

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

BENJAMIN HILLMON, *Applicant*

vs.

**STOCKTON UNIFIED SCHOOL DISTRICT, permissibly self-insured,
administered by KEENAN & ASSOCIATES, *Defendant***

**Adjudication Number: ADJ18364465
Lodi District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant has filed a Petition for Reconsideration of the October 3, 2025 Findings of Fact and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that applicant sustained injury arising out of and in the course of employment to his lumbar spine on July 14, 2023, while he was employed by defendant as a carpenter; and that applicant is entitled to temporary disability benefits after retirement, from January 1, 2024 to April 22, 2025.

Defendant asserts that applicant removed himself from the labor market when he retired, and that he failed to prove his continuing willingness to work.

We have not received an answer to the petition on behalf of applicant. The WCJ has prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny the petition.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and as further explained below, we will deny defendant's Petition for Reconsideration of the WCJ's October 3, 2025 Findings and Award.

Former Labor Code 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, Labor Code 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 Labor Code 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 November 17, 2025, and 60 days from the date of transmission is Friday, January 16, 2026. This decision is issued by or on Friday, January 16, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 WCJ, the Report was served on November 17, 2025, and the case was transmitted to the Appeals Board on November 17, 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 Labor Code section 5909(b)(1) because service of the Report in

compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on November 17, 2025.

We further note that under Labor Code section 5904, the petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the Petition. In this case, the Petition for Reconsideration's sole assertion is that applicant is not entitled to temporary disability benefits after he retired effective December 30, 2023.

The record here is sufficient to affirm the finding that applicant is entitled to temporary disability benefits after the date of his retirement, for the reasons set forth in the Report. There is no persuasive evidence that applicant retired for any reason other than his industrial injury, and the fact that he did so before the claim was formally denied does not prove otherwise. Both before and after his claim was denied, applicant was functionally in the same position insofar as he was not receiving any monetary benefits. Applicant's testimony that he retired due to a lack of monetary benefits or modified work is unrebutted.

As noted in the Report, the cases cited by defendant where post-retirement temporary disability benefits were denied all have distinguishable fact patterns. In the *Gonzalez* case, the petitioner unequivocally denied any interest in further employment of any sort after her retirement date. (*Gonzales v. Workers' Comp. Appeals Bd.* (1998) 68 Cal.App.4th 843, 850 [63 Cal.Comp.Cases 1477, 1481].) In the present case, applicant did not unequivocally deny interest in continued employment:

He retired in December 2023. He was forced into retirement. He was not ready to retire. He was told that they didn't have any light duty for him. When he was injured years ago, he was given light duty. The light duty involved answering telephones. He would have worked light duty if the employer had offered him light duty. He once again stated he retired in December 2023 because he was running out of time and because he was forced out. No one at Keenan & Associates discussed with him temporary disability. The only disability he got was from the policy he paid for. If he had been receiving temporary disability benefits, he would not have retired. He would have tried to return to work after recovering from his injury.

After he retired, his source of income has been retirement through Cal PERS and Social Security. He did receive one payment from American Fidelity Assurance Company. He does not know when he got the check. American Fidelity Assurance has indicated they paid him too much and they want some money back. He did not find any work after he retired.

(Minutes of Hearing and Summary of Evidence, August 6, 2025, p. 5, lines 5-15.)

The other cases cited in the petition are non-binding panel decisions and are also distinguished in the Report. In *Moore v. Workers' Comp. Appeals Bd.* (2015) 80 Cal.Comp.Cases 299, unlike the present case, the employee retired due to a perceived hostile work environment. In *Sera v. City of Los Angeles*, 2018 Cal. Wrk. Comp. P.D. LEXIS 100, the evidence did not support a finding that the employee intended to continue to work. In *Sera*, we were careful to explain that retirement does not automatically mean loss of entitlement to temporary disability benefits:

The fact that an injured worker retires does not automatically mean that the worker has withdrawn from the labor market because "it is common knowledge that people frequently work at other employments after retiring from their first employment." (*Van Voorhis v. Workmen's Compensation Appeals Board* (1974) 37 Cal.App.3d 81 [39 Cal.Comp.Cases 137].) If the injured worker's retirement is a "function of the job-related injury" or if the worker establishes by a preponderance of the evidence "an intent to pursue other work," then the worker should not be denied temporary disability benefits. (*University of Southern California v. Workers' Compensation Appeals Board (Miller)* (1983) 48 Cal.Comp.Cases 477 [writ denied].)

(*Sera, supra*, 2018 Cal. Wrk. Comp. P.D. LEXIS 100, at pp. 6-7.)

Unlike in *Sera*, the evidence in the present case shows that applicant wanted to return to modified duties, but he could not. Applicant testified, without rebuttal, to twice inquiring about modified work, and being told that it was not available. Applicant was on modified duty, but he was told he was unable to work at all. His retirement was a function of his industrial injury, and not a result of any intention not to work.

Further, in contrast to the evidentiary record in *Sera*, the present case establishes that applicant was medically unable to work, or look for work, immediately after his retirement. Dr. Walter, the Panel Qualified Medical Evaluator (PQME), indicated in his April 11, 2024 report that applicant was temporarily totally disabled (TTD) from July 14, 2023 forward, so medical expert opinion supports applicant's TTD status.

Accordingly, we deny the Petition for Reconsideration of the findings and award of temporary disability.

For the foregoing reasons, and the reasons set forth in the Report,
IT IS ORDERED that defendant's Petition for Reconsideration of the F&A of October 3, 2025 is **DENIED**.

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

JANUARY 16, 2026

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

**BENJAMIN HILLMON
FLETCHER B. BROWN LAW FIRM
LAUGHLIN, FALBO, LEVI & MORESI LLP**

CWF/cs

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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REPORT AND RECOMMENDATION ON PETITION
FOR RECONSIDERATION

&

NOTICE OF TRANSMISSION TO THE APPEALS BOARD

Date of Findings of Fact and Order: 10/03/2025 (SERVED ON 10/07/2025)

Petitioner: DEFENDANT, STATE COMPENSATION
INSURANCE FUND

Timeliness of Petition: TIMELY FILED ON 11/03/2025

Verification of Petition: VERIFIED

INTRODUCTION

This is a timely filed and verified Petition for Reconsideration by Defendant (Petitioner). The Findings of Fact and Award appealed is the finding that applicant did not remove himself from the labor market and therefore he was entitled to temporary disability from 1/1/2024 through 4/22/2025 despite his retirement from the Stockton Unified School District effective 12/30/2023. Petitioner argues that Applicant voluntarily removed himself from the labor market by taking a service-connected retirement on 12/29/2023 and therefore is not entitled to temporary disability benefits after the effective date of his retirement.

It is recommended that Reconsideration be denied.

FACTS

Benjamin Hillman, while employed on July 14, 2023 as a carpenter, sustained injury arising out of an in the course of employment to the lumbar spine. (Minutes of Hearing and Summary Of Evidence dated 8/26/2025, page 2 lines 4-7). The Applicant's industrial injury was formally denied by Stockton Unified School District by letter dated 10/31/2023. (Joint Exhibit 8). Applicant's effective date of his retirement from the Stockton Unified School District is 12/29/2023. (Joint Exhibit 12). Defendant by letter dated 6/12/2024 advised Applicant that although his workers' compensation claim had been accepted, that they could not pay "temporary disability benefits for the period 7/19/2023 through Current at this time because based on the medical reporting of the qualified medical examiner Dr. Walter, and need to confirm the dates of employment, retirement and paid wages." (Joint Exhibit 7). The employer paid salary continuation at \$981.87 per week from 8/3/2023 through 12/29/2023. (Minutes of Hearing and Summary Of Evidence dated 8/26/2025, page 2 lines 12-14). Applicant was never offered

modified or alternative work after December 29, 2023. (Minutes of Hearing and Summary Of Evidence dated 8/26/2025, page 2 lines 18-19). Applicant received medical treatment from 1/1/2024 through 4/22/2025 and had work restrictions or activity modifications that prevented him from working his usual and customary occupation as a carpenter based on the PQME reports of Dr. Walter and the treatment reports of Dr. Chow. (Joint Exhibit 1 through 6).

DISCUSSION

In order for an injured worker to be entitled to temporary disability, the worker has to suffer a wage loss. *Gonzales v. WCAB* (1998) 63 CCC 1477; *Herrera v. WCAB* (1969) 34 CCC 382; *Cone v. Zacks Pasta Kitchen (en banc)* (1988) 53 CCC 251. If the employer continues to pay wages equal to or in excess of the temporary disability amount, then there is no award of temporary disability. *Herrera v. WCAB* (1969) 34 CCC 382; *Cone v. Zacks Pasta Kitchen (en banc)* (1988) 53 CCC 251. "The decision to retire implicates the element of 'willingness to work' in the earnings-capacity calculus, and the primary factual component of the analysis must be whether the worker is retiring for all purposes, or only from the particular employment... A subsidiary question is whether the decision to retire is a function of the job-related injury. If the injury causes the worker to retire for all purposes or interferes with plans to continue working elsewhere, then the worker cannot be said to be unwilling to work and would have earning capacity by the injury." *Gonzales v. WCAB* (1998) 63 CCC 1477.

Like the *Defendant in County of Kern v. WCAB* (2017) 82 CCC 598), Stockton Unified School District did not present any testimony from Applicant's supervisor or any of his coworkers to show that the Applicant could have continued working but chose to retire for reasons unrelated to the industrial injury. An injured worker who credibly testifies that but for the work injury, he or she would have continued to be willing to go back to work is entitled to temporary disability. *Merritt v. Bigge Crane & Rigging* 2025 Cal. Wrk. Comp. P.D. LEXIS 38. Similarly, an injured worker who credibly testifies that he retired from his job based on his understanding that defendant's policy was to terminate employees out on leave for more than one year, but that he intended to return to work, and although the applicant had not looked for any other work after his retirement due to his work restrictions, has been found to be entitled to temporary disability benefits after his retirement. *Brown v. Frito Lay* 2020 Cal. Wrk. Comp. P.D. LEXIS 121. In this case, Applicant was aware of the 39-month reemployment list based on his prior experience of almost being placed on the 39-month reemployment list due to a hip injury.

(Minutes of Hearing and Summary of Evidence Page 5 lines 13-17). He also credibly testified that he planned to attempt to return work after he recovered from his industrial injury. (Minutes of Hearing and Summary of Evidence Page 5, lines 9-11).

Citing *Gonzales v. WCAB* (1998) 63 CCC 1477, Petitioner agrees that an Applicant may receive temporary disability post-retirement if the Applicant did not retire for all purposes, or if the industrial injury forced the worker to retire from their job and interfered with plans to continue working. Petitioner notes that Applicant has the burden of proof to "establish by the preponderance of the evidence an intent to pursue other work interrupted by the job-related injury." *Gonzales v. WCAB* (1998) 63 CCC 1477. Petitioner argues that Applicant has failed his burden of proof and cites *Acosta v. State Dep't of Corr & Rehab* 2023 Cal. Wrk. Comp. P.O. Lexis 360 and *Moore v. WCAB* (2015) 80 CCC 299. Petitioner's reliance on *Acosta v. State Dep't of Corr & Rehab* is misplaced due to not having access to the Minutes of Hearing and Summary of Evidence from the case. It shows one of the potential pitfalls to citing a panel decision without having access to the full record. If Petitioner had access to the Minutes of Hearing and Summary of Evidence in *Acosta v. State Dep't of Corr & Rehab*, they would have found that Ms. Acosta, in addition to testifying that she requested retirement in December of 2022 because the pain was making it physically impossible to do her job at that time, also testified that she was not currently working, she had not applied for work anywhere else, and had no plans to apply for work. Her plan was to not do anything stressful for a year. This is why the WCAB stated "She must still, however, prove by a preponderance of the evidence an intent to pursue other work following her convalescence from her industrial injury" and sent the matter back to the trial level for further proceedings on whether there was evidence to substantiate a perpetual temporary disability award subject to "medical substantiation and statutory entitlement." *Acosta v. State Dep't of Corr & Rehab* 2023 Cal. Wrk. Comp. P.O. Lexis 360

This facts of this case are different than *Acosta v. State Dep't of Corr & Rehab*. First, Applicant is not seeking an ongoing award of temporary disability, nor was he awarded an ongoing temporary disability award. Second, Applicant testified "He would have worked light duty if the employer had offered him light duty ... If he had been receiving temporary disability benefits, he would not have retired. He would have tried to return to work after recovering from his injury." (Minutes of Hearing and Summary of Evidence Page 5, lines 7-11). Furthermore, Applicant testified "He asked his supervisors, on two occasions, if there was any light duty

available for him to do. He was told there was no light duty." (Minutes of Hearing and Summary of Evidence Page 6, lines 19-21). There is nothing in evidence to refute this testimony. As such, per *Gonzales v. WCAB*, applicant's retirement does not preclude his entitlement to temporary disability. Applicant's testimony that he asked if there was light duty available while his claim was denied, that he would have worked if modified duty was offered, and that he would have tried to return to work after recovering from his injury proves by a preponderance of the evidence that he did not remove himself from all employment, that he was unwilling to work, and intended to pursue work after his convalescence from his industrial injury.

Petitioner's reliance on *Moore v. WCAB* (2015) 80 CCC 299 is also misplaced. In this case, the "WCAB pointed out, however, that, although the Applicant's retirement letter implicated her physical duties in her decision to retire, the record as a whole revealed that Applicant retired when she did largely due to her perception of a hostile work environment, stress, and 'mental abuse.' Additionally, Applicant's deposition testimony suggested that it was largely the emotional stress caused by her employment that forced her retirement. The WCAB further found no substantial medical evidence supporting the conclusion that the admitted orthopedic injuries standing alone, caused TTD, since Dr. Sobol continued to believe that Applicant was physically capable of working within the restrictions he had imposed, modified duties were offered to and undertaken by Applicant, and Applicant voluntarily left the modified duties because of stress." *Moore v. WCAB* (2015) 80 CCC 299, 302. In the case at hand, Applicant was never offered modified duty after his injury, he never worked a period of modified duty, and he did not leave work while working modified duties. Applicant's unrebutted testimony is that "He would have worked light duty if the employer had offered him light duty ... He would have tried to return to work after recovering from his injury." (Minutes of Hearing and Summary of Evidence Page 5, lines 7-11). Furthermore, Applicant testified "He asked his supervisors, on two occasions, if there was any light duty available for him to do. He was told there was no light duty." (Minutes of Hearing and Summary of Evidence Page 6, lines 19-21). Defendant provided no evidence to rebut this testimony.

Petitioner also argues that Applicant is not entitled to post-retirement temporary disability because the employer was not provided with an opportunity to offer modified work, to mitigate the temporary disability exposure, or to engage in the interactive process due to Applicant's retirement. Petitioner states "After the claim was accepted, there were no demands related to

modified work or indications from the applicant that he wanted to look for another job with the employer at any point during the litigation of the claim. At the time of his retirement, the applicant did not request consideration for any other jobs with the employer nor placement on the 39-month re-employment list." (Defendant's Petition for Reconsideration, page 7 lines 20-24). Petitioner continues "... Defendant asserts that the applicant's retirement was the reason modified work was never offered ... The retroactive availability of modified duty may be speculative, but the facts of the case plainly show that had the applicant not retired he would have been eligible for either temporary disability benefits or modified work following acceptance of the claim after the QME Dr. Walter reporting, but neither were provided based on his retirement status. A modified work offer, temporary or permanent, presupposes a continuing employment relationship and actionable medical restrictions. Once the applicant retired, the employer had no legal ability or obligation to offer modified work." (Defendant's Petition for Reconsideration, page 8 line 19 - page 9 line 4). Whether the employer was afforded an opportunity, or even had the ability, to provide modified duty or alternative work is irrelevant to determining whether the Applicant is entitled to temporary disability.

In *Dennis v. State of California* (2020) 85 CCC 389 (*en banc*), the WCAB held that "an employer's inability to offer regular, modified, or alternative work does not release an employer from the statutory obligation to provide a SJDB voucher." It did not matter that "inmate workers cannot return to an inmate job once they are released from prison, making it impossible for a prison employer to make a bona fide job offer." *Dennis v. State of California* (2020) 85 CCC 389 (*en banc*). This same reasoning has subsequently been applied to temporary disability where an employer could not offer or continue to offer modified duty to an injured worker because of reasons outside the employer's control. During the COVID-19 shutdown, employers were not relieved from paying temporary disability benefits because the shutdown prevented them from offering modified duty. *Berkshire Hathaway Homestate Companies v. WCAB* (2021) 86 CCC 997; *Corona v. Cal. Walls, Inc.* (2020) 85 CCC 1043. "... the relevant standard in determining whether an employer is liable for TD in cases such as this is whether the injured worker has access to modified duty, without consideration of the employer's ability to provide such duty." *Berkshire Hathaway Homestate Companies v. WCAB* (2021) 86 CCC 997. "Similarly, an employer's inability to accommodate a temporarily disabled employee's work restrictions does not release it from its obligation to pay temporary disability benefits. 'Labor Code section 3202

requires the courts to view the Workers' Compensation Act from the standpoint of the injured worker, with the objective of securing the maximum benefits to which he or she is entitled." *Corona v. Cal. Walls, Inc.* (2020) 85 CCC I 043. Once applicant established that his retirement did not preclude entitlement to temporary disability, Defendant's only way to avoid liability for temporary disability for periods where the Applicant had work restrictions before becoming permanent & stationary was to make a bona fide offer of modified or alternative work, which it did not do.

CONCLUSION

It is undisputed that applicant was unable to perform the duties of his usual and customary occupation as a carpenter after his industrial injury. It is also undisputed that the employer could not accommodate the initial work restrictions from Trinity Urgent Care. While the claim was delayed, Applicant used his sick and vacation time, along with a short-term disability policy, for income. The Applicant credibly testified that he asked his supervisors on two occasions if there was any light duty available. Running out of sick and vacation time and headed toward being placed on the 39 month re-employment list, Applicant chose to retire, something he would not have done if he were receiving temporary disability benefits, so he would have income. Absent the industrial injury, and but for Defendant's failure (or inability) to provide modified or alternative work, applicant would not have had any loss of earnings. As such, applicant is entitled to temporary disability benefits from 1/1/2024 through his permanent & stationary date of 4/22/2025.

RECOMMENDATION

Based on the foregoing, it is respectfully recommended that the Petition for Reconsideration be denied.

NOTICE OF TRANSMISSION:

Pursuant to Labor Code, Section 5909, the parties and the appeals board are hereby notified that this matter has been transmitted to the appeals board on date set out below.

Dated: NOVEMBER 17, 2025

DAVID J CONVERSE
WORKERS' COMPENSATION JUDGE