

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

**CHRISTOPHER FETZER, *Applicant***

**vs.**

**RHYS VINEYARDS;  
STATE COMPENSATION INSURANCE FUND,  
*Defendants***

**Adjudication Numbers: ADJ15305865; ADJ15305832  
Santa Rosa 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 and Opinion on Decision, 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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**JOSÉ H. RAZO, COMMISSIONER**  
**CONCURRING NOT SIGNING**

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

**JUNE 10, 2024**

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

**CHRISTOPHER FETZER  
FERCHLAND LAW OFFICE  
STATE COMPENSATION INSURANCE FUND**

**LN/pm**

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 PETITION FOR RECONSIDERATION**

**I  
INTRODUCTION**

1. Applicant's occupation:                   Equipment maintenance manager
2. Age at time of injury:                   TBD
3. Body parts injured:                   left shoulder left arm (September 14, 2020)  
and back (February 10, 2021)
4. Manner of injury:                   ATV accident and twisting injury,  
respectively.
5. Applicant seeks Reconsideration of the court's March 14, 2024 Findings and Order. The Petition for Reconsideration was timely filed and properly verified. Applicant urges the court to seek clarification as to alleged periods of temporary disability for the September 14, 2020 injury, and clarification on the delay in providing medical care.

**II  
FACTS**

Applicant sustained two separate injuries: one on September 14, 2020 to his left arm and shoulder, and one on February 10, 2021 to his back. Following his initial accident he "missed a few days of work to receive treatment" (Minutes of Hearing and Summary of Evidence, January 23, 2024 at pg. 5:7 - 8) but did not treat within the workers' compensation system because "there were no workers' compensation doctors available in the area." (*Id.* at pg. 5:5 - 7). Following the second injury "He was off work; although, he did work for a period, self-modifying his duties." (*Id.* at pg. 5:13-14). He also testified that "He did continue working and did not miss any time from work until April 30, 2020 [sic]" (*Id.* at pg. 6:1 -3).

He was first seen by a workers' compensation provider on April 30, 2021 when he was seen at Concentra in Rohnert Park. (See Defense Exhibits A and B). He was evaluated at that time for his left shoulder and left arm injury. He was found to have work restrictions that his employer could not meet and was

placed on temporary disability thereafter. Benefits were paid commencing April 30, 2021. (See Defense Exhibit F, benefits paid report). He was seen 4 days later for the back injury and given work restrictions which his employer could not accommodate. Applicant was paid temporary disability for two years and then benefits were stopped pursuant to Labor Code § 4656(C)(1).

On December 1, 2023, applicant's attorney filed a Declaration of Readiness to Proceed to an Expedited Hearing asserting that the applicant was entitled to additional temporary disability benefits due to the second date of injury. The parties filled out a Pre-Trial Conference Statement. At the time of submission of the case for decision, the parties agreed that the only issue was "Temporary disability, with the applicant claiming that he's owed temporary disability for the period December 2023 to the present and continuing." (Minutes of Hearing and Summary of Evidence, January 23, 2024 at pg. 2)

### **III DISCUSSION**

Applicant argues that "The record is vague as to when applicant was temporarily disabled from his first injury on Sept 14, 2020" (Petition for Reconsideration at pg. 3). Applicant urges the Board to further develop the record. The court believes that the time for development of the record was prior to the filing of a declaration of readiness to proceed. Notwithstanding, questions concerning when the applicant first became disabled following his September 14, 2020 injury were not raised as an issue at the expedited trial. As noted above, the issue submitted for decision was specifically whether the applicant was owed additional TD benefits "for the period December 2023 to the present and continuing." The circumstances of whether and when applicant first became disabled following September 14, 2020 and prior to April 30, 2021 was never raised as an issue.

The issue that was submitted for a decision was essentially a legal one: do the overlapping TD periods run concurrently. The court found that they did. Further development of the record will not affect that conclusion.

Similarly, the issue of "Why applicant received medical care more than seven months after the accident," (Petition for Reconsideration at pg. 2),

although an important issue, was not an issue that was submitted for decision. To argue that the court failed to address an issue that was not submitted for a decision, while true, is inapposite.

Finally, the court is satisfied that the record was sufficient to address the issue presented: whether the applicant is entitled to additional temporary disability benefits as a result of his second injury. As applicant put it "It was his understanding that once his benefits for the right upper extremity injury were exhausted, that he would start receiving benefits in connection with the back injury." (Minutes of Hearing and Summary of Evidence, January 23, 2024, pg. 6:21 - 23). That was the issue that was submitted, and the issue the court addressed. The court was not asked to consider whether there were additional undocumented TD periods. The court was presented with medical reports indicating that the applicant was temporarily disabled starting April 30, 2021.

#### **IV RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

**Jason E. Schaumberg**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

## OPINION ON DECISION

### FACTS

Applicant Christopher Fetzer sustained two specific injuries while employed by Rhys Vineyards; both are accepted. The first, an injury to his left arm and left shoulder, occurred on September 14, 2020, and involved an ATV accident. The second, an injury to his low back, occurred on February 10, 2021, while operating a skid steer. Applicant self-modified his duties for several months.

Applicant was ultimately seen at Concentra by PA James Carter and given work restrictions which the employer could not accommodate. The initial appointment occurred on April 30, 2021, specifically with respect to the left arm and shoulder injury. Temporary disability payments were commenced as of this date.

Applicant was seen by PA Carter a few days later specifically for the back injury, and was again given work restrictions that the employer could not accommodate. This appointment occurred on May 3, 2021. Temporary disability benefits were paid until April 27, 2023, and then stopped citing Labor Code § 4656, the 104 week cap. All benefits were paid in connection with the first injury. Applicant argued that he is entitled to 104 weeks of TD for each injury.

### DISCUSSION

The issue of how the 104 week cap is applied where two TD periods overlap was addressed by the Court of Appeal in *Foster v. WCAB 73 CCC 466* (Cal. Ct. App 2008). In that case the injured worker had two separate specific injuries with the same employer and became temporarily disabled for each on the same day. The court found that where two injuries cause concurrent disability periods, the 104 week cap runs for each claim simultaneously, and then injured worker would only be entitled to 104, rather than 208 weeks of disability. The court stated: "we agree with the WCAB that "[w]here independent injuries result in concurrent periods of temporary disability, the 104[-]week/two[-]year limitation likewise runs concurrently.'" *Foster v. WCAB, 73 CCC 466, 472.*

Applying Foster to the present facts, the situation is nearly identical, and accordingly, the TD periods for each of applicant's specific injuries ran concurrently.

Applicant urges the court to apply the reasoning set forth in *Hernandez v. Precision Castparts Corp*, 2014 Cal. Wrk. Comp. PD LEXIS 681. However, that case is distinguishable from the present case, as well as the *Foster* case, in that the TD periods in question did not run concurrently, and in fact there was essentially no overlapping TD periods for the two injuries. The court states in *Hernandez*:

To determine the impact of section 4656, in a case involving multiple injuries, the evidence needs to be examined to determine whether any periods of temporary disability are distinct and independent, staggered, or entirely overlapping. If there is total overlap, the applicant will be entitled to only one period of temporary disability indemnity consisting of 104 weeks within two years of the first payment. If separate periods of temporary disability are not completely overlapping, the applicant may be entitled to additional temporary disability indemnity; however, the applicant is not entitled to double recovery for overlapping periods *Hernandez v. Precision Castparts Corp.*, 2014 Cal. Wrk. Comp. P.D. LEXIS 681, \*10-11 (Cal. Workers' Comp. App. Bd. November 26, 2014)

The undersigned is actually applying the reasoning in the *Hernandez* case insofar as there is a brief period where the TD periods in the present case are not overlapping, due to the short gap in appointments with PA Carter. PA Carter found applicant TD first for the shoulder and a few days later, for the back. For the most part, however, the TD periods in the present case do overlap and the 104 week cap runs concurrently for that period.

#### CONCLUSION

Because the TD periods for the left arm/shoulder and the back are almost identical, the 104 week cap runs concurrently and the applicant is only entitled to essentially 104 weeks of TD.

**Jason E. Schaumberg**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE