

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

**NONA EWELL, *Applicant***

**vs.**

**COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT, permissibly self-insured,  
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ14797855  
Van Nuys 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.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

I CONCUR,

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

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



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

**SEPTEMBER 13, 2022**

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

**NONA EWELL  
LEWIS, MARENSTEIN, WICKE, SHERWIN & LEE  
STOCKWELL, HARRIS, WOOLVERTON & HELPHREY**

**AS/ara**

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

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

**I  
INTRODUCTION**

1. Applicant's Occupation : Custody Agent  
Date of Injury : 08/04/08 - 04/08/2021  
Parts of Body Injured : bilateral wrists
2. Identity of Petitioner : **Defendant** filed the Petition.  
Timeliness : The Petition is timely filed.  
Verification : The Petition is verified.
3. Date of Findings of Fact : 07/21/2022
4. **Petitioner's contentions:**

(a) The Award for temporary disability should be payable April 16, 2021 through June 24, 2021.

**II.  
FACTS**

Nona Ewell, born [], while employed during the period August 4, 2008, through April 8, 2021, as a Custody Assistant, by the County of Los Angeles Sheriff's Department, sustained injury arising out of and in course of employment to bilateral wrists. Ms. Ewell further claims to have sustained injury arising out of and in the course of employment to upper extremities, and hands. The parties stipulate earnings to be \$1,405.91 per week, warranting temporary disability at the rate of \$937.27 per week.

The case proceeded to Trial May 18, 2022 on the issues of temporary disability, with the employee claiming the retroactive period of April 8, 2021 through June 24, 2021; attorney's fees; whether defendant made a bona fide modified work offer to the applicant and if so, whether the applicant was justified in declining the modified work offer.

The undersigned issued Findings of Fact and Award and Opinion on Decision dated July 7, 2022 (erroneously dated July 7, 2021 on the Findings of Fact and Award), determining Nona Ewell was temporarily totally disabled during the period April 8, 2021 through June 24, 2021, payable at the rate of \$1,405.91. Defendants filed for Reconsideration July 20, 2022, and the scrivener's error of the rate was corrected in the First Amended Findings of Fact and Award dated July 21, 2022, correcting the payable rate to \$937.27. No change was made to the period of disability, determined to be April 8, 2021 through June 24, 2021.

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

Parties proceeded to Trial in part on the issue of retroactive temporary disability. Considering the nature of the applicant's employment, consideration was given as to whether this would or could be litigated as a §4850 benefit. For reasons not part of the existing record (aside from reference to the submitted benefit ledger, joint exhibit 4, dated January 11, 2022, eams number 41069292) it was determined the period in question would be litigated as retroactive temporary disability versus §4850. As the reader will see from joint exhibit 4, the ledger documents only §4850 benefits paid. The WCAB file does contain another benefit print-out, dated August 5, 2022, not offered into evidence, eams number 42585288). These offer no useful insight into the issue at-hand.

Defendant argues the applicant testified she "worked between April 8, 2021 and April 15, 2021" and therefore, temporary disability should be payable for the period of April 16, 2021 through June 24, 2021.

The continuous trauma is pled August 4, 2008 through April 8, 2001. The applicant testified at trial, on or about April 8, 2021, Dr. James Kwok gave her work restrictions. (MOH/SOE, page 3, lines 12, 13) This is consistent with Joint Exhibit 1, the report of Dr. James Kwok dated April 8, 2021. (eams number 75524196) Ms. Ewell testified thereafter, she was still going into work, but doing modified work "for about a week," doing modified duties "until approximately April 15 or 16." She was working at CTC Fit Monitoring and IAS (Inmate Answering Services). (MOH/SOE, page 3, lines 17 - 18). On cross-examination, the witness confirmed she did work "between April 8, to April 15." ((MOH/SOE, page 5, line 15)

Upon presentation of this testimony, the applicant did not amend the prayer for temporary disability. No evidence was offered into evidence to clarify specifically what dates Ms. Ewell worked between April 8 - April 16, 2021, at what pay scale, and whether it was full or part time. The applicant testified she was working her usual shift hours of 5:00 a.m. to 1:00 p.m. (MOH/SOE, page 3, line 19), though again, The Court has no documentation confirming this information.

With consideration to the applicant choosing not to amend the prayer for the period of temporary disability at-issue, and defendant offering no evidence relevant to the applicant having been employed during the period at-issue, The Court granted the Award for temporary disability to commence as of April 8, 2021, stating in the Opinion on Decision:

*"The parties are to adjust for any relevant credit for time worked as per the applicant's testimony (April 8, 2021 through April 15 or April 16, 2021), subject to proof, as against the temporary disability Award made herein by the Court of April 8, 2021 through June 24, 2021, less attorney's fees."*

The Court believes the parties are in the best position to produce documentation that will determine precisely what days, in fact, Ms. Ewell actually worked (between April 8 and April 16 2021), the hours worked, and what she earned during this time. The Court believes the parties are qualified to adjust the Award, accordingly.

For this reason, the Findings and Award can be affirmed.

**IV.**  
**RECOMMENDATION**

It is respectfully requested that the Petition for Reconsideration be denied.

Date: 08/08/2022

**JIBLET CROFT**  
**Workers' Compensation Judge**