

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

GUILHERME GUIMARAES, *Applicant*

vs.

**COUNTY OF LOS ANGELES, permissible self-insured,
administered by SEDGWICK, *Defendants***

**Adjudication Numbers: ADJ17819410; ADJ17819411
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of the “Joint Findings and Award” (F&A) issued on March 18, 2025, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant was entitled for salary continuation benefits under Labor Code section 4850 for two separate injuries. The WCJ further found that such benefits overlapped, in part, but awarded 4850 benefits for the non-overlapping portion in the second claim.

Defendant contends that the WCJ erred in awarding a separate period of 4850 benefits because the award is not justified by the evidence.

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ’s Report. Based on our review of the record and for the reason stated in the WCJ’s March 18, 2025 Opinion on Decision as quoted below and for the reason stated in the WCJ’s Report as quoted below, we will deny the petition for reconsideration.

DISCUSSION

I.

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.

(§ 5909.)

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 May 6, 2025, and 60 days from the date of transmission is Saturday, July 5, 2025, which by operation of law means this decision is due by Monday, July 7, 2025. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on July 7, 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 and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on May 6, 2025, and the case was transmitted to the Appeals Board on May 6, 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 May 6, 2025.

II.

Per the WCJ's Opinion on Decision:

These consolidated matters have returned to the undersigned following development of the record with IME Luciano. Applicant has testified on his own behalf. Following conclusion of testimony, the matter was submitted for decision, and Findings and Award issued on February 6, 2024. Responsive thereto, defendant filed a Petition for Reconsideration, alleging in part that additional evidence not originally available should be considered. The Court agreed and rescinded the Findings and Award by Order dated March 8, 2024. The matters were heard at conference, and then went off-calendar for further development of the record. These cases returned to the trial calendar following that additional discovery, and additional evidence was taken into the record. The parties were given an opportunity to and did file additional posttrial briefs, and the matter was taken back under submission as of January 6, 2025.

The instant matter concerns payment of Labor Code §4850 benefits - as stipulated by the parties, applicant is a firefighter, which entitles him to §4850 benefits in lieu of temporary disability for a period of up to one year. Essentially, applicant claims entitlement to §4850 benefits for the period from October 10, 2023 to the present and continuing. As evidenced by the Benefit Printout, admitted into evidence as defendant's exhibit "D", defendant has allegedly paid applicant full salary §4850 benefits from October 10, 2022 through October 9, 2023, but then switched to payment of "state rate" temporary disability benefits as of October 10, 2023.

Applicant claims that from October 10, 2023 to the present and continuing, he has been off work on case ADJ17819410 (hereinafter the "cumulative trauma case") for a separate and independent reason from his earlier year of §4850 pay on case ADJ17819411 (hereinafter the "specific injury case"), and that he is therefore still entitled to receive §4850 benefits. Defendant argues that applicant's disability is concurrent, that Dr. Luciano has not sufficiently differentiated the causes of disability, and that for this reason, defendant need not continue to pay §4850 benefits in excess of the one year for which applicant already received them on the specific injury case.

Following the rescission of the prior F&A, the parties twice deposed Dr. Luciano and sought clarification as to the periods of applicant's temporary disability, the body parts involved in each case, and the reasons therefor.

The parties have now stipulated that as concerns (CT) case ADJ17819410, applicant, Guilherme Guimaraes, while employed during the period December 19, 2014, to June 12, 2023, as a firefighter, Occupational Group Number 490, at Los Angeles, California, by the County of Los Angeles, sustained injury arising out of and in the course of employment to right wrist and left upper extremity.

The parties have additionally stipulated that as concerns (SI) case ADJ17819411, applicant, Guilherme Guimaraes, while employed on September 1, 2022, as a firefighter, Occupational Group Number 490, at Los Angeles, California, by the County of Los Angeles, sustained injury arising out of and in the course of employment to left shoulder and left elbow. Although portions of the left upper extremity are now implicated in both cases, these cases do involve distinct mechanisms of injury.

Applicant testified that prior to the filing of his cumulative trauma claim in case ADJ17819410, he did not receive any treatment for his hand. Prior to the filing of his claim, a doctor never took him off of work because of his hand, nor did a doctor give him any work restrictions for it. He had surgery on his hand on September 29, 2023, and he was taken off of work for that reason. As of the time that he offered his testimony, he remained off of work. Applicant reiterated on cross examination that Dr. Velios did not treat his hand. He testified that other doctors had looked at it and told him that if it were to become painful, he could see a hand specialist, but that no affirmative steps were taken to treat the hand. Applicant's testimony was credible, un rebutted, and is corroborated by the medical evidence admitted into the record.

The parties have since offered the September 10, 2024 report of Dr. Luciano into evidence. Per this report, Dr. Luciano re-evaluated applicant on August 19, 2024. Again, according to the report, applicant apparently returned to work in May of 2024 and was still working at the time of the August 19, 2024 evaluation. Dr. Luciano found that applicant had not yet reached maximum improvement for either injury. Per this report, although the actual date is unknown to the Court, applicant would not be entitled to any form of temporary disability benefit following his return to work.

LABOR CODE §4850 BENEFITS

Labor Code §4850 provides:

“Whenever any person listed in subdivision (b), who is employed on a regular, full-time basis, and is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments, if any, that would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she *is* retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.”

Although the parties did not stipulate as such, the Court has evidence in the form of the benefit printout that defendant paid §4850 benefits continuously from October 10, 2022 through October 9, 2023, at which point, defendant transitioned to payment of “state rate” benefits. The parties did not submit contemporaneous medical evidence demonstrating applicant’s entitlement to that earlier period of §4850 pay.

Per the medical records submitted, the chronology is thus: Applicant first saw Dr. Luciano for evaluation of his CT hand injury on August 10, 2023. At that time, and as reflected on page 2 of the report, applicant was “currently off work due to another work-related event.” Under the work status section on page 15, Dr. Luciano notes that applicant was “currently not working”, and then provides temporary work restrictions specifically related only to the right hand. Clearly, Dr. Luciano was aware of applicant’s TTD status from his other claim, and he did not believe that applicant’s hand independently rendered him temporarily totally disabled.

Applicant first saw Dr. Simic for consultation regarding his hand on August 24, 2023. As Dr. Simic related in that report, applicant was “off-work for left shoulder surgery.” Dr. Simic felt that applicant was indicated for hand surgery and requested authorization for same. The work status section of this report states, “return to work normal duty on: 08/24/23”. It is therefore apparent that as of this initial evaluation, prior to the authorization of the surgery, Dr. Simic did not find applicant to be TTD as a result of his hand.

The surgery was authorized by utilization review on September 1, 2023. Applicant returned to Dr. Simic on September 21, 2023, at which point he was scheduled for surgery on September 29, 2023. That report also states that applicant was “off-work for left shoulder surgery.” The work status section of this report states, “Do not return to work.”

In deposition, the parties spent significant effort seeking clarification from Dr. Luciano as to the involved body parts and the reasons for applicant's temporary disability. Dr. Luciano opines that once Dr. Velios took applicant off of work in October of 2022, this was the result of the pre-operative and then post-operative state of applicant's left shoulder. Dr. Luciano clarifies that although applicant did receive treatment for his left elbow during this time period, the elbow was not causative of applicant's TTD status during that time period.

As to the elbow, Dr. Luciano explained that the applicant had both epicondylitis, and a tear of the collateral ligament. He attributes the epicondylitis to the cumulative trauma, and the tear to the specific acute injury.

Dr. Luciano's subsequent September 10, 2024 report does not really offer additional explicit clarity as to the TTD periods, but it does provide critical contextual information. On page 3 of the report, Dr. Luciano notes that applicant underwent elbow surgery "following left shoulder surgery for the specific September 1, 2022 event ... " Thus, although the left upper extremity is involved in the cumulative trauma case, the shoulder surgery which caused applicant's TTD status was the result of applicant's specific injury case.

Further, Dr. Luciano's review of medical records provides additional context with respect to the elbow injuries. On page 8 of his report, Dr. Luciano reviews a January 4, 2024 report of Dr. Velios. Dr. Velios states that applicant has "persistent left elbow pain secondary to lateral epicondylitis and partial thickness common extensor tendon tearing."

Then, on January 12, 2024, Dr. Velios performs surgery on applicant's left elbow, described as "Left elbow lateral epicondylitis debridement, and common extensor tendon repair." From this point forward, through his June 3, 2024 report, Dr. Velios finds applicant to be TTD from his elbow surgery. Thus, applicant's TTD status from his elbow surgery is attributable to both cases. The Court lacks more explicit evidence of the date that applicant actually returned to work, but this information is clearly ascertainable by and available to the parties.

These distinctions are relevant because defendant is arguing that the involvement of common body parts across both cases necessarily obviates the need to pay \$4850 benefits for the cumulative trauma case.

The Court does not agree with defendant's position. The litigation regarding the possibility of concurrent and overlapping disability results from the interpretation and application of Labor Code §4656(c)(1), which provides as follows:

"Aggregate disability *payments for a single injury* occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 104 compensable weeks within a period of two years

from the date of commencement of temporary disability payment.”
(*emphasis added*).

In the seminal case of *Foster v. Workers’ Comp. Appeal Bd.*, 73 Cal. Comp. Cases 466, this was interpreted to mean that if an applicant became concurrently temporarily disabled as the result of more than one injury, the 104 week maximum period allowed as the result of each injury would run concurrently for the time period that both injuries were responsible for applicant’s disabled status. As mentioned in *Foster*, the purpose of temporary disability benefits is to replace lost earnings, not to compensate for an incapacity to work and for physical impairment. Therefore, if an injury has rendered an applicant temporarily unable to work, to fulfill that purpose and replace the lost earnings, TD or equivalent benefits should ordinarily be payable to the applicant.

The focus here is the time period of disability. In *Foster*, the applicant suffered two injuries, and then became temporarily disabled following the second injury, but as the result of both injuries together. Thus, there was one time period of disability, caused by both injuries together. Each single injury was simultaneously and concurrently responsible for aggregate disability payments of 104 weeks. By this logic, the WCAB determined that the maximum 104 weeks should also run concurrently, *because each individual injury was causing temporary disability for the same period of time*. The same logic has been applied to cases involving §4850 pay, wherein applicant receives full pay for a period of up to one year, and then thereafter becomes entitled to continued TTD benefits at the lesser “state rate”.

This concept and why the instant case is distinguishable from it can best be understood if one thinks of each case as possessing an hourglass with a maximum 104 weeks of benefits within, represented by the grains of sand. Once an injury begins to cause temporary disability, its hourglass is overturned, and benefits are payable for the duration of its runtime. If a separate injury begins to simultaneously cause temporary disability, its hourglass is also overturned. The applicant does not gain extra financial benefit from the second overturned hourglass; both cases simply exhaust their supply of maximally available benefits at the same time. Once a single injury has caused temporary disability for 104 weeks, the available “benefits sand” is exhausted. Even if the injury continues to cause temporary disability and the hourglass remains overturned, there are no more benefits available to be paid. If, as was the case in *Foster*, the time completely overlaps, then both hourglasses exhaust their supply of benefits at the same time, and no more benefits are available.

That is not what has happened in the instant cases. Continuing with the same analogy, but substituting a maximum one year period of §4850 pay per case, in the instant cases, applicant underwent shoulder surgery as the result of his specific injury case and became temporarily disabled for that reason as of October 09, 2022. At that point, the §4850 hourglass for the specific injury case overturned. Independently, as the result of the cumulative trauma case, Dr. Luciano found

applicant TPD for his hand as of August 10, 2023. On that date, the §4850 hourglass for the cumulative trauma case overturned, creating a period of concurrent TTD for both cases as of August 10, 2023.

On October 10, 2023, the §4850 sand in the hourglass of the specific injury case was exhausted. However, applicant continued to be temporarily totally disabled as the result of his hand surgery, which was necessitated by the cumulative trauma case. Thus, with §4850 sand still available in the hourglass of the cumulative trauma case, §4850 benefits should still have been payable to applicant.

The same logic applies vis-a-vis applicant's left elbow. Even though the elbow was involved in both claims, the first time period of disability beginning October 9, 2022 was caused by the specific injury alone, to applicant's shoulder alone. Even though the specific injury contributed to the need for the left elbow surgery on January 12, 2024 and was already exhausted for purposes of §4850, the cumulative trauma case also contributed to the need for the left elbow surgery. As benefits still remained in the hourglass of the cumulative trauma case, §4850 benefits were still due.

Again, this is because concurrency of benefits is determined by *the time period of disability* and reason therefor, rather than the parts of body involved in each case. This interpretation is consistent with the wage replacement public policy behind the payment of temporary disability benefits, as well as the mandate per Labor Code §4656(c) that an applicant cannot receive more than 104 weeks of benefits for a *single injury*.

To decide in the alternative, as defendant requests, that because applicant injured his elbow, twice, he is disqualified from receiving additional §4850 benefits, is to defeat the wage replacement public policy behind temporary disability. The Court does not see the logic in this approach. Per the statute and decisional authority, the applicant's entitlement to §4850 pay is per claim. To the extent that applicant's disability from the cumulative trauma case overlaps with his earlier disability from the specific injury case, defendant will not be required to pay §4850 benefits for the overlapping period, but this does not re-characterize the earlier period as counting against the year of potential entitlement to §4850 benefits otherwise applicable to a separate case.

Pursuant to Labor Code §4850 and decisional authority in *City of Lompoc v. WCAB (writ denied)*, 49 Cal. Comp. Cases 248, and *City of Montclair v. WCAB (writ denied)*, 66 Cal. Comp. Cases 899, applicant is separately and independently entitled to §4850 benefits as the result of each claim. In accordance with *Cardoza v. County of Alameda*, 2018 Cal. Wrk. Comp. P.O. LEXIS 279, for those periods during which applicant is concurrently disabled from multiple injuries, applicant is not separately entitled to §4850 pay. In the instant case, there is evidence of temporary partial disability as the result of applicant's hand injury as of

August 10, 2023, thus, there is a period of concurrent disability beginning as of August 10, 2023.

The concurrent disability counts against the 52 week §4850 maximum for the cumulative trauma case for a period of 61 days, which is the length of time from August 10, 2023 through the date of exhaustion of the specific injury case §4850 benefits on October 9, 2023. This then leaves a maximum of 304 days of §4850 benefits separately available for the cumulative trauma case. Were applicant to have received §4850 benefits continuously beginning on October 10, 2023, such benefits would have exhausted on August 8, 2024. The medical record demonstrates that there was evidence of continuous TTD status from October 9, 2022 until applicant's return to work in May or June of 2024. Although applicant's actual return to work date is unclear, it is certain that he would have been entitled to such benefits from October 10, 2023 through his return to work following elbow surgery.

Per the opinion of IME Dr. Luciano, the Court finds that applicant's entitlement to §4850 benefits as a result of his cumulative trauma injury in case ADJ17819410 commenced on August 10, 2023. This partially overlapped with applicant's entitlement to §4850 benefits as a result of specific injury case ADJ17819411. Thus, there is a period of overlap from August 10, 2023 - October 09, 2023 which will count against the maximum one year of entitlement to §4850 pay in both cases. However, as a result of his continuing disability from cumulative trauma injury case ADJ17819410, applicant is entitled to §4850 benefits from October 10, 2023 until his return to work from elbow surgery in May or June of 2024, the actual period of which is to be adjusted by and between the parties with jurisdiction reserved over any dispute.

(Opinion on Decision, March 14, 2025, pp. 1-9.)

We adopt the following portion of the WCJ's Report:

At trial, and again on reconsideration, defendant essentially argued and continues to argue that because there is a common part of body between the two claims, once defendant had paid 52 weeks of §4850 benefits on the first claim, applicant became disqualified from any additional §4850 benefits on a second claim. The Court found that the existence of common body parts on two separate claims was not determinative of applicant's entitlement to §4850 benefits, and that the deciding factor as to applicant's entitlement is the time period of disability. The Court found that although there was a period of overlapping disability between the two claims for which benefits ran concurrently, the continuity of disability from the older injury did not disqualify applicant from §4850 benefits when such benefits were still otherwise independently available on the second case.

Defendant has filed a timely verified petition for reconsideration of the Findings and Award. Petitioner alleges that applicant failed to meet his burden of proof as to TTD status, and that the existence of common body parts between the claims should disqualify applicant from benefits on his second claim.

...

As set forth *supra*, it is not true that applicant did not meet his burden of proof regarding disability; as discussed in detail in the Court's opinion on decision, the record contains ample and substantial evidence of applicant's TTD status, as well as the specific medical reasons to which that status is attributed.

...

Although applicant had one continuous period of temporary disability, the record demonstrates that the disability was attributable to different causes. First, on October 9, 2022, applicant undergoes left shoulder surgery as the result of his *specific injury*. The elbow was not causative of applicant's TTD status during that time period. Then, as of August 10, 2023, applicant becomes TPD for his hand as the result of the cumulative trauma injury, then has surgery for the hand on September 29, 2023, becoming independently TTD for that reason. Then, on January 12, 2024, Dr. Velios performs surgery on applicant's left elbow, and applicant becomes TTD from his elbow surgery, attributable to both cases, as pathology from each case was addressed concurrently. Then, in May or June of 2024, applicant returns to work. The medical record demonstrates that there was evidence of continuous TTD status from October 9, 2022 until applicant's return to work in May or June of 2024. Although applicant's actual return to work date is unclear, it is certain that he would have been entitled to such benefits from October 10, 2023 through his return to work following elbow surgery.

(WCJ's Report, pp. 2-7.)

Accordingly, we deny defendant's petition for reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's petition for reconsideration of the Joint Findings and Award issued on March 18, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 7, 2025

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

**GUILHERME GUIMARAES
STRAUSSNER SHERMAN LONNÉ TREGER HELQUIST KRUPNIK
COUNTY OF LOS ANGELES, COUNTY ATTORNEY'S OFFICE**

EDL/mc

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