

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

RIGOBERTO SANCHEZ, *Applicant*

vs.

TIC - THE INDUSTRIAL COMPANY¹; administered by BROADSPIRE, *Defendants*

**Adjudication Number: ADJ9789936
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the June 9, 2025 Findings, Award, and Order (FA&O) wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant, while employed as a pipe fitter for defendant on September 16, 2014, sustained an injury arising out of and in the course of employment (AOE/COE) to the left leg, left knee, left hip, and reproductive system/testicles and that applicant was temporarily totally disabled or temporarily partially disabled from September 26, 2014 through October 11, 2017 and reached maximum medical improvement/permanent and stationary status (MMI/P&S) as of October 11, 2017. Applicant was awarded temporary disability indemnity at the weekly rate of \$1,074.64 from September 27, 2014 through July 1, 2016, and at the weekly rate of \$1,337.37 from July 2, 2016 through October 11, 2017, less a reasonable attorney's fee of 15% for the period from July 2, 2016 through October 11, 2017, and less credit to defendant for temporary disability indemnity paid from September 27, 2014 through July 1, 2016. (FA&O, pp.1-2.) Defendant's request for credit for overpayment was denied. (*Id.* at p. 2.)

¹ In light of defendant's May 30, 2024 Petition to Correct Name of Employer and defendant's use of the requested employer name in subsequent pleadings, including the Petition for Reconsideration, we use employer's requested name, TIC-The Industrial Company, herein. Upon return of this case to the district office, the record must be updated accordingly. (Cal. Code Regs., tit. § 10390; see *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 1466 (Appeals Bd. en banc).)

Defendant contends that “the medical evidence does not support a finding of temporary total disability or temporary partial disability during the period from June 1, 2016 until September 13, 2017” because applicant “was able to perform full duties” during this time. (Petition for Reconsideration (Petition), pp. 3, 6.) Defendant argues that the WCJ’s decision was based upon an “alleged work restriction” provided by urological panel Qualified Medical Evaluator (PQME), Dr. Grant Orlin, during his January 26, 2022 deposition wherein he testified that applicant needed to be placed near a bathroom at work. (*Id.* at p. 6.) According to defendant, “Dr. Orlin did not provide any specific time, distance, or other proximity information” and “[s]ince both United States and California law requires all employers to provide reasonable access to a bathroom...and there has been no showing that [a]pplicant did not have access[,]” Dr. Orlin’s statements do not constitute an actual work restriction for temporary disability indemnity purposes. (*Ibid.*)

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

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition.

FACTS

Applicant claimed that, while employed as a pipe fitter for defendant on September 16, 2014, he sustained an injury AOE/COE to the left leg, left knee, left hip, and reproductive system/testicles.

Thereafter, the parties proceeded with discovery and retained Dr. Roger Sohn as the orthopedic Agreed Medical Evaluator (AME), Dr. James Sherman as the internal AME, and Dr. Grant Orlin as the urological PQME.

On June 1, 2016, applicant completed an initial evaluation with Dr. Sohn. In a corresponding report, Dr. Sohn found injury AOE/COE for applicant’s orthopedic claims and opined that applicant had reached MMI/P&S status. (Joint Exhibit 5, p. 17.) He deferred questions regarding applicant’s urological and gastrointestinal claims to the relevant evaluators. (*Ibid.*)

On July 28, 2016, applicant completed an evaluation with Dr. Sherman. In a corresponding report dated August 17, 2016, Dr. Sherman found no injury AOE/COE with respect to applicant’s gastrointestinal claims. (Joint Exhibit 3, p. 8.)

On March 22, 2017, applicant completed an initial evaluation with Dr. Orlin for his urological issues. In a corresponding report, Dr. Orlin found injury AOE/COE for applicant's urological complaints and noted that applicant had not yet reached MMI/P&S status. (*Id.* at pp. 9 – 11.) Work restrictions were noted, including a recommendation that applicant “be placed close to a bathroom” due to urinary “frequency and urgency.” (*Id.* at p. 11.)

On January 29, 2020, the case proceeded trial, and on February 20, 2020, the WCJ issued a Findings, Awards, and Orders which held that applicant, while employed as a pipe fitter for defendant on September 26, 2014, sustained injury AOE/COE to the left knee, left hip, and reproductive system/testicles. The WCJ further held that applicant was temporarily disabled from September 26, 2015, through March 12, 2018, and reached MMI/P&S status on March 13, 2018.

On March 6, 2020, defendant filed a Petition for Reconsideration of the February 20, 2020 Findings, Awards, and Orders, and on April 1, 2020, reconsideration was granted. On December 2, 2020, the Appeals Board issued an Opinion and Decision after Reconsideration² wherein the WCJ findings as to employment, body parts injured, permanent partial disability, need for further medical treatment, and attorney fees were upheld. The issues of temporary disability, MMI/P&S date, and defendant's entitlement to credit for overpayment of temporary disability were deferred. (Opinion and Decision, December 2, 2020.)

Thereafter, the parties proceeded with discovery, and on January 26, 2022, Dr. Orlin was deposed and testified as follows with respect to his March 22, 2017 report and his recommendations regarding applicant's work restrictions:

Q. Now, on page 11 under future work restrictions you indicated that the restrictions would basically involve orthopedic injuries, however, you stated – and I'm going to quote – “I do believe that if he were to return to work, that urological recommendation would be that he be placed close to a bathroom as he notes some frequency and urgency at times.” Would you consider that to be a recommendation for possible work restriction that he have access to a bathroom close by due to those ongoing symptoms and complaints?

A. Yes.

Q. And after his surgery when he recovered, you did not feel that any further restrictions from a urological standpoint were necessary, correct?

² Commissioner Marguerite Sweeney and Katherine Dodd were on the panel which issued this Opinion and Decision. Commissioner Sweeney no longer serves at the Appeals Board, and Commissioner Dodd was unavailable to participate. New panel members have been substituted in their place.

A. Yes.

...

Q. Okay. And let me ask you about this close to a bathroom. What are we talking about? Does that mean that as soon as he had the urge to go, he's got five seconds to get to a bathroom?

A. Well, in consideration of the symptoms that he has frequency and urgency, it just seems reasonable that in a work condition he'd be close to a restroom so that he won't wet himself.

Q. Sure. And what I'm trying to get at is – in other words, he would have to do in this job be allowed that if he needed to use the bathroom he could go, correct?

A. Yes.

Q. And in terms of proximity you don't mean the bathroom has to be ten feet away, just whatever is reasonable availability of a bathroom such that if he feels the need to go he would go?

A. Correct.

Q. But beyond that there would not be any other limitation; is that correct?

A. Yes, I believe so.

(Court Exhibit 1, pp. 14:23-15:12, 17:6-18:1.)

On February 27, 2025, applicant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on the issues of temporary disability indemnity and applicant's serious and willful misconduct claim.

On April 7, 2025, a mandatory settlement conference was held, and continued to trial on May 20, 2025 on the issues of temporary disability indemnity and MMI/P&S date.

On June 9, 2025, the WCJ issued an FA&O wherein he found, in relevant part, that applicant, while employed as a pipe fitter for defendant on September 16, 2014, sustained an injury AOE/COE to the left leg, left knee, left hip, and reproductive system/testicles and that applicant was temporarily totally disabled or temporarily partially disabled from September 26, 2014 through October 11, 2017 and reached MMI/P&S status as of October 11, 2017. Applicant was awarded temporary disability indemnity at the weekly rate of \$1,074.64 from September 27, 2014 through July 1, 2016, and at the weekly rate of \$1,337.37 from July 2, 2016 through October 11,

2017, less a reasonable attorney's fee of 15% for the period from July 2, 2016 through October 11, 2017, and less credit to defendant for temporary disability indemnity paid from September 27, 2014 through July 1, 2016. Defendant's request for credit for overpayment was denied. (FA&O, pp. 1-2.)

DISCUSSION

I.

Under Labor Code³ 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 under the Events tab 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 July 3, 2025, and 60 days from the date of transmission is September 1, 2025, which is a holiday. The next business day that is 60 days from the date of transmission is Tuesday, September 2, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)⁴ This decision was issued by or on September 2, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on July 3, 2025, and the case was transmitted to the Appeals Board on July 3, 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

³ All further statutory references will be to the Labor Code unless otherwise indicated.

⁴ 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.

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 July 3, 2025.

II.

Turning to the Petition, temporary disability indemnity is a workers' compensation benefit paid during the time an injured worker is unable to work because of a work-related injury and is primarily intended to substitute for lost wages. (*Gonzales v. Workers' Comp. Appeals Board* (1998) 68 Cal.App.4th 843 [63 Cal.Comp.Cases 1477]; *J.T. Thorp, Inc. v. Workers' Comp. Appeals Bd. (Butler)* (1984) 153 Cal.App.3d 327, 333 [49 Cal.Comp.Cases 224].) The purpose of temporary disability indemnity is to provide a steady source of income during the time the injured worker is off work. (*Gonzales, supra*, at p. 1478.) Generally, a defendant's liability for payments ceases when the employee returns to work, is deemed medically able to return to work, or becomes permanent and stationary. (§§ 4650-4657; *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 868 [44 Cal.Comp.Cases 798]; *Bethlehem Steel Co. v. I.A.C. (Lemons)* (1942) 54 Cal.App.2d 585, 586- 587 [7 Cal.Comp.Cases 250]; *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 236 [58 Cal.Comp.Cases 323].) In *Huston*, the Court of Appeal stated:

“In general, temporary disability indemnity is payable during the injured worker’s healing period from the injury until the worker has recovered sufficiently to return to work, or until his/her condition reaches a permanent and stationary status. [citation] Temporary disability may be total (incapable of performing *any* kind of work), or *partial* (capable of performing *some* kind of work). [citation] 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. [citation] 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. [citation] 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. [citations]”

(*Huston, supra*, at p. 868.)

Thus, *Huston* reflects that an employer's failure to show that modified work was available and offered affects an injured worker's entitlement to temporary disability indemnity.

Here, defendant contends that the WCJ’s decision to award temporary total disability or temporary partial disability during the period from June 1, 2016 until September 13, 2017 was

based upon an “alleged work restriction” provided by urological PQME, Dr. Grant Orlin, during his January 26, 2022 deposition, wherein he testified that applicant needed to be placed near a bathroom at work. (Petition, p. 6.) According to defendant, “Dr. Orlin did not provide any specific time, distance, or other proximity information” and “[s]ince both United States and California law requires all employers to provide reasonable access to a bathroom...and there has been no showing that [a]pplicant did not have access[,]” Dr. Orlin’s statements did not constitute a real work restriction for temporary disability indemnity purposes. (*Ibid.*) As such, defendant argues that applicant was essentially released to work full duty and therefore not entitled to retroactive temporary disability indemnity during the period from June 1, 2016 through September 13, 2017.

As noted above, the issue of applicant’s work restrictions was addressed in both Dr. Orlin’s March 22, 2017 report and his January 26, 2022 deposition. On page 11 of the March 22, 2017 report, Dr. Orlin indicated that applicant was “not yet permanent and stationary” and in need of work restrictions, including placement “close to a bathroom” as applicant experienced “frequency and urgency at times.” (Joint Exhibit 2, p. 11.) This restriction was further discussed by Dr. Olin during his January 26, 2022 deposition wherein he testified that “...in consideration of the[se] symptoms” it “seems reasonable that in a work condition [applicant] be close to a restroom so that he won’t wet himself.” Based upon our review of the evidentiary record, we found no evidence that a written offer to return to work based upon these restrictions was provided by defendant to applicant. Pursuant to *Huston*, applicant would therefore be entitled to temporary disability indemnity.

Accordingly, defendant’s Petition for Reconsideration of the June 9, 2025 FA&O is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the June 9, 2025 Findings, Award, and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 29, 2025

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

**RIGOBERTO SANCHEZ
CHAIN COHN CLARK
HAIGHT BROWN & BONESTEEL**

RL/cs

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