

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

RAHELEH SHABANPOUR KALAGAR, *Applicant*

vs.

**PROVIDENCE ST. JUDE MEDICAL CENTER, permissibly self-insured,
administered by CORVEL, *Defendants***

**Adjudication Number: ADJ19087467
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on May 22, 2026. The WCJ found, in relevant part, that: on February 27, 2023, while employed by defendant as a phlebotomist, applicant sustained injury arising out of and in the course of employment (AOE/COE) to her right wrist, cervical spine, right shoulder, right hand and fingers; further development of the record is required to determine whether applicant suffered injury to her right elbow in the form of supplemental reporting from panel qualified medical evaluator (QME), Dr. Rod Melvin, D.C.; applicant worked for both Providence St. Jude and Innovative Health Diagnostics during medically certified periods of temporary total disability from February 27, 2023 to February 26, 2025; applicant's last date of employment, temporary total disability, temporary partial disability, and average weekly wage(s) cannot be determined without further development of the record; and defendant must pay temporary disability benefits from the last date of wage loss through February 26, 2025 less the amount for credits subject to full development of the record.

Defendant, in essence, contends the WCJ erred in awarding applicant temporary total disability benefits from February 28, 2023 to August 1, 2023 and August 9, 2023 to October 3, 2023 as it is not supported by the evidence. Defendant further contends the WCJ erred in awarding

attorney's fees and benefits, credits, penalties, or interest that are inconsistent with the payment evidence and the QME opinion.

We have received an Answer from applicant.

The WCJ submitted a Report and Recommendation on Petition for Reconsideration (Report), recommending defendant's Petition be denied.

We have considered the Petition, the Answer, and the contents of the Report with respect thereto. Based upon our preliminary review of the record, we will grant defendant's Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code¹ section 5950 et seq.

FACTS

On April 4, 2024, applicant filed an Application for Adjudication of Claim (Application) claiming an injury to her head, neck, arm-elbow, wrist, hand, fingers, back, and shoulders while employed by defendant as a phlebotomist on February 27, 2023.

On February 26, 2024, applicant was evaluated by chiropractic panel QME, Rod Melvin, D.C., who noted applicant's last day of work for defendant was on the date of her injury of February 27, 2023. (Applicant's Exhibit 2, Report of Rod Melvin, D.C., March 18, 2024, at p. 2.) However, he also noted applicant was currently working for her other employer, Innovative Health Diagnostics (IHD), as a senior lab technician. (*Id.*) Applicant informed the QME she had concurrent employment with IHD while working for defendant for over two years. (*Id.*) Although she was off of work from February 27, 2023 until May 2023, she informed the QME she returned to work in late June or early July 2023 and was currently working forty hours a week. (*Id.* at p. 3.)

The QME reviewed the medical records which showed that on the day of the injury, applicant went to the emergency room where she was discharged home in stable condition. (*Id.* at p. 11.) However, a few days later on March 2, 2023, applicant was seen by Dr. Chester Tung, who placed applicant on modified work until the report dated August 1, 2023. (*Id.* at pp. 11-22.) On August 2, 2023, applicant saw Dr. Mary Bos for an orthopedic hand surgery initial evaluation. (*Id.*

¹ All section references are to the Labor Code, unless otherwise indicated.

at p. 22.) Dr. Bos found applicant able to return to full duty and then at the subsequent evaluation on August 30, 2023, found applicant permanent and stationary for her right hand. (*Id.* at pp. 22, 24.) On August 9, 2023, Dr. Peter Borden saw the applicant for an orthopedic surgery initial evaluation. (*Id.* at pp. 22-23.) Dr. Borden evaluated the applicant for her right shoulder and placed her on modified work. (*Id.*) Dr. Borden continued to place her on modified work as of the report dated September 13, 2023. (*Id.* at pp. 24-25.)

In the supplemental report dated January 13, 2025, the QME opined all periods of disability were appropriate to date and that applicant was on disability from February 27, 2023 to June 2023 when she returned to work with restrictions. (Applicant's Exhibit 3, Report of Dr. Melvin, January 13, 2025, at p. 48.) The QME opined that applicant had not reached maximal medical improvement and was not considered permanent and stationary. (*Id.* at p. 49.)

On April 20, 2026, the parties proceeded to trial on the issues of 1) parts of body injured for the neck, right shoulder, and right elbow; 2) earnings; 3) temporary disability; and 4) attorney fees. Defendant also asserted an overpayment of temporary total disability benefits while applicant asserted section 4650 and 5814 penalties. (Minutes of Hearing (MOH), dated April 20, 2026, at p. 2.) The parties stipulated applicant sustained injury AOE/COE to the right wrist, right hand, and fingers and that defendant paid temporary total disability benefits from February 28, 2023 to August 1, 2023 and August 9, 2023 to October 3, 2023 and then temporary partial disability benefits from October 4, 2023 to October 17, 2023. (*Id.*; see Defense Exhibit A, Benefit Printout, at p. 2.) Both parties submitted evidence related to applicant's employment at IHD including wage statements, paystubs, timecards, and off work/leave of absence requests. (*Id.* at pp. 3-4.) The parties waived testimony and the matter was submitted for decision.

DISCUSSION

I.

Former 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, 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 June 16, 2026 and 60 days from the date of transmission is August 15, 2026, which is a Saturday. The next business day that is 60 days from the date of transmission is Monday, August 17, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision was issued by or on August 17, 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 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 June 16, 2026, and the case was transmitted to the Appeals Board on June 16, 2026. Service of the Report and transmission of the cases 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

² 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.”

Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 16, 2026.

II.

We highlight the following legal principles that may be relevant to our review of this matter:

Temporary disability indemnity is a workers' compensation benefit that is paid while 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 not at 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].)

If the employee is able to obtain some type of work despite the partial incapacity, the worker is entitled to compensation on a wage loss basis. (Lab. Code, § 4657.) "An employee is considered temporarily partially disabled if [they are] able to earn some income during [their] healing period but not [their] full wages. The disability payment in such event is [two-thirds] of the employee's weekly wage loss." (*Herrera v. Workmen's Comp. Appeals Bd.* (1969) 71 Cal.2d 254, 257 [34 Cal.Comp.Cases 382].)

Different calculations must be applied depending on whether the worker is temporarily totally disabled or temporarily partially disabled and entitled to wage loss benefits. The starting point for the calculation of both is the average weekly wage calculated under section 4453. (*Gamble v. Workers' Comp. Appeals Bd.* (2006) 143 Cal.App.4th 71, 87 [71 Cal.Comp.Cases 1015].) The average weekly earnings are then used to calculate the amount of either temporary total disability under section 4653 or temporary partial disability under sections 4654 and 4657.

Here, it appears from our preliminary review of the existing record that the record is not properly developed on one or more issues, including the issue of whether applicant was

temporarily partially disabled during periods when she was paid total temporary disability benefits. Taking into account the statutory time constraints for acting on the Petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

III.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

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. I.A.C. (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. I.A.C. (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. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. I.A.C.* (1958) 50 Cal.2d 360, 364.) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”]; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’*

Comp. Appeals Bd. (Pointer) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Section 5901 states in relevant part that:

No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

IV.

Accordingly, we grant defendant’s Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. ***While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board’s voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov.***

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 17, 2026

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

**RAHELEH SHABANPOUR KALAGAR
LAW OFFICES OF HALEH SHEKARCHIAN
COOPER BROWN, APC
KSM LAW GROUP, LLP**

JL/abs

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