WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MATHEW MARTIN, *Applicant*

vs.

TEMPUR SEALY INTERNATIONAL; ARCH INDEMNITY INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ21369860
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) First Amended Findings and Award of February 27, 2026, wherein it was found that while employed on June 20, 2022 as a store manager, applicant sustained admitted industrial injury to the abdomen in the form of a hernia causing temporary disability from May 24, 2023 to January 30, 2024, permanent disability of 14%, and the need for further medical treatment. Occupational Group Number 212 was utilized to calculate the permanent disability rating.

Applicant contends that the WCJ erred in (1) finding temporary disability only until January 30, 2024 arguing that the medical evidence that he was able to return to his regular duties on that date were not substantial medical evidence and in (2) finding permanent disability of only 14% arguing that his permanent disability should have been rated utilizing a more beneficial occupational group. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will deny the applicant's Petition.

Preliminarily, we note that 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.
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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 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 March 17, 2026 and 60 days from the date of transmission is Saturday, May 16, 2026. The next business day that is 60 days from the date of transmission is Monday, May 18, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on May 18, 2026, so 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 workers' compensation administrative law judge, the Report was served on March 17, 2026, and the case was transmitted to the Appeals Board on March 17, 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

[1] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 March 17, 2026.

Turning to the merits, applicant sustained a hernia injury when lifting a 35-pound box at work. He initially sought treatment in San Jose through Concentra. He then moved to Marin County and was treated by Brett Curtis, M.D. In a report of January 18, 2023, it was noted that applicant could work his full duties while he waited and was cleared for surgery and that after the procedure, he would be able to return to full duty in 1-2 weeks. (January 18, 2023 report at p. 2.) Eventually, applicant underwent hernia repair surgery on May 24, 2023 and began receiving temporary disability benefits.

Applicant subsequently came under the care of primary treating physician Julia Nyquist, M.D. In a report of January 30, 2024, Dr. Nyquist returned applicant to full duty, writing in her report:

> [Patient] continues to complain of highly atypical levels of pain 8 months post repair of a simple umbilical hernia. The surgeon Dr. Bozac in Petaluma has ordered a[n] [ultrasound] to assess the efficacy of the repair. It is unclear to me if that was denied as I don't have his most recent consult. Another possible physiologic explanation for this otherwise somewhat improbable level of pain would be adhesions. Although I'm not certain what study aside from a second laparoscopy could evaluate this. [Dr.] Bozac has returned the [patient] to full duty and the [patient] is seeking work. I defer to the surgeon[']s judgement on this issue but I do feel that an additional study should be done prior to P&S to [rule out] complications or [treatment] failure.

(January 30, 2024 report at p. 2.)

Applicant was reevaluated by Dr. Nyquist on March 12, 2024. Although Dr. Nyquist recommended that applicant consult with another surgeon for a second opinion, she continued to clear applicant for full work duties. Dr. Nyquist saw applicant again on May 28, 2024. Although she expressed reservations regarding Dr. Bozac's conclusion that applicant's condition had reached maximum medical improvement, she still concluded that applicant could work full duty.

Dr. Nyquist saw applicant again on June 11, 2024 and September 3, 2024. While the ultrasound was apparently negative, Dr. Nyquist concluded by stating, "we have been unable to ascertain the cause of his persistent [abdominal] pain and he has been unable to get a [qualified medical evaluator] we need to do the PR-4 so that he can tell prospective employers that his

[workers' compensation] case is closed [and that he has reached maximal medical improvement]." (September 3, 2024 report at p. 2.)

Applicant was evaluated by secondary treating physician general surgeon Kevin Hiler, M.D. on September 19, 2024. With regard to applicant's complaints of pain, Dr. Hiler wrote:

> His umbilical pain is unchanged. From the perspective of postoperative healing he is now 16 months postoperative and has reached his maximum medical improvement. I would anticipate no future changes in his current status unless there is an operative intervention. Terms of future medical treatment, CT scan and possible reexploration of the area may be warranted in the future if it continues to limit him in the workplace. He has ongoing difficulties which limits his ability to work in his normal capacity and I would recommend QME evaluation for disability rating relative to this.

(September 19, 2024 report at p. 3.)

Applicant was eventually evaluated by a qualified medical evaluator, Joseph A. Sclafani, M.D., who opined that applicant had attained maximal medical improvement "as of the date of this evaluation" (July 12, 2025) and that "all periods of temporary disability noted within the medical records … were appropriate and commensurate with the applicant's injuries." August 3, 2025 report at p. 9.)

A mandatory settlement conference was held on December 18, 2025 where the parties completed and submitted a Pre-trial Conference Statement. In the Pre-Trial Conference Statement, the parties stipulated that applicant's job title was "store manager" and that the proper occupational code was 212. This stipulation was recorded in the minutes of the January 27, 2026 trial. (Minutes of Hearing and Summary of Evidence of January 27, 2026 trial at p. 2.)

With regard to the issue of temporary disability, "[T]emporary 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 v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 868 [44 Cal.Comp.Cases 798].) Thus, even if a condition has not reached maximal medical improvement, entitlement to temporary disability ceases once a worker has sufficiently recovered to return to work. Here, Dr. Nyquist repeatedly stated that applicant was able to return to full duty on January 30, 2024 and the QME did not take exception to this conclusion. Even if we were to accept applicant's argument that Dr. Nyquist's return to work conclusion did not constitute substantial medical evidence because she unduly "deferred" to Dr. Bozac's conclusions, the QME did not offer any contrary

opinion. The only evidence in the record is that applicant was able to return to work on January 30, 2024. We note that applicant has the affirmative burden of proving an entitlement to temporary disability benefits (Lab. Code, §§ 3202.5; 5705), so even if we were to conclude that both Dr. Nyquist and Dr. Sclafani's reporting on the issue was not substantial evidence, applicant presented no affirmative evidence upon which we could award temporary disability after January 30, 2024. We therefore deny applicant's Petition with regard to the issue of temporary disability.

With regard to the issue of occupational group, we note that applicant stipulated to Occupational Group Number 212. "A stipulation is … binding … where the stipulation is not contrary to law, court rule or policy." (*Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 790 [52 Cal.Comp.Cases 419].) A stipulation may be disregarded only on a showing of "good cause" (*Robinson, supra*; *County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118-1121 [65 Cal.Comp.Cases 1]). Since applicant has not set forth good cause to set aside the stipulation, we will deny reconsideration with regard to this issue.

We therefore deny the applicant's Petition.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the First Amended Findings and Award of February 27, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 18, 2026

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

MATHEW MARTIN
BRADFORD & BARTHEL

DW/oo

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