

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

OSAMA AGAIBY, *Applicant*

vs.

**CITY OF CULVER CITY, permissibly self-insured,
adjusted by INTERCARE, *Defendants***

**Adjudication Number: ADJ15643990; ADJ13744962
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted defendant's Petition for Reconsideration of "Findings and Award and Order" (F&A) issued in ADJ15643990 on July 23, 2024 and the "Findings and Award and Order" (F&A) issued in ADJ13744962 on July 23, 2024 by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that applicant was entitled to a full year of benefits pursuant to Labor Code¹ section 4850 in ADJ15643990 and a second full year of benefits in ADJ13744962, notwithstanding the fact that the periods of applicant's temporary disability partially overlapped.

Defendant argues that the benefits paid under section 4850 are credited to both dates of injury where the temporary disability periods overlap, so that applicant was not entitled to separate section 4850 benefits in each injury when the disabilities overlapped.

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, and we have reviewed the record in this matter. Based upon our review of the record, as our Decision After Reconsideration we will rescind the F&As and reissue

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

new F&As deferring the issues of temporary disability and section 4850 benefits, and return these matters to the parties to adjust the periods of disability and section 4850 time, with jurisdiction reserved at the trial level in the event of a dispute.

FACTS

Per the WCJ's Report:

ADJ13744962

Osama Agaiby was a police captain employed by Culver City. On August 5, 2020, during an exercise workout in the course and scope of his duties, Agaiby fell forward with 75-pound weights strapped to his wrists, causing him to strike his face on the ground and to lose consciousness. The impact caused injuries to his neck, back, both shoulders, and both knees. (MOH/SOE pg. 3) Agaiby was temporarily totally disabled for a couple weeks but returned to modified duties performing desk work. Agaiby then was taken off work by Dr. Jae Chon February 9, 2021(Exhibit F). The applicant never returned to work. Agaiby underwent left shoulder surgery on November 11, 2021. He was found maximally medically improved for these injuries February 7, 2023 by QME Dr. William Mealer (Exhibit EE).

ADJ15463990

Osama Agaiby sustained a cumulative trauma claim for the period May 1, 1994 to February 8, 2021 for bilateral carpal tunnel syndrome (MOH/SOE pg. 2). AME Steven Brouman noted that the applicant experienced some numbness and tingling following the specific incident on August 5, 2020, but the electrodiagnostic study (EMG/NCV) of the bilateral upper extremities performed on August 24, 2020, shortly after the specific incident of August 5, 2020 did not reveal carpal tunnel syndrome. However, the subsequent electrodiagnostic study dated January 31, 2022[did show bilateral carpal tunnel syndrome. Dr. Brouman concluded that the bilateral carpal tunnel syndrome was not due to the specific incident but a work-related cumulative trauma (Exhibit AA). Initially, AME Dr. Brouman found that applicant was temporarily totally disabled as the result of the carpal tunnel syndrome beginning March of 2021 (Exhibit BB). It should be noted that the cumulative trauma claim was originally pled as May 1, 2004 to March 4, 2021. However, according to the evidence presented, the applicant was taken off work as of February 9, 2022 for the August 5, 2020 injury and he never returned to work. Therefore, there was no injurious exposure attributable to the bilateral carpal tunnel syndrome past February 8, 2021, and this is the proper end date of

the cumulative trauma injury. Dr. Brouman later amended his opinion as to the start date of temporary total disability to February 9, 2021 (Exhibit DD) . The applicant was found permanent and stationary by both Dr. Keith Feder, the primary treating physician (Exhibit B), and Dr. Brouman, the Agreed Medical Evaluator (Exhibit BB) on February 16, 2023.

(WCJ's Report, pp. 1-2.)

DISCUSSION

I.

This case requires resolution of the scope of section 4850 and how it interacts with temporary disability benefits. Specifically, whether applicant is entitled to two separate periods of salary continuation under section 4850 when he sustains two separate injuries.

Section 4850(a) states that:

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.

(§ 4850(a).)

Two principles in this case are well established. First, benefits paid under section 4850 are credited against temporary disability payments during periods when applicant is temporarily disabled. (*County of Alameda v. Workers' Comp. Appeals Bd. (Knittel)* (2013) 213 Cal.App.4th 278.)

In 2004, as part of a comprehensive reform of the workers' compensation law, the Legislature enacted a 104-week limit on disability payments for an injury causing temporary disability. (See Stats. 2004, ch. 34, § 29, pp. 196–197.) The law currently (and at the time Knittel was injured) provides: “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.” (§ 4656, subd. (c)(2).)

The question here is the meaning of “[a]ggregate disability payments.” The Labor Code does not define the phrase. The parties agree the phrase encompasses

temporary disability indemnity payments. The County argues the phrase also encompasses other disability payments for injuries causing temporary disability, including the salary continuation benefit payable to public safety officers pursuant to section 4850. The County points out our Supreme Court has unambiguously held: “Payments pursuant to section 4850 are not salary but workmen’s compensation benefits.” (*Boyd v. City of Santa Ana* (1971) 6 Cal.3d 393, 397 [99 Cal.Rptr. 38, 491 P.2d 830]; see *Kosowski v. Workers’ Comp. Appeals Bd.* (1985) 170 Cal.App.3d 632, 636–637 [216 Cal.Rptr. 280] [rejecting firefighter’s claim that § 4850 payments are special benefits which may not be equated with ordinary workers’ compensation disability benefits].)

The County’s arguments are persuasive. If section 4850 payments are workers’ compensation benefits, then they are part of the “aggregate” of disability payments when they are paid for an injury causing temporary disability. “Aggregate” is defined as “[c]onstituting or amounting to a whole; total.” (American Heritage Dict. (4th ed. 2000) p. 33.) Knittel received an aggregate of two types of workers’ compensation benefits for his temporary disability: section 4850 salary continuation benefits and temporary disability indemnity. Pursuant to section 4656, subdivision (c)(2), Knittel was entitled to a total of 104 weeks of those combined disability benefits, and he received 52 weeks of section 4850 benefits and 52 weeks of temporary disability indemnity.

(*Id.* at pp. 283-284.)

The next well-established principle is that temporary disability is paid concurrently when two injuries establish overlapping periods of temporary disability. (*Foster v. Workers’ Comp. Appeals Bd.* (2008) 161 Cal.App.4th 1505.)

The language of section 4656(c)(1) is 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.” 3 (*Italics added.*) Thus, the language itself ties the temporary disability indemnity limitations period for any single injury to the temporary disability caused by that injury and starts the limitations period on the date of commencement of the temporary disability payments for such disability.

* * *

There is nothing in the language of section 4656(c)(1) suggesting the limitations period for a single injury causing temporary disability should be tolled for any period during which a worker is entitled to temporary disability benefits based on another injury. There is no language in the statute suggesting the limitations period will not run concurrently where multiple injuries cause an overlap, either partial or complete, during periods of temporary disability.

Nor have we found anything in the context of section 4656(c)(1) that suggests a different interpretation is required where multiple injuries result in temporary

disability. In fact, the history of section 4656 demonstrates a clear legislative intent to provide a reliable, defined time limit on an employer's liability for temporary disability indemnity.

(*Id.* at pp. 1511-1512.)

With these principles in mind, we must resolve the question of whether applicant is entitled to two separate periods of section 4850 benefits.

Section 4850 benefits are provided whenever an applicant "is disabled" on an industrial basis. The statute authorizes payment of salary continuation "for the period of the disability, but not exceeding one year[.]" The key word that triggers section 4850 is that applicant must be on a period of industrial 'disability'. The statutory scheme contains no language limiting a period of disability to a single injury. Just as an applicant can be temporarily disabled due to the combined effects of multiple injuries, so may an applicant be disabled for purposes of collecting section 4850 benefits.

Section 4853 explains the effect of applicant sustaining a period of disability exceeding one-year:

Whenever such disability of any such officer or employee continues for a period beyond one year, such member shall thereafter be subject as to disability indemnity to the provisions of this division *other than Section 4850* during the remainder of the period of said disability or until the effective date of his retirement under the Public Employees' Retirement Act, and the leave of absence shall continue.

(§ 4853 (emphasis added).)

The Legislature has clearly stated that after a disability exceeds one-year, applicant is subject to the disability provisions of the Labor Code *other than* section 4850.

Accordingly, we hold that the provisions of section 4850 run concurrently when applicant is on disability due to the combined effect of multiple injuries. As the only issues on appeal are temporary disability and section 4850 benefits, we will rescind the F&As and reissue them deferring the issues of temporary disability and section 4850 benefits, and return these matters to the parties to adjust the periods of disability and section 4850 time, with jurisdiction reserved at the trial level in the event of a dispute.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award and Order (F&A) issued in ADJ15643990 on July 23, 2024, and the Findings and Award and Order (F&A) issued in ADJ13744962 on July 23, 2024 by a workers' compensation administrative law judge are **RESCINDED** with the following **SUBSTITUTED** in its place.

FINDINGS OF FACT (ADJ13744962)

1. OSAMA AGAIBY, who was 48 years old on the date of injury, while employed on August 5, 2020 as a police officer at Culver City, California, by CITY OF CULVER CITY (permissibly self-insured), whose workers' compensation claims administrator is INTERCARE PASADENA, sustained an injury arising out of and occurring in the course of employment to his neck, back, both shoulders, and both knees.
2. Applicant's earnings at the time of injury were \$3,521.11 per week producing a temporary disability rate of \$1,299.43 per week and a permanent disability indemnity rate of \$290.00 per week.
3. The issues of temporary disability and section 4850 benefits are deferred.
4. The issue of credit is deferred.
5. Applicant's injury caused permanent disability of 62%, entitling applicant to 367.25 weeks of disability indemnity payable at the rate of \$290.00 per week in the total sum of \$106,502.50.
6. Applicant will require further medical treatment to cure or relieve from the effects of this injury.
7. The reasonable value of the services and disbursements of applicant's attorney fees is 15% of the value of the permanent disability award, \$15,975.38. Any further award of attorney's fees from other benefits deferred.

AWARD (ADJ13744962)

AWARD IS MADE in favor of **OSAMA AGAIBY** against **CITY OF CULVER CITY** of:

- a. Permanent disability of 62%, entitling applicant to 367.25 weeks of disability indemnity at the rate of \$290.00, in the total sum of \$106,502.50, less credit to defendant for all sums heretofore paid on account thereof, and

less \$15,975.38 payable to LAW OFFICES OF STEVEN BARRY as attorney fees to be commuted from the far end of the award;

- b. Future medical treatment reasonably required to cure or relieve from the effects of the injury herein.
- c. All other issues are deferred.

FINDINGS OF FACT (ADJ15643990)

- 1. OSAMA AGAIBY, who was 48 years old on the date of injury, while employed during the period ending on February 8, 2021, as a police officer at Culver City, California, by CITY OF CULVER CITY (permissibly self-insured), whose workers' compensation claims administrator is INTERCARE PASADENA, sustained injury arising out of and occurring in the course of employment to both wrists.
- 2. Applicant's earnings at the time of injury were \$3,578.33 per week producing a temporary disability rate of \$1,356.31 per week and a permanent disability indemnity rate of \$290.00 per week.
- 3. The issues of temporary disability and section 4850 benefits are deferred.
- 4. The issue of credit is deferred.
- 5. Applicant's injury caused permanent disability of 12%, entitling applicant to 38.25 weeks of disability indemnity payable at the rate of \$290.00 per week in the total sum of \$11,092.50.
- 6. Applicant will require further medical treatment to cure or relieve from the effects of this injury.
- 7. The reasonable value of the services and disbursements of applicant's attorney is 15% of the permanent disability value, \$1,663.88. Any further award of attorney's fees from other benefits deferred.

AWARD (ADJ15643990)

AWARD IS MADE in favor of **OSAMA AGAIBY** against **CITY OF CULVER CITY** of:

- a. Permanent disability of 12%, entitling applicant to 38.25 weeks of disability indemnity at the rate of \$290.00, in the total sum of \$11,092.50, less credit to defendant for all sums heretofore paid on account thereof, and less \$1,663.88 payable to LAW OFFICES OF STEVEN BARRY as attorney fees to be commuted from the far end of the award;

- b. Future medical treatment reasonably required to cure or relieve from the effects of the injury herein.
- c. All other issues are deferred.

IT IS FURTHER ORDERED that these matters are **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 27, 2025

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

**OSAMA AGAIBY
BARRY LAW GROUP
GILSON DAUB**

EDL/mc

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