

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

SCOTT DIEHL, *Applicant*

vs.

**STOCKDALE COUNTRY CLUB;
ARCH INSURANCE COMPANY administered by SEDGWICK CLAIMS
MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ20709426
Bakersfield District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Award (F&A) issued on December 2, 2025. The workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant Scott Diehl sustained industrial injury to his right upper extremity (particularly right arm, wrist and hand) on August 3, 2024, while employed in as an Executive Chef by Defendant Stockdale Country Club; that applicant was temporarily partially disabled as a result of his industrial injury during the period of August 3, 2024 through April 8, 2025; that he was provided modified work from August 3, 2024 through October 25, 2024; and that he was not provided with appropriate modified work during the period of October 26, 2024 to April 8, 2025. The WCJ awarded applicant temporary partial disability benefits from October 26, 2024 through April 8, 2025.

Defendant argues that applicant resigned from employment for personal, non-industrial reasons despite the work restrictions being accommodated; and that as a self-supervising employee, applicant had complete control over compliance with work restrictions and voluntarily exceeded his work restrictions. As a result either of his non-industrially related resignation or by exceeding his work restrictions thereby forcing him to resign, applicant should not be entitled to temporary disability benefits.

Applicant filed an Answer. The WCJ issued a Report and Recommendation (Report) recommending denial of the Petition.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will deny reconsideration.

FACTS

Applicant sustained an injury on August 3, 2024, arising out of and in the course of employment to his right arm, wrist, and hand while working as an executive chef for defendant.

The job description of executive chef outlines in relevant part, that the position is, “responsible for planning, purchasing, and preparation of all foods in the manner and variety most pleasing to the members and their guests.” (Defendant’s Exhibit A.) The document notes that the executive chef reports to the General Manager and receives “general” supervision. (*Id.*)

Applicant was seen by his primary treating physician, Richard Heiss, M.D., on August 3, 2024. While the full report is not entered into evidence, the work restrictions include: No gripping, grasping, twisting and/or lifting more than 5 pounds. The diagnosis is sprain of right elbow. (Applicant’s Exhibit A.) Applicant continued to treat and was given the same work restrictions until April 9, 2025, when the work status indicated temporary total disability following surgery that apparently occurred that day. (Applicant’s Exhibit 10.) Dr. Heiss continued to recommend that applicant was temporarily totally disabled in the remainder of the admitted reports up to August 12, 2025. (Applicant’s Exhibit 15.)

Applicant submitted a letter of resignation on October 27, 2024 (Defendant’s Exhibit C) and a resignation email dated October 28, 2024 (Defendant’s Exhibit D). The resignation letter noted that the resignation was necessary for his “health and wellbeing.” The email reiterated that the resignation was to put his health first.

On August 20, 2025, the matter proceeded to trial. The primary issue was framed as follows:

Temporary disability with the employee claiming the period from October 26, 2024, to the present and continuing; Defendant claiming that temporary disability indemnity has been paid from April 9, 2025, to the present and continuing, and that Applicant previously voluntarily resigned.

(Minutes of Hearing/Summary of Evidence (MOH/SOE), 2:36-41.)

Employment Development Department (EDD) also included consideration of its lien as an issue as they paid \$1620.00 per week from November 4, 2024 through February 19, 2025. The parties stipulated to an average weekly wage entitling applicant to a temporary disability rate of \$1619.15 and a permanent disability rate of \$290.00.

Applicant testified in pertinent part as follows:

In his position, he oversaw the restaurant and bar, which included undertaking administrative duties such as changing the POS system, making menu changes, as well as cooking and kitchen responsibilities. (*Id.* at 5:12-18.) The day after his injury, he reported his work restrictions to the Human Resources Manager, Candice Valdez. (*Id.* at 5:40.) He did not receive an offer of modified work. (*Id.* at 5:42-43.) He testified that he continued to perform all aspects of his role without modification. (*Id.* at 7:5-6.) There was no money in the budget to hire extra people to help with the lifting activities. (*Id.* at 6:44-45.) His sous chef had left in September of 2024, and he could not find a replacement for her. He told Susan Greer, the General Manager, that his hand was cramping and he was having issues with his work restrictions, but no changes were made. (*Id.* at 8:28-29.)

Defendant's Human Resources Manager, Candice Valdez, testified in pertinent part as follows:

She was provided with the work restrictions, and she advised applicant that she and Ms. Greer would have someone assist him. (*Id.* at 10:32-33.) He was asked to focus on administrative duties and to avoid lifting and stirring pots. (*Id.* at 11:4-7.) She testified that after the sous chef left, they hired two line cooks and a food preparer to assist. (*Id.* at 11:32-41.) She would check in on him and admonished him to not hurt himself though he indicated that he was fine. (*Id.* at 11:43-12:2.) She noted that she was concerned that applicant may not have been complying with his work restrictions as she observed him doing activities inconsistent with the restrictions. As a result, she urged him to "ease up" but did not put anything in writing. (*Id.* at 13:20-24.)

Defendant's General Manager, Susan Greer, testified in pertinent part as follows:

She confirmed that applicant's position involved physical and administrative duties. (*Id.* at 14:31-33.) She was aware of his work injury and agreed to his restrictions which she understood to be a lifting restriction. (*Id.* at 14:41-15:2.) He was advised to focus more on his administrative duties. (*Id.* at 15:28-29.) She testified that the policy was to honor the work restrictions but a written offer of work subject to those restrictions was not made. (*Id.* at 16:13.) She later confirmed

that his job duties exceeded his modified work duties, but when asked applicant indicated he was fine, so she did not correct or admonish him. (*Id.* at 17:17-22.)

The WCJ issued an F&A finding in relevant part that applicant was temporarily partially disabled as a result of his injury from August 3, 2024 to April 8, 2025 and that he was accommodated without any wage loss from August 3, 2024 through October 25, 2024. The WCJ further found that applicant was not provided with appropriate modified work from October 26, 2024 through April 8, 2025 and that he has been temporarily totally disabled from April 9, 2025 to present and has been compensated for this period at a rate of \$1,620.00 per week.

DISCUSSION

I.

Former Labor Code section 5909¹ 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 February 17, 2026 and 60 days from the date of transmission is Saturday, April 18, 2026. The next business day that is 60 days from the date of transmission is Monday, April 20, 2026. (See Cal. Code Regs., tit.

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

8, § 10600(b).)² This decision is issued by or on Monday, April 20, 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 February 17, 2026, and the case was transmitted to the Appeals Board on February 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 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 February 17, 2026.

II.

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].)

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].) As explained by

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.

the Supreme Court:

A “disability” under the Work[ers] Compensation Law connotes an inability to work. Where an employee has been temporarily disabled by an industrial injury, he is considered temporarily totally disabled if he is unable to earn any income during the period when he is recovering from the effects of the injury. For such a disability, the employee’s disability payments are based on his earning capacity, the statute providing that the payment is [two-thirds] of his average weekly earnings. [Citation.] An employee is considered temporarily partially disabled if he is able to earn some income during his healing period but not his 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].)

Although a partially temporarily disabled worker is expected to work during their partial disability if suitable work is available, as the Supreme Court explained in another case:

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. [Citation.] 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. [Citations]

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

In *Huston, supra*, 95 Cal.App.3d 856, the Court of Appeal stated:

In general, temporary 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. [Citation.] Temporary disability may be total (incapable of performing any kind of work), or partial (capable of performing some kind of work). [Citation.] 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. [Citation.] If the partially disabled worker can perform some type of work but chooses not to, his ‘probable earning ability’ will be used to compute wage-loss compensation for partial disability. [Citation.] If the temporary partial disability is such that it effectively prevents the employee from performing any duty for which the worker is skilled ***or there is no showing by the employer that work is available and offered***, the wage loss is deemed total and the injured worker is entitled to temporary total disability payments.

(*Huston, supra*, at p. 860 emphasis added.)

The holding in *Huston* requires that in order to be relieved of potential liability for temporary disability for an injured worker capable of returning to modified duties, the employer must establish that work within applicant's restrictions is both *available* and *offered*. An offer of regular, modified, or alternative work must be bona fide. (*Dennis v. State of California* (2020) 85 Cal.Comp.Cases 28, 43 (Appeals Board en banc).) A resignation cannot be interpreted as a refusal of modified work and cannot be used as a basis for denying temporary disability if modified work was not offered. (*City of Seaside v. Workers' Comp. Appeals Bd. (Sanchez)* (1991) 56 Cal.Comp.Cases 598 (writ den.)) Moreover, where an injured worker's resignation is a result of the injury, the worker cannot be said to be unwilling to work. (See *Gonzales, supra*, at p. 1479.)

Here, by the defendant's own admission, no offer of modified work was ever made in writing, thus employer cannot meet its burden that an offer of modified work was ever made. While applicant did go back to work for some period, there is no evidence that he was actually working in a modified capacity. There is no evidence that parameters were set by the employer for the capacity in which applicant would work or that any meaningful discussion was had regarding accommodation of the restrictions. Further, each of defendant's witnesses testified that they either saw him working beyond the restrictions or knew that it was likely that he was working beyond the restrictions. Thus, it is apparent that applicant could not modify his position, and the employer did not make clear the manner in which he would be accommodated. Defendant is unable to show that either an offer was made or that applicant's restrictions were appropriately accommodated.

Moreover, the language of the resignation alludes to applicant's physical health being affected thereby leading to his resignation. While the resignation does not specifically mention the injury to the right wrist as being the cause for the resignation, applicant testified that he was having, "ongoing progressive damage to his body, particularly his arm" and that the "injury to his arm was getting worse due to the heavy lifting." (MOH/SOE, 10:2-7.) Thus, the resignation following the period of regular work is not a bar to temporary disability where there is no evidence that a bona fide offer of modified work was made and where the resignation was due to the effects of the industrial injury.

Further, there is no legal authority cited or found that stands for the notion that an individual employed as a supervisor who exceeds his work restrictions is engaging in a voluntary non-industrial activity that would bar temporary disability where the individual is no longer able to

work.³ First, applicant is subject to supervision by the general manager who, according to the human resources manager, was responsible for providing clear modifications. Second, continuing to work in his role in line with his job description is by definition industrial. The employer continued to reap the benefit of the unencumbered employment and cannot later plead ignorance as a bar for temporary disability when the employee is no longer able to continue to work.

Accordingly, we deny the Petition for Reconsideration.

³ Defendant cites to panel decisions that are neither binding nor relevant for the issue in this case.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 20, 2026

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

**SCOTT DIEHL
J SMITH LAW, PC
BRADFORD & BARTHEL, LLP
EMPLOYMENT DEVELOPMENT DEPARTMENT**

TF/md

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