WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CHENITA WATSON, *Applicant*

vs.

CITY OF GARDENA, permissibly self-insured; administered by LWP CLAIMS SOLUTIONS, *Defendants*

Adjudication Numbers: ADJ10912062 (MF), ADJ15464731, ADJ18229865[1]
Long Beach District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant Chenita Watson seeks reconsideration of the July 1, 2026 Joint Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while applicant is entitled to the supplemental job displacement benefit (SJDB) voucher under Labor Code, section 4658.7[2], said entitlement is barred by Rule 10133.31(c).

Applicant contends that section 4658.7 imposes two separate requirements for an employer to avoid SJDB voucher liability: (1) the employer must offer regular, modified, or alternative work no later than 60 days after receipt of the qualifying permanent-and-stationary report finding permanent partial disability; and (2) the offer of regular, modified, or alternative work must last at least 12 months. Applicant further contends that Rule 10133.31(c)—which provides that an employee who has lost no time from work or has returned to the same job for the same employer is deemed to have been offered and accepted regular work—does not satisfy the 60-day and 12-month timing requirement in and of itself, and that an employer still needs to prove that the return to the same job for the same employer satisfies the two timing requirements.

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[1] ADJ18229865 was not submitted for trial but it was included in the Petition for Reconsideration and the Report and Recommendation on Petition for Reconsideration.

[2] All statutory references are to the Labor Code unless otherwise indicated.

We have not received an answer from defendant City of Gardena. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we grant reconsideration and amend the July 1, 2026 Joint Findings of Fact to find that applicant is entitled to a SJDB voucher for the April 13, 2017 injury (ADJ10912062).

FACTS

As the Report states:

> The following facts are relevant to Applicant's claim of entitlement to two vouchers: one for the April 13, 2017 date of injury, and one for the October 26, 2021 date of injury. With respect to the first injury, Applicant received treatment from Dr. Julie Goalwin, her primary treating physician (psyche), and was temporarily totally disabled ("TTD") beginning April 13, 2017. [*See* Applicant's Exhibit "2", Psychological report of Julie Goalwin, Ph.D., dated July 17, 2019, p. 18.] Applicant reached maximum medical improvement ("MMI") on July 17, 2019, and a report identifying same was issued by Dr. Goalwin on or about July 29, 2019. [*See* MOH, *supra* at p. 2, lns. 19.5-20. *See also*, Exhibit "2", *supra* at pp. 18, 24.]
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> In Dr. Goalwin's MMI report, Applicant was assigned permanent partial disability of 11% and it was noted that Applicant could return to work with no restrictions at that time. Applicant returned to work on December 19, 2019, and continued to perform the same work for the same employer continuously and without interruption for approximately 22 months until her second injury. [*See* MOH, *supra* at p. 2, ln. 21. *See also*, Applicant's verified Petition to Compel Issuance of Supplemental Job Displacement Benefit Voucher, filed March 17, 2026, p. 2, lns. 10.5-16.5.]
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> With respect to the October 26, 2021 date of injury, Applicant also received treatment from Dr. Goalwin. Applicant had a new period of TTD and returned to regular work on June 2, 2023. [*See* MOH, *supra* at p. 3, lns. 20-20.5. *See also*, Applicant's Exhibit "1", Final MMI Primary Treating Physician's Psychological Evaluation report of Julie Goalwin, Ph.D., dated February 11, 2024, p. 4. *See also*, Applicant's Exhibit "3", Orthopedic PQME report of C. Thomas Vangsness, Jr., dated August 4, 2023, pp. 3-4, 20-24 (record review).]

> Applicant was subsequently declared MMI by the orthopedic PQME, Dr. C. Thomas Vangsness, Jr., on August 4, 2023, and later by Dr. Goalwin on February 11, 2024. [*See* MOH, *supra* at p. 3, lns. 18.5-19. *See also*, Exhibit "3", *supra* at p. 26.] Applicant was assigned 12% permanent partial disability by Dr. Vangsness for the neck and back, before adjustment and apportionment. Applicant was given mild work restrictions by Dr. Vangsness and no restrictions from a psychological perspective by Dr. Goalwin. [*See* Exhibit "3", *supra* at p. 26. *See also*, Applicant's Exhibit "1", *supra* at p. 21.]
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> As noted above, Applicant had two separate and distinct TTD periods following each of the two dates of injuries at issue herein. Following each period of TTD, Applicant returned to regular work as a bus driver and continues working her usual and customary duties for Defendant to this day. [*See* Exhibit "1", *supra* at p. 21. *See also*, Exhibit "3", *supra* at p. 2-3. *See also*, Defendant's verified Trial Brief, filed March 16, 2026, p. 3, lns. 1-2.]. (Report, pp. 3-5.)

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, which states 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.
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> (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 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 August 6, 2026, and 60 days from the date of transmission is October 5, 2026. This decision is issued by or on October 5, 2026, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 6, 2026, and the case was transmitted to the Appeals Board on August 6, 2026. 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 August 6, 2026.

II.

Section 4658.7(b) provides that an injured employee with permanent partial disability is entitled to a SJDB voucher unless the employer makes an offer of regular, modified, or alternative work that is made no later than the specified period provided by section 4658.7(b)(1), and the offer is for regular work, modified work, or alternative work lasting at least 12 months. (§ 4658.7, subd. (b).)

Rule 10133.31(c) provides:

> An employee who has lost no time from work or has returned to the same job for the same employer, is deemed to have been offered and accepted regular work in accordance with the criteria set forth in Labor Code section 4658.7(b). (Cal. Code Regs., tit. 8, § 10133.31(c).)

The interpretation of an administrative regulation is subject to the same principles as the interpretation of a statute. (*County of Sacramento v. State Water Resources Control Bd.* (2007) 153 Cal.App.4th 1579, 1586.) "A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. [Citations.] In

construing a statute, our first task is to look to the language of the statute itself. [Citation.] When the language is clear and there is no uncertainty as to the legislative intent, we look no further and simply enforce the statute according to its terms. [Citations.] [P] Additionally, however, we must consider the [statutory language] in the context of the entire statute [citation] and the statutory scheme of which it is a part. We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. [Citations.] [Citations.] If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. [Citation.] . . . When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. [Citations.] Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. [Citations.]" (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743; internal quotations and citations omitted.)

Rules adopted by an administrative agency may not exceed the scope of the authority granted the agency in the relevant enabling legislation or exceed the limits of the agency's powers which other statutes may impose. (*Flores v. OC Complete Personnel* (ADJ3751392, September 22, 2017) [2017 Cal. Wrk. Comp. P.D. LEXIS 410] citing *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 419–420 and *Morris v. Williams* (1967) 67 Cal.2d 733, 737; Gov. Code, § 11342.2).

The issue here is whether satisfying Rule 10133.31(c) means the employer is absolved from providing a SJDB voucher. We conclude that it does not. Rule 10133.31 simply provides that an employee who has lost no time from work, or has returned to the same job for the same employer, is deemed to have been offered and accepted regular work. It does not provide that satisfying either of these conditions absolve voucher liability. To be absolved from voucher liability, an employer must make an offer of regular, modified, or alternative work that meets both criteria: (1) the offer is made no later that 60 days after receipt of the first permanent and stationary report; and (2) the offer is for regular, modified, or alternative work lasting 12 months. The rule is silent as to whether an employee who has lost no time from work or has returned to the same job for the same employer is deemed to have satisfied the two timing requirements, and we do not insert additional meaning to the words of the rule when it is not plainly laid out. To interpret the rule otherwise, that is to interpret the regulation to mean that it need not satisfy the two timing requirements expressed in the statute, would create an overreach that would conflict with the parameters of the statute.

Here, with respect to the April 13, 2017 injury (ADJ10912062), according to the July 29, 2019 report of Julie Goalwin, Ph.D., applicant was found to be permanent and stationary with a GAF score of 63 and a whole person impairment (WPI) of 11. (Applicant's Exhibit 2, report of Dr. Goalwin, signed on July 29, 2019 with an examination date of July 17, 2019, p. 22.) An earlier report by Michelle Conover, Ph.D., dated July 1, 2019 found applicant permanent and stationary but without any disability, or a disability that had largely been resolved. (Defendant Exhibit A, report of Dr. Conover dated July 1, 2019, pp. 59, 61.) Dr. Conover's report would not have entitled applicant to the SJDB voucher as she did not find applicant had suffered any permanent disability. But because the Joint Findings of Fact found applicant to be permanent and stationary on the later date of July 17, 2019 (this is the date of Dr. Goalwin's examination of application, not the date Dr. Goalwin signed her report), we accept Dr. Goalwin's finding of permanent disability. The Joint Findings of Fact also found that applicant returned to work on December 19, 2019, which is more than 60 days after the permanent and stationary date of July 17, 2019. It is undisputed that applicant returned to the same job for the same employer for more than 12 months. (See Joint Opinion on Decision dated July 1, 2026, pp. 2-3.) Accordingly, because the employer was not deemed to have offered applicant regular work until December 19, 2019, which is more than 60 days after she was permanent and stationary, the employer is not absolved from voucher liability. Therefore, applicant is entitled to a SJDB voucher for her April 13, 2017 injury (ADJ10912062).

With respect to the October 26, 2021 injury (ADJ15464731), applicant returned to work on June 2, 2023, which is before her permanent and stationary dates of August 4, 2023 and February 11, 2024. (Joint Findings of Fact date July 1, 2026, Findings, 14 and 15.) As such, she was deemed to have been offered regular work before she became permanent and stationary. Again, it is undisputed that applicant returned to the same job for the same employer for at least 12 months here. (See Joint Opinion on Decision dated July 1, 2026, p. 5.) In this matter, both timing requirements—the 60-day and 12 months requirements—were satisfied and the employer is absolved from voucher liability. Therefore, applicant is not entitled to a SJDB voucher for the October 26, 2021 injury (ADJ15464731).

Section 4658.7(b)(1) provides that the 60-day period to offer regular, modified, or alternative work, runs from the receipt by the claims administrator of a Physician's Return to Work & Voucher Report indicating that the employee is permanent and stationary. (§ 4658.7(b)(1).) The fact that the record does not contain a Physician's Return to Work & Voucher Report is not fatal.

There is no dispute that defendant knew of applicant's permanent partial disability and, therefore, of its potential liability for a SJDB voucher as defendant and its claim administrator received Dr. Goalwin's reports. (See Notice of Representation dated June 29, 2017 indicating that the Law Offices of Richard T. Fort was defendant's attorney and the claims administrator was Adminsure, Inc., both entities who were served with Dr. Goalwin's July 29, 2019 and February 11, 2024 permanent and stationary reports.) In *Opus One Labs v. Workers' Comp. Appeals Bd. (Fndkyan)* (2019) 84 Cal.Comp.Cases 634, 636 [2019 Cal. Wrk. Comp. LEXIS 51] (writ denied), a different Appeals Board panel concluded that:

> We are persuaded by applicant's contention here that, in this instance, defendant had the burden to obtain a Physician's RTW form when defendant was apprised of applicant's permanent disability status and work preclusions in the QME report. The purpose of a Physician's RTW form is to inform defendant that applicant has become permanent and stationary, the industrial injury caused permanent partial disability, and of applicant's work capacities and restrictions. (Lab. Code, § 4658.7(b)(1), (h)(2); Cal. Code of Regs., tit. 8, § 10133.31(b).) The QME report here provided this information. To conclude otherwise would place form over substance. (*County of Kern v. T.C.E.F, Inc.* (2016) 246 Cal. App. 4th 301, 321, 200 Cal. Rptr. 3d 714 ["A general principle of statutory construction is that courts do not place form over substance where doing so defeats the objective of a statute, especially a statute designed to protect a public interest. (citations omitted.) It is an 'established principle of the law that the substance and not the mere form of transactions constitutes the proper test for determining their real character. If this were not true it would be comparatively simple to circumvent by sham the provisions of statutes framed for the protection of the public. This the law does not permit.' (citations omitted)."]; *Pulaski v. American Trucking Associations, Inc.* (1999) 75 Cal. App. 4th 1315, 1328 [64 Cal. Comp. Cases 1231, 1236] ["Substantial compliance, as the phrase is used in the decisions, means actual compliance in respect to the substance essential to every reasonable objective of the statute .... Where there is compliance as to all matters of substance technical deviations are not to be given the statute of noncompliance. ... Substance prevails over form. (citations omitted.)" (internal quotations omitted [by WCAB]; emphasis in original.)].) [Citations to record omitted]

Accordingly, we grant reconsideration and amend the July 1, 2026 Joint Findings of Fact to find that applicant is entitled to a SJDB voucher for the April 13, 2017 injury (ADJ10912062).

For the foregoing reasons,

IT IS ORDERED that applicant Chenita Watson's Petition for Reconsideration of the July 1, 2026 Joint Findings of Fact is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 1, 2026 Joint Findings of Fact is **AFFIRMED EXCEPT** that it is **AMENDED** as follows:

. . .

JOINT FINDINGS OF FACT

17. Applicant is entitled to the supplemental job displacement benefit voucher for her April 3, 2017 injury (ADJ10912062) but not for her October 26, 2021 injury (ADJ15464731).

18. The issue of costs and attorney's fees is deferred, with jurisdiction reserved.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

JOSEPH V. CAPURRO, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 5, 2026

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

CHENITA WATSON
LAW OFFICES OF HINDEN & BRESLAVSKY, APC
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN, LLP

LSM/*ara*

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