

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

MARIA ALVARADO, *Applicant*

vs.

**M3G I, LP MACDONALD COMPANY, permissibly self-insured;
adjusted by PACIFIC CLAIMS MANAGEMENT, *Defendants***

**Adjudication Number: ADJ20337002
Sacramento District Office**

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

Applicant seeks reconsideration of the Findings of Fact, Award, and Order (FA&O) issued on May 18, 2026, by the workers' compensation administrative law judge (WCJ). By the FA&O, as relevant here, the WCJ found that on December 19, 2024, applicant sustained an injury arising out of and occurring during the course of employment to the low back, right hand and left hand; applicant is entitled to temporary total disability benefits from December 19, 2024, through September 14, 2025; and that applicant was not entitled to temporary total disability benefits after September 15, 2025.

Applicant alleges that the WCJ found applicant's testimony credible and defendant employer did not establish that modified duty was actually offered to applicant. She contends that the WCJ relied on an incorrect premise that she failed to adequately respond to employer communications, and that defendant did not meet its burden to show job abandonment or termination for cause so that she is entitled to temporary disability benefits after September 15, 2025.

We received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, and, as our Decision After Reconsideration, we will amend the FA&O to find that applicant is entitled to temporary total disability benefits from December 19, 2024 to January 6, 2026 and defer the issue of whether she is entitled to benefits thereafter (Findings of Fact 9, 10, Award (a)); amend the Order to reflect that the issue of whether applicant is entitled to temporary disability benefits after January 7, 2026 is deferred (Order); and otherwise affirm the FA&O.

FACTUAL BACKGROUND

We will review the relevant facts.

Applicant, while employed by defendant, sustained an admitted injury to the low back and bilateral hands arising out of and occurring in the course of employment on December 19, 2024.

The record includes emails from defendant addressed to “Maria” at an email address beginning with “storm[...].” (Def. Exhs. F; G; H; I.) Emails dated January 3, 2025 and January 16, 2025 (Def. Exhs. F; G; H.) and dated March 7, 2025 (Def. Exh. I, p. 1, ¶ 1-4) discuss the need for doctors’ notes and state that applicant has not reported to work.

Following the injury, applicant treated with primary treating physician (PTP) Isaac Vargas, D.O. In a report dated March 24, 2025, Dr. Vargas indicated he found applicant had reached maximum medical improvement (MMI), and she was discharged from care with permanent work restrictions including limits on bending and twisting, and no repeatedly lifting, pulling, pushing, or carrying greater than 10 pounds. (Def. Exh. C, p. 1, ¶ 1; p. 4, ¶ 8-p. 5, ¶ 1.)

On April 25, 2025, defendant employer’s LP/Benefits Manager MonaLisa Suarez sent correspondence to applicant. (Def. Exh. E.) In relevant part it stated that: “When an employee takes time off from work, the employee is required to provide periodic updates about their status, and when medically necessary, provide medical certification to support their leave.” It further stated that the last doctor’s note received was up to March 24, 2025. It then concluded by stating:

If you have any new or updated doctor's note that supports your absence from work, please provide a copy of it . . . on or before 5/5/25. If we do not receive a doctor's note supporting your absence from work on or by 4/30/25, we will have no choice but to separate with you for job abandonment.

(Def. Exh. E, p. 1, ¶ 1, 4.)

On May 21, 2025, applicant filed a Declaration of Readiness to Proceed (DOR) for a hearing on the issue of medical treatment. Applicant alleged that:

DEFENDANTS HAVE FAILED TO AUTHORIZE THE CHANGE OF PRIMARY TREATING PHYSICIAN TO DR. SHIN WHICH WAS REQUESTED ON MAY 6 2025. DESPITE REASONABLE EFFORTS TO OBTAIN AUTHORIZATION NO ACTION HAS BEEN TAKEN. WCAB ASSISTANCE IS NEEDED.

At an expedited hearing on June 9, 2025, defendant authorized a consultation with PTP Matthew Johnson, D.O.

In a report dated July 30, 2025, Dr. Johnson issued work restrictions consisting of no repetitive bending/twisting, no lifting greater than 10 pounds occasionally, no repetitive grasping/squeezing with the right upper extremity, and no repetitive pushing/pulling. (App. Exh. 3, p. 4)

On August 21, 2025, applicant was evaluated by Qualified Medical Evaluator (QME) Mark Casha, D.C., with the assistance of a certified interpreter (App. Exh. 4.) He noted that applicant was employed as a cook, food preparer, and storekeeper. (App. Exh. 4, p. 1, ¶ 3.) He opined applicant had not reached MMI and was not considered permanent and stationary. (App. Exh. 4, p. 23, ¶ 1; p. 25, “AMA Impairment Rating.”) Dr. Casha indicated applicant’s pain was evidenced by inflammation, palpation pain reactions, and degree of muscle hypertonicity, which was consistent with chronic pain. (App. Exh. 4, p. 23, ¶ 4.) He stated there was substantial evidence for industrial causation. (App. Exh. 4, p. 23, ¶ 6.) He advised that applicant, “is incapable of working any position with the current restrictions present. Realistically, care has to first be provided in order to get her to even consider any type of employment.” (App. Exh. 4, p. 24, ¶ 10.) Dr. Casha assessed the following work restrictions:

Restrictions should consist of limited standing, walking, sitting, climbing, forward bending, kneeling, crawling, twisting, keyboarding, grasping with the right hand, and pushing/pulling with the right hand. All these activities are limited to 5-10 minutes before stopping and sitting is limited to approximately 20 minutes before actively changing to a different activity or changing positions.

(App. Exh. 4, p. 25, ¶ 1.)

A Separation Form dated September 14, 2025, reflects applicant was terminated for “failure to report,” with a separation date of September 14, 2025. (Def. Exh. B.)

In a report dated April 26, 2026, Dr. Johnson indicated applicant remained on modified work duty. (App. Exh. 1, p. 4.) Dr. Johnson also noted, “The patient’s imaging findings are largely congruent with her symptoms. As above, I will reconsider work restrictions as below. In regard to treatments for the hand and the cervical spine. It is possible she may need surgery for the wrist or the cervical spine, but not definitive (there is no cervical canal stenosis or severe neuroforaminal stenosis but there are some EMG findings that are atypical in the absence of severe NF narrowing).” (App. Exh 1, p. 4, Item 3.)

On May 5, 2026, the parties proceeded to trial on the sole issue of whether applicant was entitled to temporary disability benefits for the period of December 19, 2024, to January 6, 2026.

Applicant testified in pertinent part as follows. Following her injury, she returned to work, but she was told by her manager that she was not allowed to continue working and not to come back until she was healthy. (Minutes of Hearing and Summary of Evidence (MOH), May 5, 2026, p. 4, lines 18-20.) She never received an email from defendant. (MOH, p. 4, lines 21-22.) She spoke with MonaLisa through an interpreter, who indicated she needed to go back to work, but she was never told by MonaLisa that alternative work was available nor given specific job duties. (MOH, p. 4, lines 21-24; p. 5, lines 24-25.) She called defendant numerous times, but defendant never answered and MonaLisa stopped returning her calls. (MOH, p. 5, lines 1-2, 24-25.) She sent text messages to MonaLisa. (MOH, p. 5, line 19.)

The WCJ confirmed with applicant’s daughter, who was present in the courtroom, that the “storm[...]” email address belonged to her sister. (MOH, p. 5, lines 20-21.)

MonaLisa Suarez Cox testified as a witness for defendant in pertinent part as follows. She was employed by defendant as a loss prevention officer, and her job was to deal with workers’ compensation injuries. (MOH, p. 6, lines 5-7.) She spoke to applicant on at least one occasion with the assistance of an interpreter. (MOH, p. 6, lines 8-9.) She emailed applicant on several occasions, and when she was unable to reach applicant by telephone, she sent a follow-up email. (MOH, p. 6, lines 7-8, 20-21; p. 7, lines 12-14.) She confirmed that the April 28, 2025 letter was sent to the applicant (Def. Exh. E), which requested that applicant contact the employer about returning to work. (MOH, p. 7, lines 10-12.) She spoke with applicant on the telephone on May 19, 2025. (MOH, p. 6, lines 9-10.) On May 19, 2025, applicant called to speak with her, but no interpreter was available, so she did not call applicant back but sent an email. (MOH, p. 6, lines 19-21.) However, she went on to claim she attempted to return applicant’s call at least 10 or 15 times, but

applicant never picked up, so she followed up with an email after each attempt. (MOH, p. 7, lines 12-14.) The “storm[...]” email address used to email applicant was the email addressed listed in applicant’s personnel file (MOH, p. 6, lines 9-11), but she never verified applicant’s email address. (MOH, p. 7, lines 3-4.) After applicant’s injury, she remained on the schedule for approximately three hours per day and did not come in, but she called in every day. (MOH, p. 6, lines 22-23.) She never spoke with applicant regarding modified work, she did not know if anyone else actually spoke to applicant regarding modified work, and she did not know if any modified alternative work offer was sent to applicant by email. (MOH, p. 7, lines 3-7.) She confirmed that applicant’s employment was terminated on September 14, 2025 for failure to report in or job abandonment. (MOH, p. 6, lines 24-25.)

Following the trial, the WCJ issued the FA&O that is the subject of the Petition for Reconsideration herein, finding in relevant part that applicant was not entitled to temporary total disability benefits after September 15, 2025 and ordering that applicant take no temporary disability benefits after September 15, 2025. (FA&O, May 18, 2025, p. 2, Finding 10.)

In the Opinion on Decision, the WCJ stated in relevant part that:

The credible portion of Applicant’s testimony is that she reported to duty with work restrictions on or about December 19, 2024, and was told by a low-level manager not to come back until Applicant was healthy.

The credible portion of the employer’s testimony was that it kept following up with Applicant via email and U.S. mail and that Applicant did not provide sufficient information about treatment and restrictions. The employer also credibly testified that it had modified duty available. However, the employer provided no testimony, credible or otherwise, that it offered modified duty to Applicant.

...

The credible evidence establishes that the injured worker was released to return to work with medical restrictions and that Applicant was sent away until she was healthy. *The employer did not offer modified work.* Therefore, Applicant is entitled to TTD through September 14, 2025. *Further, the credible portion of the employer’s testimony was that it kept following up with Applicant via email, phone, and U.S. mail and that Applicant either ignored the Employer or did not provide sufficient information about treatment and restrictions. The employer also credibly testified that it had modified duty available had applicant been responsive.* Applicant was not and the Applicant’s employment was terminated. Where, as in this case, an injured worker is terminated for reasons unrelated to the industrial injury, any subsequent wage loss is not causally connected to the injury.

...

Accordingly, the undersigned finds that the injured worker failed to properly respond to the good faith inquiries from the employer as to medical status and work restrictions. This failure to either respond to the employer or return to work is equivalent to job abandonment and is good cause for the termination of employment. After a good faith non-discriminatory termination, the entitlement to TTD ends.

Thereafter, applicant sought reconsideration of the FA&O.

DISCUSSION

I.

Former Labor Code section¹ 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 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 May 22, 2026, and 60 days from the date of transmission is July 21, 2026. This decision is issued by or on July 21, 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

¹ All further statutory references are to the Labor Code, unless otherwise noted.

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 May 22, 2026, and the case was transmitted to the Appeals Board on May 22, 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 May 22, 2026.

II.

The Workers' Compensation Act provides for temporary and permanent disability indemnity. (Lab. Code, § 4650 et seq.) Temporary disability indemnity is intended primarily to substitute for the worker's lost wages, in order to maintain a steady stream of income. (*Chavira v. Workers' Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 473 [56 Cal.Comp.Cases 631].) Unlike permanent disability, which compensates an injured employee for diminished future earning capacity or decreased ability to compete in the open labor market, temporary disability is intended as a substitute for lost wages during a period of transitory incapacity to work. (*Livitsanos v. Superior Court* (1992) 2 Cal.4th 744, 753; see also *Signature Fruit Co. v. Workers' Comp. Appeals Bd. (Ochoa)* (2006) 142 Cal.App.4th 790, 795 [71 Cal.Comp.Cases 1044].)

Temporary total disability occurs when an employee is unable to earn any income during the period of recovery. (*Herrera v. Workers' Comp. Appeals Bd. (Goleta Lemon Association)* (1969) 71 Cal.2d 254, 257.) Temporary partial disability occurs when an employee is able to earn some income during their recovery period but not their full wage. (*Ibid.*)

A partially temporarily disabled worker is expected to work if suitable work is available. However, the Supreme Court explained:

Under the "odd lot" doctrine, a worker who is only partially disabled may receive temporary total disability payments if his partial disability results in a total loss of wages. (*Pacific Employers Ins. Co. v. Industrial Acc. Com. (Stroer)* (1959) 52 Cal.2d 417, 421 [24 Cal.Comp.Cases 144].) This doctrine places the burden on the employer to show that work within the capabilities of the partially disabled

employee is available. If the employer does not make this showing, the employee is entitled to temporary total disability benefits. (*Id.* at p. 422; *Transport Indem. Co. v. Ind. Acc. Com. (Cooper)* (1958) 157 Cal.App.2d 542, 546 [23 Cal.Comp.Cases 30].)

(*General Foundry Service v. Workers' Comp. Appeals Board (Jackson)* (1986) 42 Cal.3d 331, 339, fn. 5 [51 Cal.Comp.Cases 375].)

However, an applicant may be estopped from claiming temporary disability indemnity corresponding to periods that they have refused suitable modified work without good cause. (*Vittone v. Workers' Comp. Appeals Bd.* (2001) 66 Cal.Comp.Cases 435 (writ den.).) The same rule applies when an injured worker abandons the job after suitable modified work is provided. (*Haile v. Workers' Comp. Appeals Bd.* (2012) 77 Cal.Comp.Cases 832, 835 (writ den.).) A mere allegation that defendant would have offered modified work, had applicant not been terminated, is insufficient. (See *City of Seaside v. Workers' Comp. Appeals Bd. (Sanchez)* (1991) 56 Cal.Comp.Cases 598 (writ den.).)

Here, the WCJ concluded that defendant “provided no testimony, credible or otherwise, that it offered modified duty to Applicant. This failure to accommodate work restrictions results in the obligation to pay TTD [total temporary disability] benefits effective December 19, 2024...” (Opinion on Decision, p. 4, ¶ 3-4.) We agree. Upon review of the documentary evidence and the testimony of the trial witnesses, defendant has not met its burden of proof to establish that defendant made applicant a bona fide offer of modified work to relieve itself of liability to pay applicant temporary disability benefits.²

The testimony of defense witness, Ms. Suarez, does not support finding a bona fide offer of modified work was made. Ms. Suarez confirmed she never spoke with applicant regarding modified work, she did not know if anyone else actually spoke to applicant regarding modified work, and she did not know if any modified alternative work offer was sent to applicant by email. (MOH, May 5, 2026, p. 7, lines 3-7.) A review of the written evidence reflects communications from defendant to applicant vaguely indicating defendant “*may* have positions available that will fit all limitation established by [applicant’s] treating physician during the recuperative period” (see e.g., Def. Exh. p. 1, ¶ 3, emphasis added), but applicant was advised to contact defendant to discuss, with no jobs actually identified as being available and performable by applicant within her work

² Although the FA&O only refers to modified work, defendant bore the burden of demonstrating that modified *or* alternative work was offered. Nevertheless, here, there is no dispute that no offer was made.

restrictions. (Def. Exs. E; F; G; H; I.) At trial, applicant confirmed she spoke with Ms. Suarez through an interpreter, who indicated she needed to go back to work, but she was never told by Ms. Suarez that alternative work was available nor given specific job duties. (MOH, May 5, 2026, p. 4, lines 21-24; p. 5, lines 24-25.) Accordingly, the record as a whole does not support finding that a bona fide offer of modified work was offered. The inquiry then moves to whether applicant's subsequent termination was for cause.

Cases have suggested that an injured worker terminated for cause during a period in which they are offered modified work is not entitled to temporary disability indemnity. (*Manpower Temporary Services v. Workers' Comp. Appeals Bd. (Rodriguez)* (2006) 71 Cal.Comp.Cases 1614 (writ den.); *Drews v. Workers' Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 799, 801-802 (writ den.); *Butterball Turkey Co. v. Workers' Comp. Appeals Bd. (Esquivel)* (1999) 65 Cal.Comp.Cases 61 (writ den.)) The rationale expressed in these cases is that conduct leading to a justified termination is, in effect, tantamount to a refusal to perform modified work. In either case, it is applicant's conduct, rather than the work injury, which is disqualifying the applicant from employment. As such, the relevant inquiry in these lines of cases is whether the injured worker has committed *misconduct* on the job that in effect gives the employer no choice but to terminate them.

To successfully assert this defense, an employer must prove by a preponderance of the evidence that the employee's alleged misconduct rose to the level "by which termination would have been proper under the company policies." (*Butterball, supra*, at pp. 62-63; see also Lab. Code, § 5705 [the party with the affirmative of the issue holds the burden of proof]; Lab. Code, § 3202.5 [burden of proof shall be met by a preponderance of the evidence]; *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 868 [44 Cal.Comp.Cases 798].) "Preponderance of the evidence means, that evidence that, when weighted against that opposed to it, has more convincing force and the greater probability of the truth." (Lab. Code, § 3202.5.)

Thus, the issue before us is whether defendant met its burden in proving that applicant engaged in misconduct that rose to the level "by which termination would have been proper under the company policies." (*Butterball, supra*, at pp. 62-63.). Based on our review of the record, and as discussed below, we find defendant did not present sufficient evidence to meet its burden.

We begin our analysis by acknowledging the WCJ's observations with respect to purported inconsistencies in the evidentiary record. We note that in the Opinion on Decision, which provided the rationale for the May 18, 2026 FA&O, the WCJ stated, "[t]he credible portion of Applicant's

testimony is that she reported to duty with work restrictions on or about December 19, 2024, and was told by a low-level manager not to come back until Applicant was healthy.” (Opinion on Decision, p. 4, ¶ 2.) In the Report, the WCJ added that, “[i]n this matter the credibility of Applicant about the employer’s attempts to contact Applicant about returning to work was not credible. The employer’s testimony in this regard was credible.” (Report, p. 5, ¶ 2.) In his Opinion, the WCJ stated that “the credible portion of the employer’s testimony was that it kept following up with Applicant via email, phone, and U.S. mail and that Applicant either ignored the Employer or did not provide sufficient information about treatment and restrictions.”

We accept that the evidence demonstrates defendant’s efforts to contact applicant. But, the crucial flaw in the WCJ’s reasoning is that the documentary evidence that is actually in the record of the efforts by defendant are emails that all *predate* the letter of April 28, 2025. (Def. Exhs. E; F; G; H; I.) In the letter of April 28, 2025, defendant acknowledges that applicant was off work through March 24, 2025 by way of a doctor’s note. Thus, the only relevant evidence is what happened after March 24, 2025, when applicant was released with limitations, and *what defendant’s efforts were after her release with restrictions because that is when the duty to offer modified or alternative work was triggered*.

We note that the WCJ does not reconcile how he found applicant’s testimony not credible regarding the employer’s attempt to contact her about returning to work, despite Ms. Suarez’s testimony demonstrating applicant did contact her employer. Defendant’s witness Ms. Suarez testified that she spoke with applicant by telephone on May 19, 2025 (MOH, p. 6, lines 9-10), which was *after* the dates of the emails and letters from defendant to applicant. Such evidence supports finding that applicant *was* responsive to defendant’s inquiries, even if not as responsive as defendant may have preferred. Further, Ms. Suarez acknowledges applicant called her, but Ms. Suarez provided inconsistent responses as to how she responded to applicant’s call. She initially claimed she did not call applicant back because no interpreter was available (MOH, p. 6, lines 19-21), but later in her testimony she claimed she tried to call applicant back “10 or 15 times” but applicant did not pick up. (MOH, p. 7, lines 12-14.) Again, such evidence appears to support finding applicant *did* attempt to contact defendant, although unsuccessfully. Lastly, Ms. Suarez maintained she followed up each unsuccessful call to applicant with an email; yet, the record contains no evidence of such emails because as explained above, the emails in evidence are dated *before* Ms. Suarez’s acknowledged telephone conversation with applicant on May 19, 2025 and

before applicant's release with restrictions. Of note, "the test of substantiality must be measured on the basis of the entire record, rather than by simply isolating evidence which supports the board and ignoring other relevant facts of record which rebut or explain that evidence." (*Garza, supra*, at p. 317; *Le Vesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 638-639 [35 Cal.Comp.Cases 16].) As such, based on the foregoing analysis and following our complete and independent review of the entire evidentiary record, we find the existing record does not support finding defendant satisfied its burden of proving by a preponderance of the evidence that applicant's termination was for good cause, unrelated to the industrial injury.

Here, a review of the record reveals no conduct on applicant's part that would rise to the level of misconduct precluding her from entitlement to temporary disability benefits. Defendant presented no evidence nor suggested that applicant had issues with absenteeism or any other workplace misconduct prior to her industrial injury that would result in termination. Moreover, defendant failed to establish that applicant's absence from work was unrelated to her industrial injury.

In the Opinion on Decision, the WCJ found that applicant "failed to properly respond to the good faith inquiries from the employer as to medical status and work restrictions. This failure to either respond to the employer or return to work is equivalent to job abandonment and is good cause for the termination of employment." (Opinion on Decision, May 18, 2026, p. 5, ¶ 3.) We disagree.

The letter dated April 28, 2025 advised that multiple attempts were made to contact applicant and that she must submit any new or updated doctor's note supporting her absence from work by May 5, 2025, but that if a doctor's note supporting applicant's absence from work was not received on or by April 30, 2025, applicant would be separated from her job for job abandonment. (Def. Exh. E, p. 1, ¶ 1, 4.) This language is clearly contradictory since two dates were provided. More importantly, as detailed above, the testimony of defense witness Ms. Suarez does in fact support finding applicant *was* responsive following the April 28, 2025 letter, contrary to the WCJ's conclusion.

Thereafter, defendant provided no evidence of attempts to correspond with applicant after May 19, 2025. Applicant was then terminated for failure to report, with a separation date of September 14, 2025 (Def. Exh. B.) The timing of applicant's termination is suspect. It is unclear why defendant waited almost four months after issuing the April 28, 2025 letter to terminate

applicant's employment. Further, the record contains no documentary evidence that applicant was subject to any discipline after her May 19, 2025 call with Ms. Suarez. If defendant truly terminated applicant for failing to respond to the April 28, 2025 letter, it is difficult to explain why it delayed in doing so. Notably, applicant's termination came less than one month after QME Dr. Casha issued his report providing work restrictions and indicating applicant, "is incapable of working any position with the current restrictions present. Realistically, care has to first be provided in order to get her to even consider any type of employment." (App. Exh. 4, p. 24, ¶ 10.) This raises genuine questions as to whether the stated reason for applicant's termination was pretextual. Based on the foregoing, defendant has not satisfied its burden in proving that applicant was subject to a justified termination for misconduct unrelated to her industrial injury.

Lastly, we consider *Romero v. Sunbelt USA, Inc.* (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 728 (Appeals Board panel decision), cited by the WCJ in support of his decision.³ (Opinion on Decision, p. 5, ¶ 1.) The facts of *Romero* are distinguishable from those herein. In *Romero*, the injured worker sustained industrial injury, then returned to work without restrictions, and she continued to work until she was terminated. (*Romero, supra*, at pp. 3-4.) Several key factors distinguish the instant case and *Romero*, including that the injured worker in that case did not testify on her own behalf and that the injured worker's absenteeism predated and was clearly unrelated to the industrial injury. Notably, the injured worker had been counseled regarding her absenteeism in the two months *prior* to the industrial injury. (*Id.* at p. 4.) Thus, in *Romero*, the injured worker's absenteeism and subsequent termination were appropriately deemed misconduct unrelated to the industrial injury, such that her for cause termination precluded her from entitlement to temporary disability after her date of termination. The facts here reflect that any absenteeism by applicant was related to her industrial injury, as she was unsure whether she was permitted to return to work prior to recovery and *she was never actually offered modified duty*.

Therefore, since the period that was at issue at trial was December 19, 2024, to January 6, 2026, we will find that applicant is entitled to total temporary disability benefits during that period.

³ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to *Romero* because it considered a similar issue.

We do not address the merits of whether she is entitled to benefits thereafter, and we will defer that issue.

Accordingly, we grant the Petition for Reconsideration, amend the FA&O to find that applicant is entitled to temporary total disability benefits from December 19, 2024, to January 6, 2026 and defer the issue thereafter (Findings of Fact 9, 10, Award (a)), and otherwise affirm the FA&O.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the May 18, 2026 Findings of Fact, Award, and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the May 18, 2026 Findings of Fact, Award, and Order is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT IN ADJ20337002

9. Applicant is entitled to temporary total disability benefits from December 19, 2024 to January 6, 2026.

10. The issue of whether applicant is entitled to temporary total disability benefits after January 7, 2026 is deferred.

AWARD

AWARD IS MADE in favor of Maria Alvarado and against M3G-I LP MACDONALD COMPANY as follows:

(a) Temporary disability indemnity for the period beginning December 19, 2024 to January 6, 2026, less amounts previously paid, and less reasonable attorney's fees of 15% to be commuted from the far end of the award.

ORDER

IT IS ORDERED that the issue of whether applicant is entitled to temporary disability benefits after January 7, 2026 is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 21, 2026

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

**MARIA ALVARADO
LAW OFFICES OF CHRISTINA LOPEZ
LAUGHLIN, FALBO, LEVY AND MORESI LLP**

DC/pm

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