

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

**MIGUEL RAMOS, *Applicant***

**vs.**

**SPACE EXPLORATION TECHNOLOGIES, permissibly self-insured,  
administered by CORVEL CORPORATION, *Defendants***

**Adjudication Number: ADJ16720202  
Van Nuys District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Defendant Space Exploration Technologies (SpaceX) seeks reconsideration of the July 15, 2025 Amended Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant, in relevant part, is entitled to temporary total disability from October 24, 2022 to May 3, 2023 at the indemnity rate of \$1,471.47 less credit for indemnity paid or amounts paid by EDD, and less attorney's fees.

Defendant contends that (1) the finding that the modified work offer was invalid for failing to be presented exclusively through applicant's attorney is contrary to the law and constitutes legal error, and (2) the period and applicable rate of temporary disability were arbitrarily applied.

We received an answer from applicant Miguel Ramos. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we grant reconsideration to amend the July 15, 2025 Amended Findings and Order to add that defendant failed to offer regular, modified, or alternative work, thereby entitling applicant to temporary disability.

## FACTS

Per the WCJ's Opinion on Decision:

Employer has admitted injury to the right knee only. Applicant has not returned to work since 07/10/2022. Applicant received short-term disability through 10/24/2022.

Applicant was provided a "medical leave of absence" from July 2022 into December 2022. The parties have agreed that there is an admitted, cumulative trauma September 11, 2020, through July 9, 2022 to the right knee.

There is dispute as to the other claimed body parts. Decision on these is deferred and discovery is ongoing.

Permanent disability and penalties are deferred.

When first claimed, the Applicant was sent to Dr. Borden. The parties reference Dr. Borden's report of 10/24/2022 (Exhibit K), which noted restrictions of no squatting, kneeling, climbing, and no walking for a period greater than 15 minutes. There is no exhibit indicating written letters of an offer of modified duties until 01/20/2023 (Exhibit I). Applicant testified that he did not have access to emails as he did not have access to his work computer. The record does not indicate that Applicant Counsel was provided a copy of the 01/20/2023 letter.

However, the Personnel File (Exhibit D) records do show attempts 10/28/2022 to discuss "reasonable accommodations" at a "@spaceex.com" email account and a "@yahoo.com" account (the applicant counsel was not included). In Exhibit D, page 10/41, The Applicant does respond from the "@yahoo.com" on 12/27/2022 that he is off work. The letter attached is blanked out. There is acknowledgement that the document indicates he is medically "off work" (Exhibit D, page 13/41).

There is an injury denial letter of 11/04/2022 (Exhibit A). At this point, the applicant may be evaluated by a doctor of his choosing. There is no 4600 letter advising of such offered as an exhibit. The letter does not include information that the Applicant Counsel was provided a copy of the denial notice although Applicant was represented since 09/22/2022.

It is also noted that the Carrier denied the CT to psyche. The knee injury is not denied.

The witness Ana Rivera was tested as to reliability as to testimony as she is a SpaceX employee, subpoenaed to testify on behalf of the employer. The testimony provided and responses to questions under oath before the Judge are deemed reliable. The judge felt the 02/24/2025 testimony held veracity.

The witness confirmed that the employer could have accommodated the restrictions set forth by Dr. Boden. However, the parties did not complete the interactive process due to a 12/01/2022 Carnegie, MD off work slip.

Review of Exhibit D the Personnel Records page 30 of 41 in HR internal emails within the personnel record, indicates review of the report taking the Applicant off work into March 2023.

Redacted portions of the medical record have now been identified as Exhibit D1 [sic]. This is the medical report of Dr. Carnegie dated 12/01/2022 with a medical release from work through 03/01/2023.

Although the Applicant had an admitted workers compensation claim as to the right knee and had an off-work slip, the Employer, through its third party administrator, failed to provide evidence of benefit notices as to the entitlement to benefits per Title 8 CCR § 9810 (Exhibit I, Exhibit D) There was no notice of termination of benefits from Corvel, or SpaceX.

As the Applicant Counsel was not provided information as to the notice of termination of benefits, and Applicant was not provided benefits, and was not provided information as to the alternative work, the Employer did not allow the applicant proper representation, and was not properly advised as to rights or obligation.

The Employer did not provide adequate notice to the Applicant of the offer of any modified duties as it did not notify the Applicant's Attorney.

Applicant Counsel has responsibly pursued the TTD benefits and is entitled to fees from the accrued amounts at 15%.

The benefits are due, less 15% attorney's fees. (Opinion on Decision dated July 15, 2025.)

## **DISCUSSION**

### **I.**

Former Labor Code section 5909<sup>1</sup> 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. (§ 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.

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<sup>1</sup> All statutory references are to the Labor Code unless otherwise indicated.

(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 2, 2025, and 60 days from the date of transmission is December 1, 2025. This decision is issued by or on December 1, 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 August 12, 2025, and the case was transmitted to the Appeals Board on October 2, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on October 2, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does

not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on October 2, 2025.

## II.

The issue here is whether applicant is entitled to temporary disability from October 24, 2022 to May 3, 2023 at the indemnity rate of \$1,471.47.

Temporary disability is defined as incapacity to work that is reasonably expected to be improved with medical treatment. (*Chavira v. Workers' Comp. Appeals Bd. (Johns-Manville Sales Corp.)* (1991) 235 Cal.App.3d 463, 473 citing *W. M. Lyles Co. v. Workmen's Comp. App. Bd. (Butz)* (1969) 3 Cal.App.3d 132, 136.) "Temporary disability indemnity is intended primarily to substitute for the worker's lost wages, in order to maintain a steady stream of income." (*Chavira, supra* at p. 473 (citation and internal quotations omitted).) Temporary total disability occurs when an employee is unable to earn any income during the period of recovery. (*Herrera v. Workers' Comp. Appeals Bd. (Goleta Lemon Association)* (1969) 71 Cal.2d 254, 257.) Temporary partial disability occurs when an employee is able to earn some income during her recovery period but not her full wage. (*Ibid.*)

"If the employee is able to obtain some type of work despite the partial incapacity, the worker is entitled to compensation on a wage loss basis. ([Lab. Code,] § 4657.) If the partially disabled worker can perform some type of work but chooses not to, his 'probable earning ability' will be used to compute wage-loss compensation for partial disability." (*Huston v. Workers' Comp. Appeals Bd. (Coast Rock)* (1979) 95 Cal.App.3d 856, 868 [44 Cal.Comp.Cases 798, 806].) "If the temporary partial disability is such that it effectively prevents the employee from performing any duty for which the worker is skilled or there is no showing by the employer that work is available and offered, the wage loss is deemed total and the injured worker is entitled to temporary total disability payments." (*Ibid.* citing *Pacific Employers Ins. Co. v. Industrial Acc. Com.* (1959) 52 Cal.2d 417 [24 Cal.Comp.Cases 144, 340 P.2d 622] and *Transport Indem. Co. v. Ind. Acc. Com.* (1958) 157 Cal.App.2d 542 [23 Cal.Comp.Cases 30, 321 P.2d 21].)

Temporary disability ends when (1) the employee returns to work, (2) the employee is deemed medically able to return to work, or (3) the employee's medical condition becomes permanent and stationary. (*Huston, supra*, 95 Cal.App.3d at 868; *Bethlehem Steel Company v. Industrial Accident Commission and Harvey Lemons* (1942) 54 Cal.App.2d 585, 587 [7

Cal.Comp.Cases 250, 252]; *Industrial Indemnity Exchange v. Industrial Accident Commission and Riccardi* (1949) 90 Cal.App.2d 99, 101 [14 Cal.Comp.Cases 25, 26-27].)

“Defendant has the burden to identify and offer physically appropriate modified or alternative work if defendant wants to be relieved of the liability to pay temporary disability.” (*Navarrete Medrano v. Santa Rosa City Sch. Dist.* (ADJ19327586, October 6, 2025) [2025 Cal. Wrk. Comp. P.D. LEXIS 355].)<sup>2</sup> “Preliminary negotiation or an invitation to make an offer is not a legally operative offer. As noted by the California Supreme Court, ‘[a]n offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.’ [citation omitted]” (*Ibid.*) Furthermore, an offer of regular, modified, or alternative work must be bona fide in order for the employer to avoid liability, even if there are circumstances that prevent the making of a bona fide offer. (See *Dennis v. State of California* (2020) 85 Cal.Comp.Cases 389 [2020 Cal. Wrk. Comp. LEXIS 19].)

Here, the record does not contain an offer of regular, modified, or alternative work made to applicant. Although defendant witness Ana Rivera testified at trial that defendant could have accommodated the work restrictions set forth by Peter S. Borden, M.D., there is no record that such an offer was made. We are aware that there was conflicting medical evidence between Dr. Borden and Sherie Carnegie, DO, that defendant wanted to clarify before making such an offer. But the fact remains that no such offer was made and therefore defendant is not relieved from paying temporary disability.

We agree with the WCJ that it is concerning that defendant failed to include applicant’s attorney in its communication efforts regarding applicant’s work restrictions, especially since applicant has been represented from the beginning of his workers’ compensation claim. (See Application for Adjudication dated September 22, 2022.)

With respect to the temporary disability rate, we also agree with the WCJ that defendant stipulated to applicant’s weekly earnings, failed to object to the many pleadings outlining this stipulation, and therefore waived any objection to the temporary disability indemnity rate of \$1,471.47.

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<sup>2</sup> Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers’ compensation judges (see *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236]), but the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive (see *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc).)

As to the period of temporary disability, we agree with the WCJ that the period begins on October 24, 2022, the date of Dr. Borden's report outlining work restrictions, and ends on the date applicant was found maximum medical improved by Alex H. Etemad, M.D., on May 3, 2023. We also note that the WCJ indicated that applicant received short-term disability through October 24, 2022. (Opinion on Decision dated July 15, 2025.) The fact that applicant was on medical leave until December 2022 is irrelevant as to the issue of temporary disability. If applicant received disability benefits as a result of his medical leave, those benefits would be relevant to the issue of credit, as addressed in finding no. 8 (amended finding no. 10).

Accordingly, we amend the July 15, 2025 Amended Findings and Order for the purpose of adding a finding that defendant failed to offer regular, modified, or alternative work, thereby entitling applicant to temporary disability.

For the foregoing reasons,

**IT IS ORDERED** that defendant Space Exploration Technologies' Petition for Reconsideration of the July 15, 2025 Amended Findings and Order is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 15, 2025 Amended Findings and Order is **AFFIRMED EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

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9. There is no evidence that the employer offered applicant regular, modified, or alternative work.

10. Applicant is entitled to temporary total disability from October 24, 2022 to the May 3, 2023 report of PQME Alex H. Etemad, M.D., at the rate of \$1,471.47, less credit for indemnity paid or amount paid by EDD, if any, with the parties to determine interest that may apply, and less attorneys' fees. Penalties, if any, are deferred.

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**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



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

**DECEMBER 1, 2025**

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

**MIGUEL RAMOS  
LYFE LAW – LOS ANGELES  
SION ASSOCIATES LOS ANGELES**

**LSM/ara**

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