

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

YONGQUAN HU, *Applicant*

vs.

**AMERICAN ALLIANCE LOGISTICS, INC., a California corporation; LIANG YE, an individual, substantial shareholder of AMERICAN ALLIANCE LOGISTICS, INC.;
UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ14244909
Van Nuys District Office**

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

Applicant and defendant Uninsured Employers Benefits Trust Fund (UEBTF) both seek reconsideration of the February 10, 2025 Amended Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a truck driver on March 21, 2020, sustained industrial injury to his spine, upper extremities, and lower extremities. The WCJ found in relevant part that applicant's injuries resulted in permanent and total disability, and that applicant's average weekly earnings were appropriately calculated based on applicant's earnings with multiple employers in the year preceding his industrial injury.

Applicant contends that his average weekly earnings should be calculated using a wage capacity analysis contemplating only his wages from employment with defendant and no other employers.

The UEBTF contends the WCJ inadvertently omitted one week of applicant's wages from his calculations and urges that we recalculate average weekly earnings including the missing week.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) with respect to applicant's Petition, recommending that the Petition be granted, and that we amend the F&A to reflect average weekly earnings based on calculations that include the one week of inadvertently omitted wage data, but

utilizing applicant's average earnings among multiple employers in the year preceding industrial injury.

After filing the Report with respect to applicant's Petition, the WCJ became unavailable, and the UEBTF filed their petition. The Workers' Compensation Presiding Judge (WCPJ) filed a report with respect to the UEBTF Petition, recommending we grant the petition and amend the calculations as described in the WCJ's Report.

We have considered the allegations of applicant's Petition for Reconsideration as well as the UEBTF Petition, and we have considered the contents of the report of the WCJ and the WCPJ respectively. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will grant reconsideration, amend the WCJ's decision as recommended in the report, and otherwise affirm the decision of February 10, 2025.¹

Former Labor Code² 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.

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

¹ Workers' Compensation Appeals Board Rule 10962(c) (Cal. Code Regs., tit. 8, § 10962(c)) provides, in relevant part, that "[i]f the workers' compensation judge assigned to the case is unavailable, the presiding workers' compensation judge shall prepare and serve the report." Here, following the filing of UEBTF's petition, the WCPJ correctly applied our rule by preparing a second Report in response to a petition filed after the WCJ was no longer available. However, because the report of the WCPJ concurs with the WCJ's recommendations, we do not adopt and incorporate the WCPJ's Report.

² All further references are to the Labor Code unless otherwise noted.

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 February 27, 2025, and 60 days from the date of transmission is April 28, 2025. This decision is issued by or on April 28, 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 February 27, 2025, and the case was transmitted to the Appeals Board on February 27, 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 February 27, 2025.

For the foregoing reasons,

IT IS ORDERED that both applicant's and defendant's petitions for reconsideration of the decision of February 10, 2025 are **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of February 10, 2025 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

...

3. At the time of injury, the employee's average weekly earnings were \$1,462.15, warranting a temporary total disability and permanent total disability rate of \$974.77 per week.
4. The injury caused temporary total disability during the period from March 21, 2020 to May 6, 2020, warranting indemnity at the rate of \$974.77 during this period, less credit for sums paid, if any, and less a 15% attorney fee payable to Shatford Law.
5. The injury caused permanent total disability, warranting benefits commencing May 7, 2020 and continuing for life at the initial rate of \$974.77, increasing every January 1 thereafter by a percentage commensurate with any increase in the State Average Weekly Wage (SAWW) during the year prior, with 15% of each payment of permanent disability to be withheld and paid to Shatford Law as a reasonable attorney fee.

AWARD

- a. Temporary total disability indemnity at the rate of \$974.77 per week during the period from March 21, 2020 to May 6, 2020, less credit for sums paid, if any, and less a 15% attorney fee payable to Shatford Law.

- b. Permanent total disability indemnity, warranting benefits commencing May 7, 2020 and continuing for life at the initial rate of \$974.77, increasing every January 1 thereafter by a percentage commensurate with any increase in the State Average Weekly Wage (SAWW) during the year prior, with 15% of each payment of permanent disability to be withheld and paid to Shatford Law as a reasonable attorney fee.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 25, 2025

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

**YONGQUAN HU
SHATFORD LAW
AMERICAN ALLIANCE LOGISTICS, INC.
LIANG YE
UNINSURED EMPLOYERS BENEFITS TRUST FUND (OAKLAND)
OFFICE OF THE DIRECTOR-LEGAL UNIT (LOS ANGELES)**

SAR/abs

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Applicant Yongquan Hu, through his attorney of record, has filed a timely, verified petition for reconsideration of the Amended Findings and Award of February 10, 2025, awarding temporary total disability from March 21, 2020 to May 6, 2020, plus permanent total disability commencing May 7, 2020 and continuing for life. The sole issue raised by applicant's petition is the earnings rate. The petition asserts that the evidence required a finding of weekly earnings of \$2,014.59, based on the seven paychecks received from applicant's at-injury employer, and did not justify the amount that was found, \$1,423.41, which was based on the weekly average of all 47 paychecks from various employers within a one-year period prior to applicant's injury. The petition also points out that one paycheck dated 3/17/2020, in the amount of \$2,014.53, was inadvertently omitted from the calculations.

There is no answer yet from the defendants at the time this report was prepared.

II

FACTS

The petition does not raise any issues about the finding of temporary disability or permanent total disability, which may very well be incontestable as applicant is a quadriplegic due to a collision involving the truck in which he was working, which under California Labor Code Section 4662(a)(3) means that his permanent disability is conclusively presumed to be total in character as "an injury resulting in a practically total paralysis."³ Based on the only medical report in evidence, the Panel Qualified Medical Evaluator (PQME) report of Ben Schwachman, M.D. dated November 15, 2023, admitted as Applicant's Exhibit 1 at trial on December 10, 2024, it was found that Yongquan Hu, while employed on March 21, 2020, at age 45, as a Truck Driver, at

³ Applicant also qualifies for a conclusive presumption of permanent, total disability based on his inability to use his upper extremities, for "loss of both hands or the use thereof" under Labor Code Section 4662(a)(2), and he is also permanently totally disabled based on the 80% Whole Person Impairment (WPI) found by Dr. Schwachman, which adjusts under Labor Code Section 4660.1 and the PDRS to 100% permanent disability as follows: 15.04.02.00-80-[x 1.4]-100-350G-100-100.

Walnut, California, by American Alliance Logistics, Inc., sustained injury arising out of and in the course of employment to his spine, lower extremities, and upper extremities, causing temporary total disability from March 21, 2020 to May 6, 2020, plus permanent total disability commencing May 7, 2020 and continuing for life. Dr. Schwachman found no nonindustrial apportionment of this permanent total disability (Report of Dr. Schwachman dated 11/15/2023, Applicant's Exhibit 1, page 70).

Based on the pay stubs admitted into evidence as Applicant's Exhibit 2 at trial on December 10, 2024, it was found that Yongquan Hu's average weekly earnings were \$1,423.41 per week from all sources, under California Labor Code Section 4453(c)(3). This was based on copies of checks for earnings⁴ within one year before Mr. Hu's injury of March 21, 2020, as follows:

1.	3/29/2019	\$2,263.17	QL EXPRESS INC
2.	4/5/2019	\$1,798.97	QL EXPRESS INC
3.	4/12/2019	\$2,102.65	QL EXPRESS INC
4.	4/19/2019	\$1,759.73	QL EXPRESS INC
5.	4/26/2019	\$1,625.61	QL EXPRESS INC
6.	5/3/2019	\$1,529.26	QL EXPRESS INC
7.	5/10/2019	\$1,571.36	QL EXPRESS INC
8.	5/17/2019	\$1,369.06	QL EXPRESS INC
9.	5/24/2019	\$1,847.21	QL EXPRESS INC
10.	6/7/2019	\$1,581.57	QL EXPRESS INC
11.	6/14/2019	\$1,581.57	QL EXPRESS INC
12.	6/21/2019	\$1,412.44	LFL TRANSPORTATION INC
13.	7/5/2019	\$1,520.38	LFL TRANSPORTATION INC
14.	7/12/2019	\$2,025.40	LFL TRANSPORTATION INC
15.	7/22/2019	\$1,551.50	SWIFTER TRUCKING INC
16.	7/22/2019	\$100.00	SWIFTER TRUCKING INC
17.	7/22/2019	\$60.85	SWIFTER TRUCKING INC
18.	8/2/2019	\$1,247.24	LFL TRANSPORTATION INC
19.	8/9/2019	\$1,330.90	LFL TRANSPORTATION INC

⁴ The 3/22/2019 check in the amount of \$1,564.88 from QL EXPRESS INC, and checks prior thereto, were not included as they are presumed to be for work performed on or before 3/21/2019.

20. 8/16/2019	\$1,986.50	LFL TRANSPORTATION INC
21. 8/23/2019	\$1,200.00	LFL TRANSPORTATION INC
22. 8/30/2019	\$1,035.00	LFL TRANSPORTATION INC
23. 9/6/2019	\$1,409.17	LFL TRANSPORTATION INC
24. 9/13/2019	\$791.50	LFL TRANSPORTATION INC
25. 9/20/2019	\$2,277.51	LFL TRANSPORTATION INC
26. 9/27/2019	\$1,707.02	LFL TRANSPORTATION INC
27. 10/4/2019	\$1,791.62	LFL TRANSPORTATION INC
28. 10/11/2019	\$1,400.35	LFL TRANSPORTATION INC
29. 10/18/2019	\$1,654.91	LFL TRANSPORTATION INC
30. 10/25/2019	\$1,376.25	LFL TRANSPORTATION INC
31. 11/1/2019	\$1,908.08	LFL TRANSPORTATION INC
32. 11/8/2019	\$2,053.57	LFL TRANSPORTATION INC
33. 11/22/2019	\$2,997.87	LFL TRANSPORTATION INC
34. 12/1/2019	\$864.50	LFL TRANSPORTATION INC
35. 12/6/2019	\$407.01	LFL TRANSPORTATION INC
36. 12/13/2019	\$1,646.60	LFL TRANSPORTATION INC
37. 12/20/2019	\$2,083.98	LFL TRANSPORTATION INC
38. 12/26/2019	\$1,350.00	LFL TRANSPORTATION INC
39. 12/31/2019	\$1,295.08	LFL TRANSPORTATION INC
40. 2/4/2020	\$1,646.23	ACTION LOGISTICS
41. 2/11/2020	\$2,702.38	ACTION LOGISTICS
42. 2/17/2020	\$1,868.86	ACTION LOGISTICS
43. 2/25/2020	\$1,333.94	ACTION LOGISTICS
44. 3/2/2020	\$1,972.23	ACTION LOGISTICS
45. 3/10/2020	\$1,847.84	ACTION LOGISTICS
46. 3/24/2020	\$1,837.95	ACTION LOGISTICS
47. 3/26/2020	\$1,468.58	ACTION LOGISTICS

TOTAL: \$74,017.49 / 52 weeks = \$1,423.41 weekly average

It was found that an average weekly wage of \$1,423.41 means that applicant is entitled to a temporary and permanent total disability rate equal to two-thirds of this amount, or \$948.94. Accordingly, based on the finding of average weekly earnings above, it was found that applicant is entitled to total disability benefits of \$948.94 per week, increasing every January 1 beginning retroactively on January 1, 2021 by a percentage commensurate with any percentage of increase in the State Average Weekly Wage (SAWW) during the year prior per Labor Code Section 4659, with retroactive increases as follows:

5/6/2020 - 12/31/2020	\$948.94 per week
1/1/2021 - 12/31/2021	+ 4.3774% SAWW increase = \$990.48 per week
1/1/2022 - 12/31/2022	+13.5213% SAWW increase = \$1,124.41 per week
1/1/2023 - 12/31/2023	+5.15924% SAWW increase = \$1,182.42 per week
1/1/2024 - 12/31/2024	+ 0% SAWW increase = \$1,182.42 per week
1/1/2025 - 12/31/2025	+ 3.77588% SAWW increase = \$1,227.07 per week

The opinion on decision noted that future increases should be applied effectively each January 1 hereafter, continuing for the remainder of applicant's life.

Applicant Yongquan Hu, through his attorney of record, has filed a timely, verified petition for reconsideration of the Amended Findings and Award of February 10, 2025, awarding temporary total disability from March 21, 2020 to May 6, 2020, plus permanent total disability commencing May 7, 2020 and continuing for life. The sole issue raised by applicant's petition is the earnings rate. The petition asserts that the evidence required a finding of weekly earnings of \$2,014.59, based on the seven paychecks received from applicant's at-injury employer, and did not justify the amount that was found, \$1,423.41, which was based on the weekly average of all 47 paychecks from various employers within a one-year period prior to applicant's injury. The petition also points out that one paycheck dated 3/17/2020, in the amount of \$2,014.53, was inadvertently omitted from the calculations.

III

DISCUSSION

As pointed out in the petition, Labor Code Section 4453(c) provides the following instructions for calculating average weekly earnings:

(1) Where the employment is for 30 or more hours a week and for five or more working days a week, the average weekly earnings shall be the number of working days a week times the daily earnings at the time of the injury.

(2) Where the employee is working for two or more employers at or about the time of the injury, the average weekly earnings shall be taken as the aggregate of these earnings from all employments computed in terms of one week; but the earnings from employments other than the employment in which the injury occurred shall not be taken at a higher rate than the hourly rate paid at the time of the injury.

(3) If the earnings are at an irregular rate, such as piecework, or on a commission basis, or are specified to be by week, month, or other period, then the average weekly earnings mentioned in subdivision (a) shall be taken as the actual weekly earnings averaged for this period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay.

(4) Where the employment is for less than 30 hours per week, or where for any reason the foregoing methods of arriving at the average weekly earnings cannot reasonably and fairly be applied, the average weekly earnings shall be taken at 100 percent of the sum which reasonably represents the average weekly earning capacity of the injured employee at the time of his or her injury, due consideration being given to his or her actual earnings from all sources and employments.

In this case, it seemed that applicant's pay was at an irregular rate, and accordingly all actual weekly earnings were averaged for a period not exceeding one year. Applicant's petition argues that applicant only worked for one employer at the time of his injury, and unintentionally provided copies of his earnings from other sources, but this does not negate the instructions of Labor Code Section 4553(c)(3), permitting actual weekly earnings to be averaged for a period not exceeding one year. While the petition makes a valid point about the last few weeks being arguably the best indication of earning capacity, it could also indicate an unusual spike or ebb in earnings, and so the industry custom is to average a full year and not just a few weeks. Statistically speaking, a large sample is generally considered better than a small sample because it provides a more

accurate representation. For these reasons, and because the data was conveniently available in evidence, the longer and more customary approach was used to calculate average weekly earnings. It did not seem that this method could not be reasonably or fairly applied under the circumstances.

That said, the petition is correct that one check dated 3/17/2020, in the amount of \$2,014.53, was missed in the calculations in the opinion on decision. That amount should be added to bring the total earnings up to \$76,032.02, which, divided by 52, yields average weekly earnings of \$1,462.15. Based on the corrected average weekly earnings, the corrected temporary or permanent total disability rate should be two-thirds of that amount, or \$974.77. Retroactive benefits should be paid with corrected SAWW increases as follows:

5/6/2020 -12/31/2020	\$974.77 per week
1/1/2021 -12/31/2021	+ 4.3774% SAWW increase = \$1,017.44 per week
1/1/2022-12/31/2022	+ 13.5213% SA WW increase = \$1,155.01 per week
1/1/2023 -12/31/2023	+5.15924% SAWW increase = \$1,214.60 per week
1/1/2024 -12/31/2024	+ 0% SAWW increase = \$1,214.60 per week
1/1/2025 -12/31/2025	+ 3.77588% SAWW increase = \$ 1,260.46 per week

IV

RECOMMENDATION

It is respectfully recommended that the petition be granted, and that paragraphs 3, 4, and 5 of the findings of fact be amended to read as follows:

3. At the time of injury, the employee's average weekly earnings were \$1,462.15, warranting a temporary total disability and permanent total disability rate of \$974.77 per week.
4. The injury caused temporary total disability during the period from March 21, 2020 to May 6, 2020, warranting indemnity at the rate of \$974.77 during this period, less credit for sums paid, if any, and less a 15% attorney fee payable to Shatford Law.
5. The injury caused permanent total disability, warranting benefits commencing May 7, 2020 and continuing for life at the initial rate of \$974.77, increasing every January 1 thereafter by a percentage commensurate with any increase in the State Average Weekly Wage (SAWW) during the year prior, with 15% of each payment of

permanent disability to be withheld and paid to Shatford Law as a reasonable attorney fee.

Paragraphs a and b of the award should be amended to read as follows:

- a. Temporary total disability indemnity at the rate of \$974.77 per week during the period from March 21, 2020 to May 6, 2020, less credit for sums paid, if any, and less a 15% attorney fee payable to Shatford Law.
- b. Permanent total disability indemnity, warranting benefits commencing May 7, 2020 and continuing for life at the initial rate of \$974.77, increasing every January 1 thereafter by a percentage commensurate with any increase in the State Average Weekly Wage (SAWW) during the year prior, with 15% of each payment of permanent disability to be withheld and paid to Shatford Law as a reasonable attorney fee.

Date: 2/27/2025

CLINT FEDDERSEN
Workers' Compensation
Administrative Law Judge

This Report and Recommendation was transmitted to the Appeals Board on 2/27/2025.