WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FATIMA SANCHEZ, *Applicant*

vs.

SUNFLOWER GARDENS; ACCIDENT FUND INSURANCE CO. OF AMERICA, administered by UNITED WISCONSIN INSURANCE NEW BERLIN, *Defendants*

Adjudication Number: ADJ14570760
Long Beach District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on August 14, 2025, wherein the WCJ found in pertinent part that applicant has "chronic lung disease" for purposes of Labor Code section 4656(c)(3)(I)[1], which entitles her to receive up to an aggregate of 240 weeks of total temporary disability indemnity pursuant to section 4656(c)(3).

Defendant contends that applicant does not have a chronic lung disease and therefore is not entitled to more than 104 weeks of temporary disability indemnity. Defendant further contends that because applicant has received payment of 104 weeks of temporary disability indemnity, no additional temporary disability is owed. Additionally, defendant contends that the medical reporting does not address or support a finding of chronic lung disease and should not be considered substantial medical evidence for a determination under section 4656 (c)(3)(I).

We received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto.

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[1] All statutory references are to the Labor Code unless otherwise stated.

Based on our review of the record, for the reasons stated in the WCJ's Report and Opinion on Decision, which are adopted and incorporated herein, and for the reasons discussed below, we will deny defendant's Petition for Reconsideration.

DISCUSSION

I.

Preliminarily, former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on September 18, 2025, and 60 days from the date of transmission is Monday, November 17, 2025. This decision is issued by or on November 17, 2025, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on September 18, 2025 , and the case was transmitted to the Appeals Board on September 18, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 18, 2025.

II.

As a preliminary matter, we are puzzled by defendant's contention that applicant does not have a "chronic lung disease" because primary treating physician Lawrence Miller, M.D., does not use the terminology chronic lung disease (Petition, p. 5) and James Lineback, M.D., qualified medical evaluator (QME) in pulmonary and internal medicine, does not indicate a chronic lung disease under his diagnoses. (*Id*.) Requiring the doctors to specifically use the phrase "chronic lung disease" would put form over substance and endorse a "magic words" theory of statutory interpretation that we believe is at odds with the intent of the statute and the goal of the workers' compensation system of extending benefits to injured workers. (*County of Kern v. T.C.E.F, Inc*. (2016) 246 Cal.App.4th 301; *Pulaski v. American Trucking Associations, Inc*. (1999) 75 Cal.App.4th 1315, 1328 [64 Cal.Comp.Cases 1231].) This is particularly troubling where, as the WCJ notes, "lung disease" is not a medical diagnosis, but rather a broad general term for a category of conditions that prevent the lungs from working properly.

To be substantial evidence, a medical opinion must be well-reasoned, based on an adequate history and examination, and it must disclose a solid underlying basis for the opinion. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc); see also *E.L. Yeager Construction v. Workers' Comp. Appeals Bd*. (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687].)

Jonathan C. Ellis, M.D., QME in internal medicine issued reports dated January 25, 2022 (Exhibit 2) and October 30, 2023 (Exhibit 3). Dr. Ellis reviewed at least 2,152 pages of records (Exhibit 2: QME report of Dr. Ellis, M.D., dated January 25, 2022, pp. 4, 6-58) and took a detailed history (*Id*. pp. 68-71, 75-79.) Dr. Ellis explained the basis of his conclusions. (*Id*. pp. 76-82.) Dr. Ellis's diagnoses include "Long COVID Syndrome which is industrially related." (*Id*. p. 82.) Dr. Ellis provided a detailed analysis, his opinions are well-reasoned, based on an adequate history

and examination, and he disclosed a solid underlying basis for his opinions, thus they are substantial medical evidence. (*Gatten*, *supra*; *Escobedo*, *supra*.)

Applicant's primary treating physician Dr. Miller provided diagnoses of post-COVID-19 pneumonia/long-hauler syndrome numerous times from October 4, 2021 through June 18, 2025. (Exhibit 8: Lawrence Miller, M.D.'s report, dated May 8, 2023, p. 4; Exhibit 9: multiple PR-2 reports with a date range of July 10, 2023 through June 18, 2025, pp. 3, 8, 14, 35, 40, 51, 56, and 62.) Although Dr. Miller does not define "long-hauler syndrome," this was the primary diagnosis and applicant's disability status remained temporarily totally disabled (Exhibit 9, pp. 4, 9, 21, 23, 40, 56, and 62), which supports the WCJ's conclusion that applicant had a lung disease that was chronic.

Defendant contends that Dr. Lineback's November 5, 2024 report is not substantial medical evidence. Defendant points out that Dr. Lineback requested a formal pulmonary function test and a chest CT scan but did not have the results prior to issuing his report, nor did Dr. Lineback review medical records or other laboratory data. While Dr. Lineback's report, taken in isolation, may well fall short of substantial medical evidence, his opinions are consistent with the other medical opinions. Looking at the record as a whole, the WCJ's findings are supported by substantial medical evidence.

Here, it is undisputed that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her respiratory system/COVID-19. The medical evidence establishes that applicant has been treating for serious post COVID-19 respiratory issues since June of 2020, when she was first diagnosed with the virus. It is well documented that applicant has been totally temporarily disabled for the better part of the last five years. Dr. Miller has consistently diagnosed applicant with post-COVID-19 pneumonia/long-hauler syndrome and Dr. Ellis's diagnoses include "Long COVID Syndrome which is industrially related." We will not disturb the WCJ's findings merely because the medical reporting does not contain certain terms of art.

Accordingly, we deny defendant's Petition for reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 17, 2025

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

FATIMA SANCHEZ
PERONA, LANGER, BECK & HARRISON
LAW OFFICES OF STUART NAGEL

JB/*pm*

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

OPINION ON DECISION

The Applicant sustained an admitted injury on June 16, 2020, while employed at Sunflower Gardens, for COVID and to respiratory system. The parties stipulate that 104 weeks of temporary total disability (TTD) benefits have been paid. The lien of the Employment Development Department (EDD) was withdrawn on June 25, 2025. The parties have deferred the issue of the TTD rate and attorney fees.

TEMPORARY TOTAL DISABILITY-LABOR CODE SECTION 4656(c)(3)(I)-EXCEPTION CHRONIC LUNG DISEASE:

The issue presented to the court at expedited trial is whether Applicant is entitled to temporary total disability up to the 240 weeks because she has a "chronic lung disease" under Labor Code section 4656(c)(3)(I).

The qualifying criteria for provision of TD benefits is set forth in Labor Code section 4650, et. seq. Labor Code section 4656(c)(2) limits aggregate disability payments for a single injury occurring on or after April 19, 2004, to no more than 104 weeks within a period of five years from the date of injury. However, Labor Code section 4656(c)(3) provides for further temporary disability benefits to certain specific injuries or conditions, not to extend for more than 240 compensable weeks within a period of five years from the date of injury. In the present case, the injury or condition at issue is "chronic lung disease."[1]

Temporary disability is thus dependent on the existence both a "chronic" injury or condition and a "lung disease" to qualify for the exception to the two-year (104) week cap on temporary disability. These two conditions are discussed infra.

CHRONIC CONDITION OR INJURY:

Cal Lab Code section 4616.2(d)(3)(B) defines a serious chronic condition as "a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration."

The applicant originally tested positive for COVID in June of 2020 and was subsequently hospitalized twice for the condition. Applicant experienced well documented residual sequelae from her COVID infection with respect to her respiratory system. She has been evaluated by

[1] Labor Code §4656(c)(3)(I).

internal[2], pulmonology[3], and neurology[4]4 physicians for this injury. She has consistently treated with Dr. Lawrence Miller, her primary treating physician, as recently as June 18, 2025.[5]

The internal pulmonology panel QME, Dr. James Lineback, in his report of November 5, 2024,[6] indicates that her primary complaints are chest pain and shortness of breath. She uses a walker and supplemental oxygen. He diagnoses her with a history of COVID positivity and shortness of breath, use of home oxygen, history of lung nodules and obstructive sleep apnea. Dr. Lineback states that this is a "very complex case that involves two prolonged hospitalizations following COVID positivity." Dr. Lineback finds her to be temporarily totally disabled.

Applicant has consistently sought medical treatment for her ongoing respiratory complaints since her date of injury, up to present. The court finds that Applicant has a "chronic" condition for purposes of Labor Code section 4656(c)(3)(I).

LUNG DISEASE:

Finding that Applicant suffers from a chronic condition, the court addresses whether this chronic condition is a "lung disease" as set forth in Labor Code section 4656(c)(3)(I). Labor Code section 4656(c)(3)(I) refers to various "injuries or conditions" that are not specific diagnoses which must be made by the reporting physician. "For example, amputations, severe burns and high-velocity eye injuries are not medical diagnoses. Chronic lung disease is a general term for a wide variety of persistent lung disorders or long-term respiratory problems including asthma, bronchitis, and pulmonary edema. (see U.S. National Library of Medicine, Medical Encyclopedia.)"[7]

Defendant contends that applicant's admitted respiratory condition does not constitute chronic lung disease, in part, because the evaluating physicians do not use the term "chronic lung disease," and therefore, Applicant is not entitled to up to 240 weeks of TTD per Labor Code section 4656(c)(3)(I). Essentially, Defendant's argument is the specific words "chronic lung disease" must be used in the medical reporting. This would be inaccurate. There are many legal terms or legal descriptions which are determined on a case-by-case basis. The WCAB ruled previously that the WCJ is allowed discretion in the Labor Code § 4656(c)(3) statutory interpretation.[8]

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[2] Applicant's Exhibits 2, 3.
[3] Applicant's Exhibits 1, 6.
[4] Applicant's Exhibits 4, 5.
[5] Applicant's Exhibits 7, 8, 9.
[6] Applicant's Exhibit 6, p. 4-7.
[7] Velez v. Elec. Source Co., (2018) Cal. Wrk. Comp. P.D. LEXIS 368.
[8] *AA Gonzalez, Inc. v. W.C.A.B. (Morfin)* (2009), 74 C.C.C. 760. (high velocity eye injury).

The Board addresses a similar contention in Velez v. Elec. Source Co., 2018 Cal. Wrk. Comp. P.D. LEXIS 368. In Velez, the trial court found that a chronic asthma diagnosis was a "chronic lung disease." The Board agreed, noting that "section 4656(c)(3)(I) refers to various 'injuries or conditions' that are not specific diagnosis which must be made by the reporting physician."

As recently as June 1, 2025, Dr. Miller diagnoses Applicant with "post covid 19 pneumonia/long-hauler syndrome."[9] Dr. James Pearle, the treating pulmonologist, states in his report of May 5, 2025, under the heading "Plan" that he discussed with the patient the status of "their pulmonary disease." Under assessment, Dr. Pearle finds the following conditions present in applicant: post-acute COVID-19, ongoing bronchitis, fevers, cough and chronic bronchitis. Dr. Pearle further comments that Applicant is "not doing well with ongoing bronchitis."[10]

The court determines that the unrebutted evidence supports a finding of "lung disease" under Labor Code section 4656(c)(3)(I).

SUBSTANTIAL MEDICAL EVIDENCE:

The burden of evidence lies with the party having the affirmative on an issue.[11] This party is required to prove the elements by a preponderance of the evidence. Preponderance of the evidence means that when compared to the evidence opposed has a greater likelihood of truth.[12]

Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion.[13] Defendant argues, generally, that the medical reporting in the record is not substantial evidence.

As set forth in McAllister v. WCAB (1968) 33 Cal Comp. Cases 659, the court must accept as true evidence which is neither contradicted nor impeached. Defendants offer no conflicting medical evidence to rebut the medical reports submitted into evidence by Applicant.

In Diaz v. State, 2021 Cal. Wrk. Comp. PD LEXIS 262, the Board granted reconsideration of the issue as to whether Applicant had a "chronic lung disease" within the meaning of Labor Code section 4656(c)(3)(I) and found that further development of the record was necessary to make that determination. In Diaz, the WCJ relied on the applicant's testimony to conclude there

[9] Applicant's Exhibit 9.
[10] Applicant's Exhibit 1.
[11] Labor Code §5705.
[12] Labor Code §3202.5.
[13] LeVesque v. WCAB (1970) ; Braewood Convalescent Hospital v. WCAB (Bolton) (1983) 48 Cal Comp Cases 566.

was "chronic lung disease." However, the Board disagreed and states, "Although it is a legal question whether applicant is entitled to expanded temporary total disability indemnity as set forth in section 4656(c)(3)(I), the question whether he actually has a medical diagnosis of 'chronic lung disease' is a medical question, which requires a medical opinion." Unlike Diaz, the present case is factually distinguishable because the medical reporting relied upon establishes long term treatment for respiratory symptoms, which this WCJ finds to be a "chronic lung disease."

Regarding the medical reports of the primary treating physician, Dr. Miller, defendant contends that the "doctor's assessment is not substantial medical evidence as he does not set forth why the applicant is temporarily totally disabled, his findings and diagnostic impressions are inconsistent and there is no justification for the extended period of temporary disability requested."

The court disagrees. This is an accepted injury as to COVID and respiratory system. The reports of Dr. Miller document continued chronic dyspnea, cough post COVID 19 pneumonia and long hauler syndrome. In his report of May 8, 2023, he finds Applicant still has recurrent bronchitis, increased cough, congestion and mucus. She has been to the emergency room twice and placed on a Z-Pak. On physical examination, he indicates "lungs, scattered rhonchi." His diagnostic impression is "status post-acute SARS-CoV-2 syndrome . . . history of COVID-19 pneumonia with chronic dyspnea and cough."[14] In his report of December 16, 2024, Dr. Miller discusses her increased cough since the withdrawal of authorization of the chest oscillator, causing a deterioration of her pulmonary toilet and cough. She continues to use frequent nebulizers. He reviews an updated CT chest angiogram, dated December 13, 2024, which has new findings.[15]

Additionally, the findings of Dr. James Lineback, PQME and Board-Certified Internal Medicine/Board Certified Pulmonary Medicine, are most persuasive. In his report of November 5, 2024, he concludes, "This is obviously a very complex case that involves two prolonged hospitalizations following covid positivity. Obviously for a complete evaluation, those medical records must be evaluated in detail and the results summarized in a supplemental report. Due to the severity of the patient's symptoms, additional diagnostic testing will be carried out at this time, including formal pulmonary function tests, an upper GI x-rays and a chest CT scan." He indicates

[14] Applicant's Exhibit 7, p. 1-4.
[15] Applicant's Exhibit 8, p. 7.

she is referred back to the treating physicians for continued maintenance of home oxygen and medication refills. Dr. Lineback opines that the Applicant is still TTD.[16]

Although Dr. Lineback does indicate that applicant needs additional diagnostic testing, including a formal pulmonary function test and a chest CT scan, the need for additional testing does not negate the long, well-documented history of post COVID respiratory symptoms suffered by Ms. Sanchez. These additional tests will address the severity of her condition, not a determine whether she has a "chronic lung disease" for purposes of LC §4656(c)(3)(I).

Further, PQMEs in the other specialties bolster the court's conclusion that there is a "chronic lung disease." Neurology PQME Dr. Fortanansce diagnoses Post COVID-19 pneumonia, long covid syndrome with chronic dyspnea. He finds she is not yet at maximum medical improvement and "cardiopulmonary therapy should definitely be continued."[17] Dr. Fortanansce states, "I do not feel that she is exaggerating her symptomology. She is a nurse and appeared to be fairly straightforward in her history."[18]

Internal Medicine PQME Dr. Jonathan Ellis, in his report dated January 25, 2022, under causation, finds industrial causation of "long COVID syndrome." He states that although there is difficulty reconciling the severity of her respiratory dyspnea based on the minimal findings on the resting pulmonary function test, he also explains that this is an increasingly recognized situation in Long COVID Syndrome, with the possible explanations for persistent dyspnea and exercise intolerance including heart and lung problems unrecognized on resting echocardiograms PFTs as well as deconditioning.[19] He further opines in his subsequent report that Applicant is unable to return to work until her respiratory situation is resolved.[20]

The court therefore finds that the trial record does contain unrebutted, substantial medical evidence to establish that that the Applicant's industrial COVID and respiratory injuries constitute a "chronic lung disease."

LABOR CODE 4656(C)(3) LIMITS THE 240 COMPENSABLE WEEKS OF TTD TO FIVE YEARS FROM THE DATE OF INJURY:

[16] Applicant's Exhibit 6, p. 7-8.
[17] Applicant's Exhibit 5, p. 5.
[18] Applicant's Exhibit 4, p. 28.
[19] Applicant's Exhibit 2, p. 82.
[20] Applicant's Exhibit 3, p. 61.

The Defendants correctly assert that Labor Code section 4656(c)(3) indicates that temporary disability shall not extend for more than 240 compensable weeks within a period of five (5) years from the date of injury.

The court finds that the Applicant is entitled to up to 240 compensable weeks of TTD, within a period of five (5) years from the date of injury, June 16, 2020, less the 104 weeks of TTD already paid, within that five-year period.

The issues of the TTD rate and attorney fees on the retroactive TTD are deferred, and the court retains jurisdiction over those issues.

Date: August 14, 2025

Denise Kuper
WORKERS' COMPENSATION JUDGE

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

1.	Date of Injury:	06/16/2020
	Age on DOI:	60 years old
	Parts of Body	Injured: respiratory system and COVID
2.	Identity of Petitioner:	Defendant
	Timeliness:	The petition was filed timely.
	Verification:	The petition was verified.
	Date of Award:	08/14/2025
3.	Petitioners' Contentions:	

A. The WCJ erred in finding that Labor Code 4656 (c)(3)(I) was applicable.
B. The WCJ erred in not allowing credit to defendants for payments of EDD to Applicant.

II. STATEMENT OF FACTS

Petitioner has filed a timely Verified Petition for Reconsideration from the Finding and Award and Order issued August 14, 2025, which found the Applicant has a "chronic lung disease," as set forth in Labor Code section 4656(c)(3)(I), and is therefore entitled to up to 240 weeks of temporary disability. Petitioner contends this WCJ erred in the finding that Applicant has a "chronic lung disease" because it is not based on substantial medical evidence.

The carrier paid 104 weeks of temporary disability, but Petitioner disputed that the injury was a chronic lung disease within the meaning of LC section 4656(c)(3)(I), and thereby refused to extend the provision of temporary disability benefits. On June 25, 2025, the case proceeded to an Expedited Hearing on the issue of temporary disability and Applicant's entitlement of up to 240 weeks of temporary disability. After an additional five days for Petitioner to file a Trial Brief, which it did, the matter was submitted on June 30, 2025. The matter was vacated on July 8, 2025, to allow Applicant to file complete copies of various exhibits. The matter was again submitted on July 21, 2025. A Findings and Award issued on August 14, 2025, finding in favor of the Applicant on the issue. It is from this Finding and Award that the defendant filed its timely Verified Petition for Reconsideration on September 8, 2025.

As discussed hereinafter, Petitioner asserts that the Court erred in its Findings of Fact on the following grounds:

1. That by the Findings of Fact and Opinion on Decision made and filed by the WCJ, the Appeals Board acted without or in excess of its powers;
2. That the evidence submitted does not justify the Findings of Facts;
3. The Findings of Fact do not support the order, decision or award.

Petitioner asserts that reconsideration of the Finding of Fact should be granted because:

A. The WCJ erred in finding that Labor Code 4656 (c)(3)(I) was applicable.
B. The WCJ erred in not allowing credit to defendants for payments of EDD to Applicant.

III
DISCUSSION

THERE IS SUBSTANTIAL MEDICAL EVIDENCE TO SUPPORT A FINDING THAT LABOR CODE 4656 (C)(3)(I) IS APPLICABLE.

Ms. Sanchez worked at Sunflower Gardens, a memory care residential facility, during the height of the COVID pandemic. Although the parties did not stipulate to the Applicant's occupation, the medical records indicate that she worked as a "Health and Wellness Director," working both in a supervisory and hands on capacity with patients.(Exhibit 3, p. 3-4)

Applicant was hospitalized from June 18, 2020, until June 26, 2020, at Mission Medical Center with a COVID-19 infection, complicated by pneumonia. (Exhibit 3, p.6) She continued to get medical treatment for her symptoms, and returns to work in September 2020, but only for approximately one month. Thereafter, she treats with a variety of both workers' compensation and personal physicians. There is reference to a second hospital stay in October of 2021. (Exhibit 3, p. 5-6)

Workers' compensation statutes shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment. (Labor Code § 3202)

In reviewing workers' compensation orders, "substantial evidence" is determined in "light of the whole record."[1] Substantial evidence must be reasonable in nature, credible, and of solid value such that a reasonable mind might accept it as adequate to support a conclusion.[2]

Labor Code section 4656(c) states, *in pertinent part*:

> (c)(2) Aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury.
>
> (c)(3) Notwithstanding paragraphs (1) and (2), for an employee who suffers from the following injuries or conditions, aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury:
>
> (c)(3)(I) Chronic lung disease.

Applicant's request for additional temporary disability is based on this code section, requesting the court find that she has a "chronic lung disease" to qualify for the additional benefits. Unless clearly erroneous, the Board's interpretation of workers' compensation laws is entitled to great weight.[3]

In statutory construction, courts must, if possible, place significance upon every word, phrase, sentence and part of an act to achieve the underlying legislative purpose for a particular statute or legislative scheme. An interpretation making some words surplusage is to be avoided. The statute must always be construed in context, keeping in mind the nature and purpose of the statutory act.[4] When construing the meaning of words in a statute, courts should first look to the plain dictionary meaning of the word unless it has a specific legal definition.[5] Each word, phrase and provision in a statute is presumed to have a meaning and to perform a useful function.[6]

To qualify for up to 240 weeks of temporary disability pursuant to Labor Code section 4656 (c)(3)(I), the injury must be both "chronic" and "lung disease." The court found, based on

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[1] *Levesque v. Workmen's Comp. App. Bd*. (1970) 1 Cal.3d 627.
[2] *Applied Materials v. Workers' Comp. Appeals Bd*. (2021) 64 Cal.App.5th 1042, [1068 [86 Cal.Comp.Cases 331].]
[3] [*Genlyte Group, LLC v. Workers' Comp. Appeals Bd*. (2008) 158 Cal.App.4th 705, 714 [73 Cal.Comp.Cases 6].]
[4] *Gay Law Students Assn. v. Pacific Tel. & Tel. Co*. (1979) 24 Cal.3d 458, 478; *Ceja v. J. R. Wood, Inc*. (1987) 196 Cal.App.3d 1372, 1375-1376 [52 Cal.Comp.Cases 572].
[5] *People v. Knowles* (1950) 35 Cal.2d 175, 182-183; *Rosenfield v. Superior Court* (1983) 143 Cal.App.3d 198, 202.
[6] *Rosenfield v. Superior Court*, *supra*, 143 Cal.App.3d 198, 202; *Mahdavi v. Fair Employment Practice Com*. (1977) 67 Cal.App.3d 326, 334; *Ceja v. J. R. Wood, Inc*. (1987) 196 Cal.App.3d 1372, 1375-1376.

the substantial medical evidence, that the Applicant sustained a chronic lung disease. There is no statutory definition within the statute of "chronic lung disease," and therefore, the court looks to the plain meaning of the words and the statutory context.

A. Definition of "chronic" as used in Labor Code section 4656(c)(3)(I)

Labor Code 4616.2 section (d)(3)(B) pertains to the definition of "chronic" with regard to MPN transfer of care and treatment issues. In this regard, a "serious chronic condition" is defined as a "medical condition due to a disease, illness or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain reemission or prevent deterioration." The same language is used by the Legislature in California Health & Safety Code section 1373.96 (c)(2)(A) which, in part, addresses completion of covered services for health care service plans.

Turning to the AMA Guides, 5th Ed., the term "chronic bronchitis may be used to describe a sputum-producing cough that occurs on most days for at least 3 consecutive months a year for at least 2 consecutive years."[7]

As set forth in the medical reports of Dr. Miller, Lineback and Ellis, Applicant has been treating for post COVID-19 respiratory issues since June of 2020, when she was first diagnosed with the virus. There is substantial medical evidence to support that this falls within both the statutory and the plain common sense meaning of "chronic."

B. Definition of "lung disease" as used in Labor Code section 4656(c)(3)(I).

The second element of this prerequisite to qualify for additional temporary disability is "lung disease." The medical evidence presented supports a finding that Applicant's admitted injuries of respiratory system and COVID-19 are "lung disease."

Panel decisions are not binding precedent on other Appeals Board panels and Workers' Compensation Judges, however, they are citable and are considered to the extent that their reasoning is persuasive. The recent noteworthy panel decision of Isbell v. TC Construction Co., Inc., 2025 Cal. Wrk. Comp. P.D. LEXIS 79, is instructive in the court's interpretation of the term "lung disease." In that case, since there is no definition of "eye injury" in Labor Code section 4656(c)(3)(F), the courts need to fashion a definition that is consistent with the medicine and applicable law to make a finding whether the injury constitutes "high impact eye injury" within the meaning of the statute. Likewise, in the present case, since there is no definition of "chronic

[7] AMA Guides, 5th Ed., p. 89, 5.2b.

lung disease" in the Labor Code, so the court must look to the statutory context and plain meaning of the term.

Per the National Institutes of Health, "lung disease" is not a medical diagnosis, but a broad general term for a category of conditions. It is "any problem in the lungs that prevents the lungs from working properly."[8]

As recently as May 5, 2025, Applicant's treating pulmonologist, Dr. Pearle, reports the Applicant has post-acute COVID-19 syndrome and specifically indicates "she is not doing well with ongoing bronchitis/fevers."[9]

The treating physician reports of Dr. Miller document continued chronic dyspnea, cough post COVID 19 pneumonia and "long hauler syndrome." In his report of May 8, 2023, he finds Applicant still has recurrent bronchitis, increased cough, congestion and mucus. She has been to the emergency room twice and placed on a Z-Pak. On physical examination, he indicates "lungs, scattered rhonchi." His diagnostic impression is "status post-acute SARS-CoV-2 syndrome . . . history of COVID-19 pneumonia with chronic dyspnea and cough."[10] In his report of December 16, 2024, Dr. Miller discusses her increased cough since the withdrawal of authorization of the chest oscillator, causing a deterioration of her pulmonary toilet and cough. She continues to use frequent nebulizers. He reviews an updated CT chest angiogram, dated December 13, 2024, which has new findings.[11]

Additionally, the findings of Dr. James Lineback, PQME and Board-Certified Internal Medicine/Board Certified Pulmonary Medicine, are most persuasive. In his report of November 5, 2024, he concludes, "[t]his is obviously a very complex case that involves two prolonged hospitalizations following covid [sic] positivity. Obviously for a complete evaluation, those medical records must be evaluated in detail and the results summarized in a supplemental report. Due to the severity of the patient's symptoms, additional diagnostic testing will be carried out at this time, including formal pulmonary function tests, an upper GI x-rays and a chest CT scan." He indicates she is referred back to the treating physicians for continued maintenance of home oxygen and medication refills. Dr. Lineback opines that the Applicant is still temporarily disabled.[12]

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[8] Medlineplus.gov; National Library of Medicine/NIH
[9] Applicant's Exhibit 1
[10] Applicant's Exhibit 7, p. 1-4.
[11] Applicant's Exhibit 8, p. 7.
[12] Applicant's Exhibit 6, p. 7-8.

Although Dr. Lineback does indicate that Applicant needs additional diagnostic testing, including a formal pulmonary function test and a chest CT scan, the need for additional testing does not negate the long, well-documented history of post COVID respiratory symptoms suffered by Ms. Sanchez. These additional tests will address the severity of her "chronic lung disease." The court does not find these tests imperative in order to determine the legal definition of a "chronic lung disease" for purposes of Labor Code section 4656(c)(3)(I).

Petitioner raises an "issue" that Dr. Lineback does not use the language "chronic lung disease" (Petition for Reconsideration, p. 5) There is no legal basis to support the position that the exact words "chronic lung disease" must be used in the medical reports in order to meet the exception set forth in Labor Code section 4656(c)(3)(I).

In light of the entire evidentiary record submitted at trial, and there being no contradictory reporting, the court finds that the Applicant's injury is a "chronic lung disease" as set forth in Labor Code section 4656 (c)(3)(I).

C. Additional contentions by Petitioner.

For the first time, in its "statement of material facts," Petitioner raises the issues of the physicians' use of telemedicine evaluations, whether there was an interpreter present in the various exams, and the contention that doctors have not concluded that a possible chronic condition is due to occupational exposure (Petition for Reconsideration, p. 9). Petitioner did not make any legal or factual arguments in support of these contentions. To the contrary, all the medical evidence submitted at trial supports the industrial COVID-19 diagnosis, and on this basis the court finds the Applicant has "chronic lung disease" as set forth in Labor Code section 4656(c)(3)(I).

THE DEFENDANTS ARE NOT ENTITLED TO CREDIT FOR PAYMENTS OF EDD TO APPLICANT.

Petitioner is not entitled to "credit" against its temporary disability benefit liability for the SDI paid by EDD to Applicant, because there was no evidence admitted at trial indicating Defendant reimbursed EDD for this lien. When a defendant reimburses EDD for SDI paid, it is as if EDD never paid those benefits, and instead the payments were actually made to applicant by defendant, i.e. the reimbursement effectively converts the SDI payments into workers' compensation disability indemnity.[13] However, in the present case, Petitioner cannot rely on this

[13] *Salazar v. WTS Int'l, Inc*., 2014 Cal. Wrk Comp P.D. Lexis 160; (Cal. Workers' Comp App. Bd March 10, 2014).

conversion because EDD withdrew its lien and no payment was paid by Petitioner. Petitioner cannot take credit for a payment that was never made.[14]

It is the Petitioner, not the injured worker, which would be "unjustly enriched."

[IV.]
RECOMMENDATION

It is respectfully recommended that the Petition for Reconsideration be denied in its entirety.

This matter was transmitted to the Recon Unit on September 18, 2025.

Date: September 18, 2025

Denise Kuper
WORKERS' COMPENSATION JUDGE

[14] *Richter v. Frontier Communications*, 2024 Cal. Wrk. Comp. P.D. LEXIS 20, 89 Cal. Comp. Cases 381; See also, Lab. Code, §§ 4903(f), 4904(b)(2).