.)

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, §§ 4650-46571; *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].)

In *Huston*, the Court of Appeal stated more specifically that:

In general, temporary disability indemnity is payable during the injured worker’s healing period from the injury until the worker has recovered sufficiently to return to work, or until his/her condition reaches a permanent and stationary status. [] Temporary disability may be total (incapable of performing any kind of work), or partial (capable of performing some kind of work). [] If the employee is able to obtain some type of work despite the partial incapacity, the worker is entitled to compensation on a wage-loss basis. [] If the partially disabled worker can perform some type of work but chooses not to, his □probable earning ability’ will be used to compute wage-loss compensation for partial disability. [] If the temporary partial disability is such that it effectively

prevents the employee from performing any duty for which worker is skilled or there is no showing by the employer that work is available and offered, the wage loss is deemed total and the injured worker is entitled to temporary total disability payments.

(*Huston, supra*, at p. 806 [citations omitted].)

“There is only one permanent and stationary date for an injury, even if some body parts stabilize before others. The permanent and stationary date would be the date on which the last body part became permanent and stationary.” (*American Ins. Co. v. Workers’ Comp. Appeals Bd. (Mathat)* (2003) 68 Cal.Comp.Cases 926, 931 [writ den.])

Here, Dr. Renbaum opined that applicant had not recovered sufficiently to return to her normal work, and that her injury was not yet permanent and stationary. While Dr. Renbaum may not have explicitly stated that applicant was temporarily disabled, these facts are sufficient to meet the textbook definition of temporary disability, were plainly sufficient for the WCJ to complete the syllogism and conclude that applicant was temporarily disabled. We therefore deny the defendant’s Petition.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Amended Findings, Award and Order of Fact of September 25, 2023 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 15, 2023

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

**LIDUVINA OCHOA
GEARHEART & SONNICKSEN
LLARENA, MURDOCK, LOPEZ & AZIZAD**

DW/oo

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