

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

**KAMA WILLIS JAMISON, *Applicant***

**vs.**

**FIVE ACERS; ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ15294472  
Los Angeles 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, and the reasons stated below, we will deny reconsideration.

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 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].) 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, §§ 4650-4657; *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].)

An injured worker who refuses modified work without giving a good reason may be estopped from claiming temporary total disability. (*Seale v. Workers' Comp. Appeals Bd.* (1974)

39 Cal.Comp.Cases 676 (writ den.); *Vittone v. Workers' Comp. Appeals Bd.* (2001) 66 Cal.Comp.Cases 435 (writ den.).)

We agree with the WCJ that the October 12, 2021 letter from the employer, 5 Acres - The Boys' Aid Society to applicant making an Offer of Alternative Modified Work through a temporary assignment with Friends Helping Friends was a valid offer. (Joint Exhibit C.) Applicant's claim that the offer was not made by 5 Acres (see Petition for Reconsideration, at p. 5:1-3) is not accurate. The October 12, 2021 letter is on 5 Acres letterhead and was signed by Trecia Mongal. (Joint Exhibit C.) Applicant testified at trial that Trecia Mongal works for 5 Acres' human resources department. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 11/23/21, at p. 5:15-16.) Applicant does not dispute that the modified work was within the relevant restrictions.

Moreover, to the extent that applicant raises the issue that she could perform the essential function of her regular job within the restrictions, that issue was waived when it was not raised at trial. Issues not raised at the first opportunity that they may properly be raised are waived. (Lab. Code, § 5502(e)(3), see also *Gould v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1059 [57 Cal.Comp.Cases 157], *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260 [54 Cal.Comp.Cases 145].) Lastly, we note that an employers' duties as to the interactive process pursuant to the Fair Employment and Housing Act (FEHA) and the American with Disabilities Act (ADA) are not issues within the jurisdiction of the Workers' Compensation Appeals Board.

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/ MARGUERITE SWEENEY, COMMISSIONER**

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



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

**MARCH 8, 2022**

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

**KAMA WILLIS JAMISON  
LAW OFFICES OF MARVIN L. MATHIS  
GOLDMAN, MAGDALIN & KRIKES, LLP**

**PAG/ara**

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

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**REPORT AND RECOMMENDATION ON APPLICANT'S PETITION FOR RECONSIDERATION**

**I**  
**INTRODUCTION**

- |    |  |   |
|----|--|---|
| 1. | Applicant's Occupation<br>Applicant's Age<br>Date of Injury<br>Parts of Body Injured | Rehabilitation Counselor<br>48<br>1/5/2021<br>low back  |
| 2. | Identity of Petitioner<br>Timeliness:<br>Verification:                               | <b><u>Applicant</u></b> filed the Petition.<br>The petition is timely filed.<br>The Petition is verified.           |
| 3. | Date of Findings of Fact   | 12/14/2021  |
| 4. | <b>Petitioner's Contentions:</b><br>Applicant contends:                              |   |
|    | (a)  | An offer of modified alternative work made by a non-employer is not a good faith offer of modified alternative work |
|    | (b)  | The trial Judge's decision is not supported by substantial evidence   |

**II**  
**FACTS**

The Applicant was employed as a rehabilitation counselor for Defendant 5 Acres on January 5, 2021 when she sustained an admitted industrial injury to her low back. Applicant continued to work until February 3, 2021, at which point she began receiving temporary disability benefits. Defendant stopped paying temporary disability benefits on October 4, 2021. The matter proceeded to trial on November 23, 2021. The issues before the court were whether or not 5 Acres made a bona fide offer of modified duty and whether the Applicant was entitled to additional periods of temporary disability.

On December 14, 2021 this Court issued its Findings of Fact in which it was found that Defendant made a bona fide offer of modified work on September 23, 2021 and because Applicant did not accept the offer, she was not entitled to additional periods of temporary disability benefits. It is from this finding that Applicant seeks reconsideration.

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

Applicant's first argument is that an offer of modified or alternative work made by a non-employer is not a good faith offer of modified or alternative work. Applicant's contention as phrased is misleading as the offer of alternative or modified work in the case at hand was made by Applicant's employer, 5 Acres. Although the offer of modified or alternative work was to be performed at Friends Helping Friends, the letters offering modified work were made by 5 Acres. Applicant testified that she received two to three letters offering a modified position with Friends Helping Friends (Minutes of Hearing and Summary of Evidence, 11/23/21 8:30 AM session, 5:14-5:18 and 5:23-5:24). The September 23, 2021, October 8, 2021 and October 12, 2021 letters offering alternative modified work came from Trecia Mongal, who Applicant testified worked for 5 Acres HR department (DEFENDANT'S EXHIBIT A-B and JOINT EXHIBIT C).

Included with each of the three letters is an unsigned Employee Acknowledgement Form that indicates that the Applicant would remain an employee of 5 Acres while performing alternative or modified duty with Friends Helping Friends, and that this temporary opportunity would not result in employment with Friends Helping Friends. The Applicant would still be expected to comply with 5 Acres' company policies. There is also an indication that the Applicant would continue to be covered under 5 Acres' workers' compensation program (DEFENDANT'S EXHIBIT A-B and JOINT EXHIBIT C). The evidence reflects that the Applicant would remain an employee of Defendant while performing the modified or alternative work.

An injured worker who refuses modified work without giving a good reason may be estopped from claiming temporary total disability. *Vittone v. Workers' Camp*. Appeals Bd. (2001) 66 Cal.Comp.Cases 435 (writ denied). In the case at hand Applicant did not provide a good cause basis for her refusal to accept any of Defendant's modified or work offers. The restrictions given in the offer of alternative or modified work letters followed those given by the Applicant's primary treating physician, Dr. John Yong (JOINT EXHIBIT A-B). The location of Friends Helping Friends was within 3 miles of the Applicant's residence, and the Applicant was to be paid \$19.56 an hour, which based on the stipulated average weekly wage of \$782.40, was what she was making before the injury. 5 Acres reached out to Applicant by multiple letters and by e-mail in order to inform her of the modified work opportunity, and even set up multiple meetings to allow her to ask questions regarding this opportunity, but Applicant refused to accept the offer. As such, Applicant is not entitled to temporary disability indemnity because she refused a bona fide offer of modified work.

Applicant's second argument is that the WCJ's decision is not supported by substantial evidence. Applicant contends that there is no evidence of 5 Acres contacting Applicant after February 2021 with a modified position. Applicant was the sole witness to testify at trial, and testified that she received multiple offers of alternative modified work from 5 Acres' Trecia Mongal. The court found this testimony to be credible. The credibility determinations of the workers' compensation judge are entitled to great weight and should not be disturbed when they are supported by substantial evidence because the judge has the opportunity to observe the demeanor of witnesses and weigh their statements with their manner in testifying, *Garza v. Workers' Comp*. Appeals Bd. (1970) 3 Cal. 3d 312, 318-319, 35 CCC 500.

In addition, the heading in the September 23, 2021, October 8, 2021 and October 12, 2021 letters offering alternative modified work are from 5 Acres-The Boys' & Girls' Aid Society and the valedictions are from 5 Acres' Trecia Mongal (DEFENDANT'S EXHIBIT A-B and JOINT EXHIBIT C).

Applicant further contends that there is no evidence that Applicant could not perform the essential functions of her pre-injury job as a rehabilitation counselor. Applicant raises this as an issue, however whether or not Applicant could perform her essential function as a rehabilitation counselor was not a factor the court considered in determining whether or not the offer of alternative or modified work was valid. The work restrictions outlined in the offer letters followed those given by the Applicant's primary treating physician. Applicant did not cite to any statutes, regulations or case law to support their position that an employer must first show that they cannot accommodate an employee in their pre-injury position before an offer of modified or alternative work can be considered valid.

**IV**  
**RECOMMENDATION**

For the reasons stated above, it is respectfully requested that Applicant's Petition for Reconsideration be denied.

DATE: 1-14-2022

**Andrew Malagon**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE