

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

ROBERT GEIVET, *Applicant*

vs.

**CITY OF DELANO; permissibly self-insured, administered by
ACCLAMATION INSURANCE MANAGEMENT SERVICES, *Defendant***

**Adjudication Number: ADJ9826933
Bakersfield District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of the Rulings and Orders Admitting Evidence Findings of Fact & Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on February 18, 2026, wherein the WCJ found in relevant part that applicant was permanent and stationary from the effects of his industrial injury during the period from March 12, 2012, to March 12, 2013, on July 12, 2023 and he sustained permanent and total disability as a result of his industrial injury during the period from March 12, 2012, to March 12, 2013. The WCJ then made an award in favor of applicant and against defendant for permanent total disability indemnity at the initial rate of \$706.15 per week, beginning June 9, 2016, and subject to adjustment pursuant to Labor Code section 4659(c) less 15% of accrued and on-going payments as approved attorneys' fees.

Defendant contends that as applicant was permanent and stationary on July 12, 2023, and as no temporary disability was paid to applicant, July 12, 2023, should be the permanent total disability payment start date.

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

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed in the Report of

the WCJ, which we adopt and incorporate, and as discussed below, we will deny defendant's Petition for Reconsideration.

BACKGROUND

We will briefly review the relevant facts.

Applicant sustained injury to his heart while employed by defendant as a police officer, during the period from March 12, 2012 to March 12, 2013.

In June 2014, applicant was medically retired for orthopedic reasons. (Exhibit 1, at p. 1.)

Richard Hyman, M.D., serves as panel qualified medical evaluator (QME) in internal medicine, cardiology. Dr. Hyman evaluated applicant in person on June 9, 2016, October 20, 2021, July 12, 2023, and December 12, 2024, issued five supplemental reports, June 23, 2022, September 21, 2023, February 6, 2025, May 7, 2025, May 27, 2025, and was deposed on May 28, 2024.

On June 9, 2016, Dr. Hyman diagnosed applicant with coronary artery disease, he indicated that the injury was 100% industrial and that applicant was probably permanent and stationary. (Exhibit 1, at p. 7.) There is a need for medical treatment to cure or relieve from the effects of said injury. (*Id.*) Dr Hyman assigned applicant 20% whole person impairment (WPI). (*Id.* at pp. 7-8.)

At his October 20, 2021 reevaluation, applicant remained permanent and stationary but his WPI increased to 30%. (Exhibit 2, at pp. 6-7.)

On June 23, 2022, Dr. Hyman reviewed additional records concerning primarily COVID induced cardiac problems in March [2022] from which applicant has probably "maximally recovered," and indicated a reevaluation was necessary. (Exhibit 3, at p. 2.)

At reevaluation on July 12, 2023, applicant's WPI increased to 75%. (Exhibit 4, at p. 5.) Concerning impairment, Dr. Hyman hypothesized as follows:

I will give his impairment at the current time although this is likely to get worse with time and then might get significantly better if he has a heart transplant. Current impairment [of 75%] is based on the AMA guidelines, page 36, Table 3-6a.

(*Id.*)

On September 21, 2023, Dr. Hyman reiterated that applicant's current WPI is 75%. (Exhibit 5, at p. 1.) However, Dr. Hyman clarified that applicant's WPI would increase from 75% during the period of his deterioration up to the hypothetical heart transplant. (*Id.*) Dr. Hyman went on to state that applicant is not MMI for "rating purposes." (*Id.* at p. 2.)

At his May 28, 2024 deposition, Dr. Hyman testified that applicant's WPI is 75%. (Exhibit 6, at p. 8:1-9.)

On December 12, 2024, Dr. Hyman requested updated medical treatment records and indicated that "it remains unclear whether he is permanent and stationary and whether or not permanent impairment can be addressed." (Exhibit 7, at p. 5.)

After reviewing updated records, Dr. Hyman indicated that:

These records provide a great deal of information about what has transpired but do not provide the ability to consider him MMI or change his impairment from 75%. The problem is that he probably is going to end up having a heart transplant if he is a candidate for it, which he may not be based on his kidney function.

...

If he is not considered a transplant candidate, with time his impairment will increase above the 75% that I have indicated as his heart function declines.

(Exhibit 8, at p. 4.)

On May 7, 2024, Dr. Hyman confirmed again that applicant's current WPI is 75%. (Exhibit 9, at p. 1.) Dr. Hyman further offered:

I think the best way of looking at this situation is that the patient is not currently MMI and would be so if he has a heart transplant and it is successful, and once he has plateaued, at that point impairment could be addressed.

The other situation is if it is definitely precluded that he is going to have a heart transplant either based on his heart condition or other problems such as his kidneys. If he were not considered a candidate for transplantation, then he would be MMI with the 75% whole-person impairment.

(*Id.* at p. 2.)

Finally, on May 27, 2025, Dr. Hyman makes various recommendations concerning the applicant's ongoing medical treatment including that he be evaluated for a heart transplant. (Exhibit 10, at p. 1.)

DISCUSSION

I.

Preliminarily, we note that section Labor Code¹ 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days

¹ All further references are to the Labor Code unless otherwise stated.

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 April 24, 2026 and 60 days from the date of transmission is June 23, 2026. This decision was issued by or on June 23, 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 WCJ, the Report was served on April 24, 2026, and the case was transmitted to the Appeals Board on April 23, 2026. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that the parties were not provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with

section 5909(b)(2) did not provide them with actual notice as to the commencement of the 60-day period on April 23, 2026.

While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on April 23, 2026.

II.

The WCJ found that applicant was permanent and stationary or maximum medically improved (MMI) on July 12, 2023 (Finding of Fact No. 4). Defendant agrees that applicant was MMI on July 12, 2023, when Dr. Hyman assigned him 75% WPI. (Petition, at p. 3:18-19; 4:1-6.) Then, defendant contends that permanent total disability payments should therefore begin on July 12, 2023.

In our en banc decision, *Brower v. David Jones Constr.* (2014) 79 Cal.Comp.Cases 550, we addressed the timing of permanent disability indemnity payments in relation to payment of temporary disability benefits. The Board held (1) when a defendant stops paying temporary disability indemnity pursuant to section 4656(c) before an injured worker is determined to be permanent and stationary, the defendant shall commence paying permanent disability indemnity based on a reasonable estimate of the injured worker's ultimate level of permanent disability; (2) when an injured worker who is receiving permanent partial disability payments pursuant to section 4650(b)(1) becomes permanent and stationary and is determined to be permanently totally disabled, the defendant shall pay permanent total disability indemnity retroactive to the date its statutory obligation to pay temporary disability indemnity terminated; and (3) COLAs begin on the first day in January after an injured worker becomes entitled to receive permanent disability indemnity pursuant to sections 4650(b)(1) or (b)(2).

Here, applicant was first declared permanent and stationary by QME Hyman on June 9, 2016, and any obligation defendant would have had to pay temporary disability ended on that day. As applicant is permanently totally disabled, the WCJ correctly found that defendant's permanent total disability indemnity payment obligation is retroactive to June 9, 2016.

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 23, 2026

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

**ROBERT GEIVET
MITCHELL & POWELL
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

SL/abs

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
Petition for Reconsideration and Notice of Transmittal**

I. Introduction: Defendant City of Delano seeks reconsideration to change the starting date for payments of permanent total disability indemnity from June 9, 2016 to July 12, 2023.

Applicant Robert Geivet, 53 years of age at the end of the period of cumulative injury sustain an industrial cumulative injury to his heart while employed during the period from March 12, 2012 to March 12, 2013 in Delano, California, as a Police Officer (Occupational Group 490) by Defendant City of Delano. During the period from March 12, 2012 to March 12, 2013, Petitioner City of Delano was permissibly self-insured for California workers' compensation liability.

Following Trial on October 22, 2025, and submission for decision on November 26, 2025, Findings of Fact and Award issued on February 18, 2026. Among other things, Applicant was found to be permanently totally disabled and was awarded Permanent Total Disability Indemnity at the rate of \$706.15 per week, beginning June 9, 2016. *Findings of Fact & Award 2/18/2026 p. 3 (Finding of Fact #5), p. 4 (Award ¶B).*

By timely¹, verified and properly served petition, the City of Delano seeks reconsideration. *Petition for Reconsideration 3/13/2026 p. 6 (verification); Proof of Service 3/13/2026.* Authorized grounds for reconsideration are alleged citing Lab.C. §5903 {c} & {e}. *Petition for Reconsideration 3/13/2026 p. 1 lines 17-23, p. 2 lines 18-20.* Petitioner argues that “The evidence does not justify the Findings of Fact of ordering the PTD start date as of 6/9/2016 because Applicant’s P&S dated was 7/12/2023.” *Petition for Reconsideration 3/13/2026 p. 3 lines 17-18.* Petitioner argues that no temporary disability was ever due and, therefore, Applicant’s entitlement to permanent disability indemnity began with permanent and stationary status, which had been found to have occurred on July 12, 2023. *Petition for Reconsideration 3/13/2026 p. 3 line 19 to p. 4 line 6, citing Lab.C. §4650{b}{(2)}.*

Applicant has provided a timely, verified and properly served Answer to the pending petition.² *Answer to Petition for Reconsideration 3/19/2026 p. 6 (verification); Proof of Service 3/19/2026.* Applicant argues that “Permanent Total Disability Indemnity is payable from the date permanent

¹ The pending petition was filed on March 13, 2026, the 23rd day after the Findings of Fact and Award.

² Applicant’s Answer was filed on March 19, 2026, the sixth day after the filing of the pending Petition for Reconsideration.

disability is first established, not from the date the final level of disability is later determined.” *Answer to Petition for Reconsideration 3/19/2026 p. 3 lines 5-7*. Citing Lab.C. §4650{b}(1 & 2) and the applicable *en banc* decision in *Brower v. David Jones Construction [(2014) 79 CCC 550 WCAB en banc]* Applicant contends that “the Workers’ Compensation Judge correctly determined that permanent total disability is payable commencing June 9, 2016 and Defendant’s Petition for Reconsideration should be denied.” *Answer to Petition for Reconsideration 3/19/2026 p. 4 lines 26-28*.

Applicant is correct. The Findings of Fact and Award of February 18, 2026 was correct. The pending Petition for Reconsideration should be denied.

II. Facts: Richard Hyman, M.D. is serving as a Qualified Medical Evaluator in the field of Internal Medicine-Cardiology. He initially evaluated Applicant on June 8, 2026 and provided a report the next day. He reported a history that Applicant medically retired in June 2014 for orthopedic reasons. *Applicant’s Exhibit 01: Report of Richard Hyman, M.D. 6/09/2016 p. 1* Dr. Hyman opined that Applicant’s coronary artery disease “was not labor disabling as this occurred after he was medically retired and would not have prevented him from performing his regular job with the employer.” Applicant was considered “probably permanent and stationary” with a Class 2 categorization according to the AMA Guides and 20% Whole Person Impairment which was “presumptive and 100% industrial.” Dr. Hyman also opined that “Future medical care needs to be provided on an industrial basis. *Applicant’s Exhibit 01: Report of Richard Hyman, M.D. 6/09/2016 pp. 7-8*.

Future medical care was provided on an industrial basis, including the placement of cardiac stents. QME Dr. Hyman re-evaluated Applicant on October 19, 2021 and provided a report the next day. Dr. Hyman noted that Applicant was permanent and stationary, although he had suffered “an episode of congestive heart failure that he was tipped into by pneumonia, which is common, he has more impairment than when I saw him in 2016. In addition, he has required two additional stents.” *Applicant’s Exhibit 02: Report of Richard Hyman, M.D. 10/20/2021 p. 6*. Dr. Hyman quantified the increased impairment as “between Class 2 and Class 3 of the Guidelines with 30% impairment. *Applicant’s Exhibit 02: Report of Richard Hyman, M.D. 10/20/2021 p. 7*.

Applicant’s impairment continued to rise thereafter until it reached 75% Whole Person Impairment, at which level it remains for over a year after July 12, 2023. *Applicant’s Exhibit 4:*

Report of Richard Hyman, M.D. 7/12/2023 p. 5; Applicant's Exhibit 6: Transcript of Deposition of Richard Hyman, M.D. 5/28/2024 pp. 10-11; Applicant's Exhibit 09: Report of Richard Hyman, M.D. 5/07/2025 p. 1.

The parties were unable to settle this case. After Trial on October 22, 2025, Findings of Fact and Award issued on February 18, 2026. Among other things, Applicant was found to have sustained permanent total disability. Applicant was found to be finally became permanent and stationary on July 12, 2023 but Permanent Total Disability Indemnity was awarded from June 9, 2016. *Findings of Fact and Award 2/18/2026 p. 3 (Findings of Fact #4, #5 and #6), p. 4 (Award ¶B).*

Whereupon, Defendant City of Delano seeks reconsideration.

III. Discussion: Petitioner argues that no temporary disability was ever due and, therefore, Applicant's entitlement to permanent disability indemnity began with permanent and stationary status, which occurred on July 12, 2023. *Petition for Reconsideration 3/13/2026 p. 3 line 19 to p. 4 line 6, citing Lab.C. §4650{b}{(2)}.*

Thus, the award of permanent total disability indemnity beginning June 9, 2016 was correct. Indeed, it could not have been otherwise, given the controlling precedent of *Brower*, supra.

IV. Recommendation: Denial of the pending petition is recommended.

DATE: April 24,2026

Robert Norton
PRESIDING WORKERS' COMPENSATION JUDGE