WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ISAAC TORRES, *Applicant*

vs.

COUNTY OF FRESNO, permissibly self insured;
administered by ACCLAMATION INSURANCE MANAGEMENT SERVICES,
Defendants

Adjudication Numbers: ADJ17584970, ADJ17584971
Fresno District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Joint Findings of Fact, Order, and Opinion on Decision (F&O) issued on October 1, 2025. The workers' compensation administrative law judge (WCJ) found that applicant was not entitled to benefits outlined in Labor Code section 4850[1] for attending two Qualified Medical Evaluator (QME) evaluations.

Applicant argues that full wage replacement outlined in section 4850 is required for qualified individuals in lieu of temporary disability indemnity for attending a medical legal evaluation pursuant to section 4600(e)(1). Applicant argues that qualified individuals need not show disability because disability is not required for payment of temporary disability indemnity in section 4600(e)(1) and section 4850 benefits are a replacement for temporary disability for safety officers.

Defendant filed an answer. The WCJ filed a Report and Recommendation (Report) recommending denial of the Petition.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report. Based on our review of the record, and for the reasons stated in the

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

WCJ's Report and Opinion, which are both adopted and incorporated herein, we will deny reconsideration.

FACTS

Applicant, while employed during the period of December 15, 1997 to January 26, 2023, as a deputy sheriff by the County of Fresno sustained an injury arising out of and in the course of his employment to the right kidney. He also sustained a second cumulative injury during the period of December 15, 1997 through February 24, 2023, in the form of bilateral inguinal hernias. (Minutes of Hearing (MOH) pp. 2-3.)

The QME in this matter evaluated applicant for both claimed injuries on two occasions, August 24, 2023 and March 21, 2024. (MOH, 3:24-25.) The parties stipulated that applicant was not labor disabled at the time of either QME evaluations. (MOH, 4:7-8.) They also stipulated that defendant paid benefits to applicant at the regular temporary disability rate for August 24, 2023 and March 21, 2024. (MOH, 3:15-16.)

Trial went forward on September 8, 2025 without any additional exhibits or testimony. The only issue presented for trial was whether applicant is entitled to section 4850 benefits for attending QME evaluations on August 24, 2023 and March 21, 2024.

The WCJ issued an F&O finding in pertinent part that applicant is not entitled to section 4850 benefits for attending QME evaluations with James Sherman, M.D., on August 24, 2023 and March 21, 2024.

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:

> (2) 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 October 8, 2025 and 60 days from the date of transmission is Saturday, December 7, 2025. The next business day that is 60 days from the date of transmission is Monday, December 8, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, December 8, 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.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on October 8, 2025, and the case was transmitted to the Appeals Board on October 8, 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 October 8, 2025.

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that: Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

II

In addition to the analysis outlined in the Opinion and the Report incorporated hereto, we add the following analysis.

Section 4600 (e)(1) provides that where an employee submits to an evaluation, they are entitled to all reasonable expenses incident to the reporting for the evaluation including, "one day of temporary disability indemnity for each day of wages lost in submitting to the examination." (Lab. Code, § 4600 (e)(1).) However, the employer's liability for payment outlined in section 4600 is a medical legal cost, not an ongoing obligation to pay temporary disability while seeking treatment. (*Department Of Rehabilitation v. Workers' Comp. Appeals Bd.* (*Lauher*) (2003) 30 Cal.4th 1281, 1294 - 1295 [68 Cal.Comp.Cases 831].) Hence, despite the reference to temporary disability indemnity, the reference is not to the disability benefit, but rather the exact rate at which one is reimbursed for the financial loss suffered, if any, incidental to submitting to an evaluation.

The court in *Meeks Building Center v. Workers' Comp. Appeals Bd.* (*Najjar*) (2012) 207 Cal.App.4th 219 [77 Cal.Comp.Cases 615]) compared the medical legal expense paid at the temporary disability rate outlined in section 4600(e)(1) to an ongoing temporary disability benefit. The court noted:

> The costs and expenses incurred incidental to the production of a medical report to prove or disprove a contested claim are medical-legal expenses. (§ 4620, subd. (a).) There is no requirement that an employee be disabled in order to qualify for medical-legal benefits. There need not even be a finding of an industrial injury for the worker to qualify for these benefits, as even "an unsuccessful claimant for workers' compensation benefits may recover medical-legal costs." (*Public Employees' Retirement System v. Workers' Comp. Appeals Bd.* (1978) 87 Cal.App.3d 215, 223 [151 Cal. Rptr. 35]; see *Perrillo v. Picco & Presley* (2007) 157 Cal.App.4th 914, 931 [70 Cal. Rptr. 3d 29].) Medical-legal expenses are distinct from temporary disability indemnity benefits. (*See Avalon Bay Foods v. Workers' Comp. Appeals Bd.* (1998) 18 Cal.4th 1165, 1175–1178 [77 Cal. Rptr. 2d 552, 959 P.2d 1228] (Avalon).) Medical-legal expenses are litigation expenses for the purpose of resolving a contested claim, not substitute wages during a period of incapacity. (*American Psychometric Consultants, Inc. v. Workers' Comp. Appeals Bd.* (1995) 36 Cal.App.4th 1626, 1631, fn. 1 [43 Cal. Rptr. 2d 254]; *Livitsanos v. Superior Court*, (1992) 2 Cal.4th 744 at p. 753; *Gamble v. Workers' Comp. Appeals Bd.* (2006) 143 Cal.App.4th 71, 79.)

(*Id*. at p. 226.)

Temporary disability, on the other hand, is intended to replace wages during the healing period and is therefore tied to an employee's incapacity to work and ends when they return to work

or become permanent and stationary. (*Id.* at 224-225, *Skelton v. Workers' Comp. Appeals Bd.* (2019) 39 Cal.App.5th 1098 [84 Cal.Comp.Cases 795]; *Lauher, supra*, 30 Cal.4th 1281.) Accordingly, reimbursement for medical legal costs, though payable at the temporary disability rate, have been excluded from caps on temporary disability or triggers for the duty to pay other benefits such as permanent disability. (*Najjar, supra*; *Skelton, supra.*) Further, in *Lauher*, *supra*, the court noted that the benefit in 4600(e)(1) for temporary disability indemnity would be paid for attending a medical legal evaluation, but would not be paid for medical treatment where no ongoing obligation for temporary disability was found. (*Id.* at p. 1294.) Thus, the medical legal cost under section 4600(e)(1) is not the equivalent of the temporary disability benefit.

Section 4850 states, in relevant part:

> 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 the person's duties, the person shall become entitled, regardless of the person's 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 the person is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(Lab. Code, § 4850(a).)

Section 4850 is paid in lieu of temporary disability benefits when the qualifying employee is incapacitated from work. The notion that benefits under section 4850 are comparable to temporary disability was reaffirmed in *County of Alameda v. Workers' Comp. Appeals Bd.* (*Knittel*) (2013) 213 Cal.App.4th 278 [78 Cal. Comp. Cases 81], which held that payments of section 4850 benefits were in fact credited toward the caps on temporary disability outlined in section 4656. Thus, section 4850 benefits replace temporary disability benefits only where there is an incapacity to work.

Therefore, it is established that temporary disability benefits and the medical legal cost paid at the temporary disability rate are two distinct concepts; one is a benefit, and the other is a litigation cost. There is simply no authority that section 4850 benefits replace temporary disability without a showing of disability or incapacity to work. In this case, the parties have stipulated that

applicant was not incapacitated from work, therefore he is not owed section 4850 benefits in lieu of payment at the temporary disability rate pursuant to section 4600(e)(1).

Accordingly, applicant's Petition for Reconsideration is denied.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 8, 2025

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

ISSAC TORRES
DANIEL EPPERLY
DUNCAN CASSIO

TF/md

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION – TRANSMITTAL DATE: 10/8/25

I
INTRODUCTION

1. Applicant's Occupation:	Deputy Sheriff
Age at Injury:	50
Date of Injury:	12/15/97 to 1/26/23
Parts of Body Alleged Injured:	Right kidney
Manner in Which Injury Alleged Occurred:	Kidney Cancer
2. Identity of Petitioner:	Applicant
Timeliness:	The Petition was timely filed on 10/3/25
Verification:	The Petition is Verified.
3. Date of Award:	10/1/25

4. Petitioner contends:
    a. This Court was wrong deciding Applicant was not entitled to 4850 pay for attending two QMEs in this case.

II
FACTS

Applicant attended QME evaluations with James Sherman, MD on 8/24/23 and 3/21/24. Dr. Sherman evaluated Applicant for both cases. Applicant was not labor disabled at the time of both QMEs with Dr. Sherman.

Applicant's temporary disability rate is $1619.00. Applicant's 4850 rate is $2149.00. Applicant was paid his temporary disability rate of $1619.00 on 8/24/23 and again on 3/21/24 when he was evaluated by QME Dr. Sherman.

III
DISCUSSION

LC 4600(e)(1) and the California Supreme Court case of Department of Rehabilitation/State of California v. WCAB (Lauher) (2003) 68 CCC 831, 840-841 confirm Applicant is not entitled to 4850 benefits for attending the QMEs at issue. This statute and case explain the temporary disability paid to an injured worker to attend a QME is not meant to replace an employee's wages for time away from work. Instead, the benefit is a medical-legal benefit, reimbursing the employee for his or her time when he or she is requested to submit to a medical examination to resolve a compensation claim.

LC 4850 provides salary continuation in lieu of temporary disability for qualifying peace officers who are disabled due to a work injury. LC 4600(e)(1) provides compensation specifically

for time spent attending medical evaluations, which is characterized as a medical-legal benefit rather than temporary disability in the traditional sense. Therefore, LC 4600(e)(1) benefits and LC 4850 benefits are different types of benefits with different intended purposes.

LC 3202 is not applicable to the present dispute. There is no inconsistency between LC 4600(e)(1) and LC 4850 in this case. The parties stipulated Applicant was not labor disabled at the time of both QMEs at issue. Although Applicant may have missed work to attend the QMEs, he did not lose any wages due to his salary. Therefore, the intended purpose of LC 4850 does not apply. Applicant was paid the full amount of medical-legal benefits he was entitled to receive for attending the Dr. Sherman QMEs.

IV
RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

WILLIAM R MCCLELLAND
Workers' Compensation Judge

Date: 10/8/25

OPINION ON DECISION

Labor Code Section 4600(e)(1) provides that an applicant is entitled to one day of temporary disability indemnity for each day of wages lost in submitting to a medical examination. An employee who misses work to attend a medical evaluation is entitled to one day of temporary indemnity, and not a full day's lost wage. (Mead v. Diamond International Corp (1974) 39 CCC 1 (appeals board en banc). The California Supreme Court has noted that this benefit is not a broad obligation to pay temporary disability indemnity to replace an employee's wages for time away from work. Instead, the benefit is a medical-legal benefit, reimbursing the employee for his or her time when he or she is requested to submit to a medical examination to resolve a compensation claim. (Department of Rehabilitation/State of California v. WCAB (Lauher) (2003) 68 CCC 831, 840-41.

In County of Nevada v. WCAB (Lade), the Court of Appeal held that a person who has returned to work, even on modified duty, is not entitled to LC 4850 benefits. The court found nothing in LC 4850 that guarantees a worker anything when he or she is no longer on leave of absence and instead is back at work. Moreover, it found nothing in LC 4850 that reasonably could be understood to mean that a leave of absence is anything less than being absent from employment. The court concluded that a leave of absence is a prerequisite of the no-loss-of salary provision in LC 4850. So the court held that the employee was not entitled to shift differential as part of the LC 4850 benefits while working modified duty. (County of Nevada v. WCAB (Lade) (2014) 79 CCC 123.

However, in Hoffman v. County of Butte Probation Department, 2020 Cal. Wrk Comp. P.D. LEXIS 333, the appeals board held that a probation officer was entitled to LC 4850 benefits when she was temporarily partially disabled and worked modified duty four hours a day. The board distinguished *Lade*, noting that in that case, the applicant returned to full-time work at a different shift that resulted in a loss of differential pay. But the current case involved an applicant who was absent from her employment four hours per day. The board concluded that the applicant was entitled to LC 4850 benefits while temporarily partially disabled and away from her employment until she was able to return to full work duties, was deemed to have achieved maximum medical improvement (MMI) or the one-year limit expiration.

The above two cases establish that a leave of absence or loss of salary are prerequisites to receiving LC 4850 benefits. At the time of the QME evaluations at issue, Applicant was not labor disabled. Applicant was not on leave of absence, nor is there any evidence he was losing any salary. Therefore, pursuant to the express language in LC 4600 and LC 4850, the only compensation available to Applicant for attending the QME evaluations was medical-legal benefits as set forth in LC 4600(e)(1).

Moreover, LC 4600(e)(1) benefits and LC 4850 benefits are different species of benefits. The California Supreme Court has explained LC 4600 (e)(1) is a medical legal expense in *Lauher, supra*. The two appeals board cases clearly establish that LC 4850 benefits are intended to prevent any loss of salary. No evidence has been presented that Applicant lost any salary for attending the QME evaluations at issue.

Lastly, LC 3202 is not applicable to the present dispute. Applicant was paid the full amount of benefits he was entitled to receive for attending the QME evaluations with Dr. Sherman. A liberal interpretation of workers' compensation statutes does not include re-writing the express provisions of the laws at issue.

DATE: 10/1/25

William R McClelland
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE