

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

BRIDGET CAMPOS, *Applicant*

vs.

**NORM'S RESTAURANT; ARGONAUT INSURANCE, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ11247295
Santa Ana District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on October 17, 2023, wherein the WCJ found in pertinent part that applicant, while employed on February 20, 2018, as a server by defendant, sustained injury arising out of and in the course of employment to the left knee, right knee, nose, face, left thigh, right thigh, head in the form of headaches and head itself, neurological system and neurocognitive systems, head trauma and brain; that further development of the record is required regarding whether applicant has suffered injury to her eye or eyes; that applicant's permanent and stationary date is June 10, 2022, and that the record must be more fully developed before a decision can issue on temporary disability status following June 10, 2022, if any; and that further development of the record is required before deciding permanent disability but that defendant has carried its burden of proving apportionment of 5% as it relates only as to applicant's headaches. The WCJ ordered that a second panel evaluation be obtained in the specialty of "ear, nose and throat . . . regarding whether applicant suffered independent injury to her eye or eyes which are not neurological based symptoms."

On October 23, 2023, the WCJ issued a “Nunc Pro Tunc Order,” wherein he ordered in pertinent part that the clerical error in the order regarding the second panel evaluation be corrected to state that it was in “ophthalmology” rather than “ear, nose and throat.”

Applicant contends that she is entitled to further temporary disability benefits as she has not received the maximum benefit of 104 weeks; that defendant overpaid the Employment Development Department (EDD) in the amount of \$3,573.00 when settling its lien; and that defendant should be penalized the maximum penalty allowable pursuant to Labor Code section 5814.

Defendant filed an Answer in response to the Petition requesting that the Findings, Awards and Orders stand as previously determined.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the allegations in the Petition for Reconsideration and the Answer, and the contents of the Report. For the reasons discussed below, we will vacate the Nunc Pro Tunc order; amend the Findings and Award to defer the issues of applicant’s permanent and stationary date, permanent disability and any apportionment thereon, and penalties under Labor Code section 5814; and to correct the order regarding the second panel evaluation to state that it was in “ophthalmology” rather than “ear, nose and throat.” For the reasons stated in the WCJ’s Report, which we adopt and incorporate, we otherwise affirm the Findings and Award.

I.

As an initial matter, we will vacate the Nunc Pro Tunc order as it was improper. The appropriate procedure for a WCJ to correct a previous findings, award, and/or order is to follow WCAB Rule 10961. (Cal. Code Regs., tit. 8, § 10961.) WCAB Rule 10961 provides that jurisdiction remains with the district office for 15 days after the timely filing of a petition for reconsideration and sets forth the following actions that a WCJ may take in response: (1) The WCJ may prepare a report and transfer jurisdiction to the Appeals Board to address the merits of the petition (Cal. Code Regs., tit. 8, § 10961(a); see Cal. Code Regs., tit. 8, § 10962); (2) The WCJ may rescind the entire order, decision or award and initiate proceedings within 30 days (Cal. Code Regs., tit. 8, § 10961(b)); or (3) The WCJ may rescind the order, decision or award and issue an

amended order, decision or award, and a new petition for reconsideration must be filed in response to the amended order, decision or award. (Cal. Code Regs., tit. 8, § 10961(c).)

Therefore, we will vacate the Nunc Pro Tunc order and instead amend the F&A to correct the order regarding the second panel evaluation to state that it was in “ophthalmology” rather than “ear, nose and throat.”

We note that as raised by applicant in the Petition and discussed by the WCJ in the Report, the issue of Labor Code section 5814 penalties must be deferred.

II.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

Temporary disability indemnity is a workers’ compensation benefit which is 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 temporary disability payments ceases when the employee returns to work, is deemed medically able to return to work, or becomes permanent and stationary. (Lab. Code, §§ 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 more specifically that: “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.*” (*Huston, supra*, 95 Cal.App.3d at p. 806, emphasis added.) “‘Permanent and stationary status’ is the point when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.” (Cal. Code Regs., tit. 8, § 9785 (a)(8); see also Cal. Code Regs., tit. 8, § 9811(k).)

Here, the WCJ found that the record must be more fully developed before determining whether applicant was entitled to further temporary disability indemnity benefits after June 10, 2022. Yet, the WCJ also found that the permanent and stationary (P&S) date was June 10, 2022. However, an applicant would only receive temporary disability if they had not become P&S. Therefore, if additional evidence is needed to determine whether applicant was due additional temporary disability, then she could not have reached P&S status. Thus, the issue of the P&S date must be deferred.

Similarly, apportionment cannot be determined prior to a finding of permanent disability. Labor Code section 4663 provides that “[a]pportionment of permanent disability shall be based on causation.” (Lab. Code, § 4663(a).) A doctor who prepares a report addressing the issue of permanent disability due to a claimed industrial injury must address the issue of causation of the permanent disability. (Lab. Code, § 4663(b).) Labor Code section 4663 requires that the doctor “make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.” (Lab. Code, § 4663(c); see also *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 748.) Pursuant to Labor Code sections 4663(c) and 5705, applicant has the burden of establishing the approximate percentage of permanent disability directly caused by the industrial injury, while defendant has the burden of establishing the approximate percentage of permanent disability caused by factors other than the industrial injury. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612-613 (Appeals Board en banc) (*Escobedo*)).

The WCJ found that the record needed development on the issue of permanent disability while also finding that defendant had carried its burden of proving apportionment as to applicant’s

headaches. However, permanent disability must be determined first before it can be apportioned. Therefore, the issue of apportionment must also be deferred.

Accordingly, as our decision after reconsideration, we vacate the Nunc Pro Tunc order; amend the F&A to defer the issues of the permanent and stationary date, permanent disability and apportionment, and Labor Code section 5814 penalties; and to correct the order regarding the second panel evaluation to state that it was in “ophthalmology” rather than “ear, nose and throat.” We otherwise affirm the decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the “Nunc Pro Tunc Order” issued by the workers’ compensation administrative law judge on October 23, 2023 is **VACATED**.

IT IS FURTHER ORDERED that the Findings and Award issued by the workers’ compensation administrative law judge on October 17, 2023 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS

6. The issue of applicant’s permanent and stationary date is deferred.
7. The issue of permanent disability and any apportionment thereon is deferred.
8. The issue of penalties under Labor Code section 5814 is deferred.

ORDERS

- 1. A second panel evaluation be obtained in the specialty of Ophthalmology in order to fully develop the record regarding whether applicant suffered an injury to her eye or eyes that is not neurologically based.
- 3. The issue of permanent disability and any apportionment thereon is deferred.
- 4. The issues of serious and willful misconduct and penalties under Labor Code section 5814 are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 4, 2026

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

**BRIDGET CAMPOS
WCD LAW GROUP**

JMR/pm

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

**REPORT AND RECOMMENDATION ON APPLICANT'S
PETITION FOR RECONSIDERATION**

**I.
INTRODUCTION**

1. Applicant's Occupation	Server
Applicant's Age	36 (on date of injury)
Date of Injury	02/20/2018
Parts of Body Injured	Left knee, right knee, nose, face, left thigh, right thigh, head in the form of headaches and head itself, neurological system and neurocognitive systems, head trauma and brain
Parts of Body Disputed	Brain and eye(s)
2. Identity of Petitioner	Applicant
Timeliness	The petition is timely filed
Verification	The petition is verified
Answer	11/02/2023
3. Date of Findings of Fact	10/17/2023
4. Petitioner's contentions	

(a) The findings of fact do not support the order, decision, or award.

**II.
FACTS**

Applicant suffered injury on February 20, 2018 while employed by Norm's Restaurant as a server, occupational Group No. 322, at Claremont to her left knee, right knee, nose, face, left thigh, right thigh, head in the form of headaches and head itself, neurological system and neurocognitive systems.

Argonaut Insurance, administered by Sedgwick Claims Management Services was the employer's workers' compensation carrier at the time of injury.

Disputes at trial included whether Applicant suffered injury in the form of head trauma, brain or eye injury arising out of and during the course of employment, parts of body injured, earnings, temporary disability, entitlement by Defendant to credit for EDD payments, permanent disability, permanent and stationary date, apportionment, liability for self-procured medical treatment and need for further medical treatment.

The record reflects penalties are timely raised by Applicant based on Labor Code §§ 132(a), 4453 and 5814 but were either not raised in Pre-Trial Conference Statement for trial or were deferred at the time of trial pursuant to agreement of Applicant. Pre-Trial Conference Statement (hereinafter “PTCS”). EAMS Doc ID: 77153103; Minutes of Hearing and Summary of Evidence Day I of trial August 17, 2023 (hereinafter “MOH I”) p. 2; ll: 6-14.

Jurisdiction over penalties is reserved as penalty issues remain undecided.

Penalties are addressed in Applicant’s post-trial pleadings¹ and those arguments will be recognized in the future proceedings anticipated by and before the undersigned.

Findings, Award and Orders issued October 17, 2023. Applicant timely petitioned for reconsideration of the Findings Award and Orders asserting the findings of fact do not support the order, decision, or award. Applicant acknowledges agreement with the undersigned’s order, but understandably questions if Labor Code §5814 penalties were overlooked. Applicant asserts by way of petition:

1. Defendant did not pay 104 weeks but only 94 weeks of temporary disability;
2. Defendant over paid EDD in the amount of \$3,573.00 when settling its lien;
3. Defendant should be penalized the maximum penalty allowable pursuant to Labor Code §5814.

III. **DISCUSSION**

LABOR CODE §5814 PENALITES

Applicant understandably inquires whether the issue of penalties pursuant to Labor Code §5814 were overlooked. The issue of penalties pursuant to Labor Code §5814 have not been overlooked.

¹ This pleading is identified by Applicant as “the closing statements for the trial” in her petition.

The undersigned reviewed the parties Joint Pre-Trial Conference Statement at trial following extensive work on the documents by Applicant with the assistance of the Santa Ana Information and Assistance Officer. The Pre-Trial Conference Statement did not identify Labor Code §5814 penalties as a trial issue. Other penalties were deferred with jurisdiction reserved, thus the undersigned contemplated as well as continues to contemplate all penalties including those allowable pursuant to Labor Code §5814 will be heard at future hearing(s) upon the filing of a Declaration of Readiness to Proceed by any party to disputes over penalties.

The issue of penalties has not been adjudicated. No decisions, Awards or Orders have issued whether interim or final. Applicant's Petition for Reconsideration is premature, though understandable, because it is premature as penalty disputes have not been heard yet by the undersigned.

It is acknowledged by the undersigned that future hearings must await a final decision by the Workers' Compensation Appeals Board on the Petition for Reconsideration addressed by this report and recommendation.

It is recommended Applicant's Petition for Reconsideration be denied because it is premature and there is no record of decision yet on penalties.

THE 104 WEEK CAP ON TEMPORARY DISABILITY

Applicant asserts Defendant has not paid 104 weeks of temporary disability but only 94 weeks. Applicant does not challenge the Labor Code §4656(c)(2) cap.

The undersigned's decision does not award or order any specific number of weeks as a cap to payment of temporary disability to Applicant. It is premature to do so as the record requires "further treatment and evaluation reports be obtained on the issue of whether Applicant has suffered temporary disability after 06/10/2022." Further, the undersigned's opinion remains Applicant is entitled to temporary disability less "credits for EDD payments addressed below and subject to the Labor Code §4656(c)(2) cap."

Defendant is required to prove payment of 104 weeks of temporary disability or an otherwise "cap qualified" payment such as qualified EDD payments before it may assert a cap to its obligation of payment(s). Applicant has raised this issue for the first time in her Petition for Reconsideration thus the undersigned has not had an opportunity to confirm or reject Defendant's

claim of 104 weeks of temporary disability paid to Applicant. Further Defendant has not received required due process, notice and right to be heard on the issue.

It is recommended Applicant's Petition for Reconsideration be denied because it is premature and there is no record of this dispute being raised before the undersigned and/or due process afforded all parties in resolving the dispute as required.

PAYMENT TO EDD

Applicant asserts Defendant overpaid EDD an "extra" amount of \$3,573.00. Applicant tenders understandable inquiries regarding why Defendant paid what it did to EDD and whether those payments affected her recovery adversely and wrongfully.

Applicant has raised this issue for the first time in her Petition for Reconsideration. The undersigned has not had an opportunity to confirm or reject her claims, hear defense arguments thereto, develop the trial record or issued findings of fact, order(s) and or award(s) regarding this limited issue. Defendant further has not been afforded due process, notice or right to be heard on the issue raised as it was raised for the first time in Applicant's Petition for Reconsideration.

It is recommended Applicant's Petition for Reconsideration be denied because it is premature and there is no record of this dispute being raised before the undersigned and/or due process afforded all parties in resolving the dispute as required.

IV.
RECOMMENDATION

For the reasons stated above, it is respectfully requested that Applicant's Petition for Reconsideration be denied.

Date: November 7, 2023

DAVID H. PARKER
Workers' Compensation Judge