

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

SCOTT LECZEL, *Applicant*

vs.

**ENTERTAINMENT PARTNERS/ NETFLIX; AIG administered by GALLAGHER
BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ20546432
Marina del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

Former Labor Code¹ 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.

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

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 8, 2026, and 60 days from the date of transmission is August 7, 2026. This decision is issued by or on August 7, 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 8, 2026, and the case was transmitted to the Appeals Board on June 8, 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 June 8, 2026.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 7, 2026

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

**SCOTT LECZEL
FORD & WALLACH
MISA STEFEN KOLLER WARD, LLP
EMPLOYMENT DEVELOPMENT DEPARTMENT**

JMR/pm

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

**REPORT AND RECOMMENDATION
ON APPLICANT'S PETITION FOR
RECONSIDERATION/ REMOVAL
AND NOTICE OF TRANSMITTAL**

**I
INTRODUCTION**

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|--|--|
| 1. Applicant's Occupation: | Propmaker |
| Applicant's Age: | 55 |
| Date of injury: | 01/01/1989 to 09/03/2022 |
| Parts of Body Claimed Injured: | cervical spine, lumbar spine, and hips |
| 2. Identity of Petitioner: | Defendant filed the Petition |
| Timeliness: | The petition itself is timely filed |
| Verification: | The petition is verified |
| 3. Date of Findings of Fact: | 05/06/2026 |
| 4. Petitioner contends that the WCJ erred in finding that: | |
| a) | The Applicant was entitled to temporary total disability after the Applicant retired. |
| b) | The Labor Code §4661.5 applied regarding the calculation of Applicant's temporary total disability rate. |

**II
FACTS**

Applicant sustained an admitted injury as a result of a cumulative trauma injury from January 1, 1989 to September 3, 2022. At the time of the injury Applicant's average weekly earnings were \$4,255.43. Applicant received state disability payments from EDD for essentially 3 distinct periods, the first being at the rate of \$1,540.00 per week from September 24, 2022 to January 1, 2023, the second being \$1,620.00 per week from June 11, 2023 to June 9, 2024 (less the period of November 30, 2023 to December 5, 2023), and the last being also at the rate of \$1,620.00 per week from November 3, 2025 to April 2, 2026. Applicant retired around March 25, 2025. Applicant testified that "He wanted to work until he was 60 to receive a full pension and medical, but he is physically unable to work. He would have liked to have been able to return to work." (Minutes of Hearing and Summary of Evidence, April 16, 2026, EAMS Doc ID 80275318)

Defendant has paid no temporary total disability benefits to date and has not reimbursed EDD for any state disability benefits paid.

This matter proceeded to trial on April 16, 2026, at which time Applicant was the sole witness. The matter was also submitted on April 16, 2026. A Findings of Fact and Award issued on May 6, 2026, in which Applicant was awarded temporary total disability, along with an award of attorney fees. Defendant subsequently filed her Petition for Reconsideration/ Removal challenging the Award.

III **DISCUSSION**

To the extent that the Opinion on Decision may seem skeletal, pursuant to *Smales v. WCAB* (1980) 45 CCC 1026, this Report and Recommendation cures that defect. In the event that it is determined that this matter involves a Petition for Removal versus a Petition for Reconsideration, it is noted that a Petition to Remove is an extraordinary remedy, rarely exercised by the Appeals Board, and is generally available only where the petitioner has established that substantial prejudice or irreparable injury will result if removal is not granted. *Swedlow, Inc. v. WCAB (Smith)* (1983) 48 CCC 476(writ denied); *Lubin v. Berkeley East Convalescent Hospital* (1976) 41 CCC 283 (Board Panel); *Hardesty v. McCord & Holdren, Inc. et al.* (1976) 41 CCC 111 (Board En Banc). Further, California Code of Regulations §10843 requires a showing that reconsideration will not be an adequate remedy after issuance of a final order, decision or award.

Defendant raises two issues regarding the Findings of Fact and Award. First, Defendant contends that Applicant is not entitled to temporary total disability benefits after Applicant retired having submitted his paperwork for retirement in February of 2025 with apparently an effective retirement date of March 25, 2025. Defendant correctly references the controlling case regarding entitlement to temporary total disability after retirement which is *Gonzalez v. WCAB* (1998) 63 CCC 1477, which provides that to determine whether an employee is entitled to temporary total disability following retirement, the employer must assess whether the employee is retired from the labor market in total or just from the occupation held at the time of the injury and whether the decision to retire was truly voluntary or was the decision to retire related to the industrial injury. Applicant credibly testified that he did not want to retire at the time he did and only did so because he was physically unable to work. Defendant failed to present any testimony or evidence that the

applicant could have continued working but chose to retire for reasons unrelated to the industrial injury. The credibility determinations of the workers' compensation judge are entitled to great weight and should not be disturbed when they are supported by substantial evidence because the judge has the opportunity to observe the demeanor of witnesses and weigh their statements with their manner in testifying. *San Diego Transit v. WCAB* (2006) 71 CCC 445; *Garza v. Workers' Comp. Appeals Bd.* (1970) 3 Cal. 3d 312, 35 CCC 500. The Appeals Board must accept as true a witness's testimony if it is both uncontradicted and unimpeached. *McAllister v. WCAB* (1968) 33 CCC 660,662; *Levesque v. WCAB* (1970) 35 CCC 16, 26; *Lamp v. WCAB* (1974) 39 CCC 310,314; *Western Electric Co. v. WCAB (Smith)* (1979) 44 CCC 1145, 1153. It is determined that Applicant testified credibly, that Applicant's retirement was not voluntary, and as such he is entitled to temporary total disability after his retirement.

Secondly, Defendant contends that Labor Code §4661.5 is inapplicable in this matter. Labor Code §4661.5 provides that that when temporary total disability indemnity payments are made two years or more from the date of injury, the rate in effect at the time of payment applies. Defendant's contention is essentially that because EDD paid state disability benefits to Applicant within 2 years of the industrial injury dated stipulated to by the parties, that Labor Code §4661.5 is not applicable. State Disability Insurance payments issued by the State of California are not temporary total disability payments issued by a carrier who has liability for an industrial injury. Applicant has never received any temporary total disability payments in this matter. Labor Code §4661.5 clearly states that when ANY temporary total disability indemnity payment is made two years or more after the date of injury, the amount of the payment shall be computed as of the date it is made. The Applicant is found to have been temporarily totally disabled during the periods in which he collected EDD benefits as well as subsequent period up to January 23, 2026, at which point Applicant has reached the 104-week cap for temporary total disability payments and Defendant is liable for these amounts. Defendant can take credit for the amounts paid by EDD (once they reimburse EDD), but the State Disability payments do not constitute payment of temporary total disability as referenced in Labor Code §4661.5. No temporary total disability benefits have been paid, two years after the date of injury, triggering Labor Code §4661.5 and as such the rate must be calculated as of the date of payment.

IV
RECOMMENDATION

For the reasons stated above, it is respectfully requested that Defendant's Petition for Reconsideration be ordered Denied.

Date: 6/8/2026

HON. JARED E. KLIPFEL
Workers' Compensation Judge