

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

SOHEIR RIZK, *Applicant*

vs.

**LOS ANGELES UNIFIED SCHOOL DISTRICT, permissibly self-insured,
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Numbers: ADJ12719177; ADJ12725623; ADJ12729866
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Applicant, in pro per, has filed a Petition for Reconsideration of the Findings of Fact & Order issued by the workers' compensation administrative law judge (WCJ) on May 26, 2026. We have considered the allegations of the Petition for Reconsideration and the contents of the Report and Recommendation on Petition for Reconsideration (Report) and the Opinion on Decision 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 and Opinion on Decision, which we adopt and incorporate, as quoted below, and for the reasons stated below, we will deny the Petition for Reconsideration.

I.

Up through July 1, 2024, petitions for reconsideration were subject to former Labor Code¹ section 5909, which 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.)

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former section 5909, which stated in relevant part that:

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

(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) (in effect from July 2, 2024 through June 30, 2026), 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 July 6, 2026 and 60 days from the date of transmission is September 4, 2026. This decision is issued by or on September 4, 2026, so that we have timely acted on the petition as required by section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

Section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026) 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) (in effect from July 2, 2024 through June 30, 2026) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on July 6, 2026, and the case was transmitted to the Appeals Board on July 6, 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) (in effect from July 2, 2024 through June 30, 2026), because service of the Report in compliance with section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) provided them with actual notice as to the commencement of the 60-day period on July 6, 2026.

II.

The WCJ provided the following discussion in the Report:

I. Introduction

Applicant Soheir Rizk, appearing in propria persona, filed a Petition for Reconsideration dated June 13, 2026 (received by the Van Nuys District Office on June 15, 2026), seeking reconsideration of the Findings of Fact, Order, and Opinion on Decision served May 26, 2026, in the above-captioned consolidated matters. The Petition is verified and is timely.

The issue decided at trial was whether defendant Los Angeles Unified School District (“LAUSD”) committed an act of discrimination prohibited by Labor Code section 132a when, by letter dated May 28, 2021, it placed applicant on the 39-month re-employment list effective May 24, 2021, after her paid leave benefits were exhausted. The court determined that LAUSD had not violated Labor Code section 132a.

For the reasons set forth below, it is respectfully recommended that the Petition for Reconsideration be DENIED. The Opinion on Decision dated May 26, 2026 is incorporated herein by reference and is offered as additional grounds in support of this recommendation.

II. Grounds Asserted in the Petition

Petitioner asserts the following grounds for reconsideration: (1) the evidence does not justify the findings of fact; (2) the findings of fact do not support the order, decision, or award; (3) petitioner has discovered new evidence material to her, which she could not with reasonable diligence have discovered and produced at the hearing; (4) the Board acted without or in excess of its powers; and (5) the order, decision, or award was procured by fraud. Petitioner also alleges, in substance, that the undersigned committed legal error, misapplied California Education Code section 45192, improperly weighed credibility, gave undue weight to defendant’s witnesses, and exhibited prejudice in favor of the defense.

The grounds asserted are addressed in turn below.

As a threshold matter, a petition for reconsideration that challenges the factual sufficiency of a decision must “specify in detail” how the evidence fails to support the findings; conclusory assertions and general allegations unsupported by argument in full detail do not raise cognizable objections to a Workers’ Compensation Judge’s decision. (*Michon v. Workers’ Comp. Appeals Bd.* (1971) 15 Cal.App.3d 917; *City of Los Angeles DOT v. Workers’ Comp. Appeals Bd.* (2009) 74 Cal. Comp. Cases 1264, 1267.) Much of petitioner’s submission consists of broad accusations of “prejudice” and “favoritism” unsupported by specific record citations sufficient to satisfy this standard. Applicant’s petition is also unintelligible in many aspects and fails to comply with California Code of Regulations, title 8, section 10205.12 et. seq. with regard to form and size

requirements. To the extent the Petition relies on conclusory assertions or is unintelligible in its assertions, it fails on its face. The substantive responses below are provided in the alternative.

III. Preliminary Matter: Exhibits 28 and 29 Attached to the Petition

Petitioner has attached to her Petition two documents labeled “Exhibit 28” (a 2020 Reasonable Accommodation Application and Record of Interactive Process) and “Exhibit 29” (a LAUSD temporary disability payment record). Both documents are tendered as new evidence in support of the Petition.

The attachment of these documents to the Petition is procedurally improper. California Code of Regulations, title 8, section 10945, subdivision (c)(2) – (3), expressly prohibits the filing with a petition for reconsideration of “documents previously received in evidence or rejected upon objection” or “new documentary evidence,” except as permitted by Labor Code section 5903, subdivision (d). To proceed under section 5903(d), the petitioner must establish that the evidence is material and that it could not, with reasonable diligence, have been discovered and produced at the trial. (See Cal. Code Regs., tit. 8, § 10974 [petition to introduce new evidence].)

Petitioner has made no such showing. Both Exhibits 28 and 29 (attached to the petition) plainly existed prior to the February 10, 2026 and February 25, 2026 trial dates. Exhibit 28 is dated November 30, 2020 and pertains to petitioner’s own pre-injury accommodation request; it appears it was at all times in petitioner’s possession or readily available to her. Exhibit 29 is a December 7, 2022 email from LAUSD Payroll Administrator Donald Duarte to petitioner herself, attaching a TTD payment record; petitioner was the direct recipient of that email more than three years before trial. Neither document is “newly discovered” in any sense recognized by section 5903(d). Petitioner offers no explanation for why these documents were not produced at the Mandatory Settlement Conference, listed on a Pre-Trial Conference Statement, or offered into evidence at trial.

Accordingly, it is recommended that Exhibits 28 and 29 attached to the Petition be disregarded and that they not be considered by the Appeals Board. The undersigned has reviewed attached exhibits and assuming *arguendo* that they were admitted, the outcome of the case would not change. The balance of this Report addresses the Petition on the record actually before the Court at trial.

IV. Petitioner’s Claims of Factual Error in the Opinion on Decision

Petitioner primarily identifies three asserted factual errors in the Opinion on Decision. Each is addressed below.

A. The March 29, 2021 Letter and Instructions to Monitor Leave Balances. Petitioner contends that the Court erred in stating, in the Statement of the Case, that LAUSD’s March 29, 2021 letter (Defendant’s Exhibit E) “instructed her to monitor her leave balances.” Petitioner asserts the letter contains no such instruction. The letter itself, however, opens with the directive “PLEASE READ

THE INSTRUCTIONS CAREFULLY” and then sets forth a series of instructions to the employee depending on whether she intended to return from leave, was unable to return, or wished to resign. The substance of the finding, that LAUSD communicated to petitioner, [was] that her leave was approved only through May 27, 2021, beyond which her status would depend on remaining accrued benefits, and that she was directed to read the enclosed instructions [,] is fully supported by the four corners of Exhibit E itself. The credited testimony of Ms. Davdyan further established that LAUSD employees are required to monitor their benefit time as reflected on each paycheck remuneration statement. The asserted error, if any, is immaterial, [harmless,] and does not affect the outcome.

B. The October 2022 Leave of Absence. Petitioner contends that the Court erred in characterizing her October 2022 absence as a “leave of absence,” asserting instead that she was “sent home” by Mr. Fuentes without pay following her request for a reduced-schedule reasonable accommodation. Whether that period of non-work is characterized as a “leave of absence” or as an unpaid administrative status during an ongoing interactive accommodation process is immaterial to the section 132a analysis. The relevant conduct alleged in the June 7, 2021 Petition is the May 2021 placement on the 39-month re-employment list. The October 2022 events post-date the conduct alleged in the Petition and are not, as discussed in the Opinion, within the scope of the section 132a claim as pleaded. (See *Duckson v. City of Long Beach* (1983) 48 Cal. Comp. Cases 511, 519.) The asserted error is, again, immaterial.

C. Characterization of Mr. Fuentes as Petitioner’s “Direct Supervisor.” Petitioner correctly observes that Mr. Fuentes did not become her direct supervisor until June 13, 2022, when she returned to Dearborn Elementary following her placement on the 39-month re-employment list. In May 2021, petitioner was assigned to Tarzana Elementary, and her then-supervisor was Mr. Thomas Ramirez. To the extent the Opinion on Decision’s reference to Mr. Fuentes as “applicant’s direct supervisor” may be read as situating him in that role in May 2021, the characterization is imprecise and the imprecision is acknowledged.

The imprecision is, however, immaterial to the outcome. The point of the Court’s reliance on Mr. Fuentes’s testimony was to confirm that the placement of petitioner on the 39-month re-employment list effective May 24, 2021 was an administrative decision made by LAUSD’s Human Resources department, specifically by Ms. Cervantes following the payroll department’s notification of exhausted benefits, was not made by any school-site administrator. Mr. Fuentes’s testimony that school-site administrators have no decision-making authority over leave-of-absence decisions or placements on the rehire list, and that such decisions rest with central Human Resources, appears true regardless of when he assumed the principalship at Dearborn Elementary. His testimony corroborates Ms. Cervantes’s testimony as to the institutional locus of the decision, which is the material point. The credible evidence establishes that the May 2021 placement was made by Ms. Cervantes pursuant to the payroll reconciliation process described in Defendant’s

Exhibits D and H, and was in no respect made by petitioner's site administrator (Mr. Ramirez in May 2021, or Mr. Fuentes thereafter).

V. Petitioner's Challenge to the Credibility Determination

Petitioner challenges the Court's determination that she was not a credible witness. The determination of witness credibility is a matter committed to the trier of fact, who has the unique opportunity to observe the demeanor of the witnesses and to weigh their testimony against the documentary record. The Appeals Board accords substantial deference to such determinations. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318–319; *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281; *County of San Bernardino v. Workers' Comp. Appeals Bd. (Ramirez)* (1981) 125 Cal.App.3d 679.) Petitioner's invocation of the so-called "Lamb rule" is misplaced; *Lamb* holds that the Board may not arbitrarily disregard credible testimony, not that the trier of fact must credit testimony the trier finds incredible.

Petitioner's arguments on credibility largely re-argue the merits of her testimony. The Court's credibility determination was based on, among other things, internal inconsistencies in her testimony, the absence of contemporaneous documentary corroboration for material assertions she made under oath, demonstrable inaccuracies in her characterization of the collective bargaining agreement, the inadvertent undermining of her own theory by her comparator witness, and her demeanor on the stand. The Petition does not undermine any of these bases. To the contrary:

- 1.) Petitioner now offers a revised explanation for her June 2023 travel to Egypt: that it was for a family memorial service and asserts the Court "confused" this trip with her December 2021 trip. The Court was not confused. The Court's reliance on Defendant's Exhibit J was, as expressly stated in the Opinion on Decision, limited to its bearing on petitioner's candor with respect to the activities she undertook while not actively working for LAUSD. The Court did not find, and does not now find, that petitioner owned a business in Egypt. The Court found that her testimony about her activities was evasive and inconsistent with the documentary record a finding the Petition's evolving explanations only reinforce.
- 2.) Petitioner now characterizes her testimony regarding the collective bargaining agreement as the product of "confusion" arising from omissions in the contract text. Whatever the source, her sworn accusation at trial that LAUSD engaged in "deception by copying from Article 11" was unsupported by the document in evidence and is not rehabilitated by post-trial reflection.

3.) Petitioner asserts that her testimony regarding the May 26, 2021 submission of leave-extension forms is corroborated by Defendant's Exhibit H, which bears Ms. Cervantes's signature dated May 26, 2021. Petitioner misreads Exhibit H. The form within Exhibit H reflects the processing of petitioner's prior leave-of-absence administrative paperwork; it does not establish that petitioner submitted, or that LAUSD received, a request for *additional unpaid* leave of absence on May 26, 2021. Ms. Cervantes's credible testimony was that no such request for unpaid leave was ever submitted, that unpaid leave is permissive and must be affirmatively requested, and that the form on which such a request would be made was not enclosed in the March 29, 2021 letter because unpaid leave is not the default and is not part of the standard packet. Petitioner's newfound theory that the standard mandatory leave form is the proper vehicle to request unpaid leave for industrial injury is unsupported by the record evidence and contradicts Ms. Cervantes's credited testimony.

4.) Petitioner asserts that Ms. De La Toba's testimony "did confirm that LAUSD treated her more favorably than the applicant." This re-argument is unavailing. As discussed in the Opinion on Decision, Ms. De La Toba candidly testified that she never reached the point of being placed on a 39-month rehire list because her leave bank was never exhausted. The reason her bank was not exhausted has no bearing on the operative question, which is whether placement on the 39-month list is mandated by Education Code section 45192 once leave benefits *are* exhausted. The fact that another employee whose bank was not depleted was not placed on the list does not establish disparate or discriminatory treatment; it confirms that placement is triggered by exhaustion of benefits and not by the industrial or non-industrial nature of the underlying condition.

The credibility determination is supported by substantial evidence in the entire record and is entitled to deference per *Garza* (supra at 318-319).

VI. Petitioner's Misapplication-of-Section-45192 Arguments

Petitioner devotes a substantial portion of the Petition to arguing that LAUSD failed to comply with various statutory provisions of Education Code section 45192. She argues principally that LAUSD (a) did not afford her the 60-working-day industrial accident leave referenced in section 45192; (b) used her sick and vacation accruals before exhausting industrial accident leave, in violation of the "in lieu of" provision of the statute; (c) did not provide written notice of exhaustion and an opportunity to request additional leave; and (d) effected a "break in service" in violation of the statute.

These arguments do not warrant reconsideration for two independent reasons.

First, even accepting *arguendo* that LAUSD's administration of petitioner's leave under section 45192 was imperfect in one or more procedural respects,

technical non-compliance with Education Code section 45192 is not, in itself, a violation of Labor Code section 132a. A section 132a claim requires proof of conduct by the employer motivated by the fact of industrial injury or the assertion of a workers' compensation claim. (*Department of Rehabilitation v. Workers' Comp. Appeals Bd. (Lauher)* (2003) 30 Cal.4th 1281, 1298.) The Workers' Compensation Appeals Board is not the forum for adjudication of disputes regarding the calculation, allocation, or sequencing of school-district leave benefits under the Education Code. Whatever remedies petitioner may have for asserted Education Code violations (whether before the LAUSD Personnel Commission, in the grievance process she initiated and then abandoned, or in another forum) the absence of a discriminatory motive defeats the section 132a claim regardless of the underlying Education Code compliance question.

Second, the record at trial established that LAUSD's placement of petitioner on the 39-month re-employment list was the precise action mandated by section 45192 once accrued paid leave benefits were exhausted, and that this placement was supported by the business-necessity defense as codified in section 45192 and recognized in *Romero v. Workers' Comp. Appeals Bd.* (2003) 68 Cal. Comp. Cases 1250 (writ den.). The May 28, 2021 letter (Defendant's Exhibit D) provided written notice of exhaustion of paid leave and informed petitioner of her placement on the re-employment list, advising her that her employment rights would extend for 39 months and that she could pursue reemployment during that period. Petitioner availed herself of that process and was, in fact, reemployed in June 2022. The Court's findings on this point are supported by the credited testimony of Ms. Cervantes and Ms. Davdyan, by Defendant's Exhibits D, E, G, and H, and by the controlling reasoning of *Romero*.

Petitioner's argument that her TTD entitlement should have been used "in lieu of" her sick and vacation accruals is foreclosed by *Romero*, which expressly held that workers' compensation benefits are not "paid leave benefits" within the meaning of Education Code section 45192 and that the statute distinguishes between district-administered leave banks and workers' compensation indemnity. The Opinion on Decision adopts this reasoning, and petitioner offers no authority to the contrary.

VII. The Asserted New-Evidence Ground (§ 5903(d))

As discussed in Part III above, the documents petitioner has appended to the Petition as Exhibits 28 and 29 fail the threshold requirements of section 5903(d) and Rule 10945(c)(3). They are not newly discovered; they were in petitioner's possession or readily available to her; she has made no showing of reasonable diligence; and she has not filed a petition to introduce new evidence pursuant to Rule 10974. The new-evidence ground accordingly fails.

Even were the Appeals Board to consider these documents on their merits, they would not warrant a different result. Exhibit 28 (the November 2020 Reasonable Accommodation Application related to a COVID-19 work-from-home request) pertains to events that pre-date the May 2021 adverse action by

approximately six months and concerns a categorically different accommodation request unrelated to the leave-exhaustion analysis. Exhibit 29 (the TTD payment record) is consistent with, rather than contradictory to, the trial evidence: it reflects that TTD was issued on the August 17, 2017 claim and was offset against LAUSD payroll between 2017 and 2020, that no separate TTD was issued on the October 30, 2017 and November 7, 2019 claims, and (as the Sedgwick/LAUSD email accompanying the record expressly states) that petitioner “reached a benefit ending date when [her] absence quotas exhausted on 05/21/2021” and that “any Temporary Disability to be issued between that date and the date of rehire (06/13/2022) would be paid directly from Sedgwick not through LAUSD payroll since [her] employment was inactive.” Exhibit 29 confirms, rather than refutes, the finding that petitioner’s accrued leave benefits were exhausted as of late May 2021, which is the trigger for section 45192 placement on the re-employment list.

VIII. Remaining Assignments of Error

Petitioner makes several additional assertions, none of which warrants reconsideration.

- 1) Petitioner asserts that defense counsel introduced new arguments and evidence at trial that she could not have anticipated. The record reflects that all defense exhibits (Exhibits A through J) were admitted without objection by petitioner. The mandatory settlement conference and pre-trial conference statement processes afforded petitioner full notice of defendant’s evidence and arguments. Petitioner’s assertion that she was prejudicially surprised at trial is not supported by the record. Furthermore, because petitioner made no objections to defendant’s exhibits at trial, any objection to those exhibits is waived and may not be raised for the first time on reconsideration. “It would be manifestly unfair and unreasonable to permit one party to remain silent, and by his silence to tacitly acquiesce in a proceeding, and thereafter to allow him, after an adverse decision, to nullify this decision by insisting upon an objection which he refused to make when the opportunity was afforded him at the original hearing. This rule is too well known to require any citation of authorities...” (*McFeely v. Industrial Acc. Comm.* (1923) 65 Cal.App. 45, 48–49.)
- 2) Petitioner repeatedly references attachments to her “post-trial briefs” and asks the Appeals Board to consider documents labeled Exhibits 13, 14, 17, 18, 19, 21, 23, 25, 28, and 29 from that filing in support of her Petition. At the conclusion of the trial on February 25, 2026, the Court advised the parties that the deadline to submit post-trial briefing was March 11, 2026, at 5:00 p.m., on which date and time the matter was deemed submitted. (MOH, 2/25/26, pg. 1, ll. 21-23.) Petitioner’s post-trial submission was filed March 20, 2026, nine days after the matter was deemed submitted, and is therefore untimely. Independently, and in any event, a trial brief is not evidence; documents attached to a trial brief do not become part of the trial record by virtue of attachment to

argumentation. (*Liebensperger v. Workers' Comp. Appeals Bd.* (1995) 60 Cal. Comp. Cases 506, 508-509.) Petitioner's references throughout the Petition to documents that were not admitted into evidence at trial cannot supply the evidentiary foundation that the trial record itself does not provide.

- 3) Petitioner asserts that defense counsel failed to properly serve trial exhibits and that this purported misconduct was overlooked. The Court addressed defendant's objections to the timely service of certain of petitioner's exhibits in the Minutes of Hearing dated February 10, 2026 and in the Order accompanying the Findings of Fact. Petitioner's reciprocal service objections were considered and are not supported by the record.
- 4) Petitioner asserts that defense witnesses gave testimony that was "inaccurate, untruthful, [or] evasive," and lists asserted inconsistencies between their testimony and various documents. These contentions amount to a request that the Appeals Board reweigh the credibility of the witnesses. The Board does not sit as a trier of fact on reconsideration and the credibility determinations of the trial judge are entitled to substantial deference. (*Garza, supra*, 3 Cal.3d at pp. 318–319.)
- 5) Petitioner invokes the California Constitution, article I, section 1, and asserts that LAUSD's reliance on Defendant's Exhibit J (social media postings) violated her right to privacy. This claim was not pleaded in the June 7, 2021 Petition for Benefits Pursuant to Labor Code section 132a, was not identified as an issue in the Pre-Trial Conference Statement, and was not tried by consent. It is not properly before the Appeals Board on reconsideration. (*Duckson, supra*, 48 Cal. Comp. Cases at p. 519.) In any event, the Court did not rely on Exhibit J to find that petitioner owned a business in Egypt; the exhibit was considered only for its bearing on petitioner's candor.
- 6) Petitioner asserts that the Court "favored" defense witnesses and exhibited prejudice. The record does not support this assertion. The credibility findings articulated in the Opinion on Decision rest on specific, identifiable bases tied to the testimony and the documentary record. Disagreement with the result is not evidence of bias.

IX. Recommendation

For the reasons set forth above, and for the additional reasons set forth in the Opinion on Decision dated May 26, 2026, which is incorporated herein by reference, it is respectfully recommended that the Petition for Reconsideration be DENIED. It is further recommended that Exhibits 28 and 29 attached to the Petition

be disregarded as having been filed in violation of California Code of Regulations, title 8, section 10945, subdivision (c)(3), and without the showing required by Labor Code section 5903, subdivision (d).

(Report, at pp. 2-11.)

The WCJ provided the following discussion in the Opinion on Decision:

I. Introduction and Procedural Posture

This consolidated matter comes before the court on applicant Soheir Rizk's Petition for Benefits Pursuant to Labor Code section 132a, dated June 7, 2021. By Order of Consolidation entered on February 10, 2026, case Nos. ADJ12719177, ADJ12725623, and ADJ12729866 were consolidated for trial, with ADJ12719177 designated as the master file.

Applicant's three underlying claims of injury were resolved by Stipulated Awards issued February 27, 2024. The remaining issue is whether defendant Los Angeles Unified School District ("LAUSD") committed an act of discrimination prohibited by Labor Code section 132a when, by letter dated May 28, 2021, it placed applicant on the 39 month re-employment list effective May 24, 2021, after her paid leave benefits were exhausted.

Trial was held over two days, on February 10, 2026 and February 25, 2026, with applicant appearing in propria persona and defendant represented by Gerald MacRae, Esq., of Hanna, Brophy, MacLean, McAleer & Jensen, LLP. The Court heard testimony from applicant, from applicant's witness Lupe De La Toba, and from defendant's witnesses George Fuentes (Principal of Dearborn Elementary), Loretta Cervantes (LAUSD Human Resources Officer), and Zhanna Davdyan (LAUSD Senior Human Resources Representative). Documentary evidence was received as set forth in the Minutes of Hearing. The matter was deemed submitted on March 11, 2026, following the parties' opportunity to submit post-trial briefing.

II. Statement of the Case

Applicant was employed by LAUSD as a School Administrative Assistant at Dearborn Elementary School. The parties have stipulated that applicant sustained three industrial injuries during the course of her employment: a specific injury to her psyche on August 17, 2017; a specific orthopedic injury to her bilateral shoulders, neck, low back, and right knee on October 30, 2017; and a cumulative trauma to her right wrist through November 7, 2019.

Applicant submitted requests for leaves of absence in connection with these injuries. By letter dated March 29, 2021 (Defendant's Exhibit E), LAUSD advised applicant that her leave of absence had been approved through May 27, 2021 and instructed her to monitor her leave balances. On May 28, 2021, LAUSD issued the notice that gives rise to this Petition (Defendant's Exhibit D), advising applicant that her paid leave benefits had been exhausted and that, effective May 24, 2021,

her name had been placed on the 39-month re-employment list pursuant to the collective bargaining agreement and Education Code section 45192.

Applicant filed a grievance through her union on June 17, 2021 (Defendant's Exhibit C). LAUSD's response, issued June 24, 2021 (Defendant's Exhibit B), found no violation of the Memorandum of Understanding and advised that workers' compensation issues are not grievable and fall within the exclusive jurisdiction of this Board. Applicant did not elevate the grievance. She was ultimately rehired in June 2022 and went on a subsequent leave of absence in October 2022.

III. The Governing Legal Standard

California Labor Code (Labor Code) section 13 2a declares the policy of this state that there should be no discrimination against workers who are injured in the course and scope of their employment. To establish a prima facie violation of section 132a, an applicant must demonstrate that the employer engaged in conduct detrimental to the employee and that such conduct was motivated by the fact that the employee sustained an industrial injury or asserted a claim for workers' compensation benefits. (*Department of Rehabilitation v. Workers' Comp. Appeals Bd. (Lauher)* (2003) 30 Cal.4th 1281.) Once a prima facie showing is made, the burden shifts to the employer to establish a legitimate business necessity for its action. (*Id.* at 1298.)

In the specific context of a school district employee placed on a 39-month reemployment list while receiving temporary disability indemnity, the Court of Appeal's denial of the petition for writ of review in *Romero v. Workers' Comp. Appeals Bd.* (2003) 68 Cal. Comp. Cases 1250 (writ denied) is directly controlling. In *Romero*, the WCAB held that an LAUSD employee's placement on the 39-month re-employment list while receiving temporary disability indemnity did not constitute a violation of section 132a where (1) the employer's action was mandated by Education Code section 45192 and the collective bargaining agreement once the employee's paid leave benefits (sick and vacation accruals) were exhausted, and (2) workers' compensation benefits are not within the meaning of "paid leave benefits" under section 45192. The *Romero* court further held that Education Code section 45192 is, in essence, a legislative codification of the "business necessity" defense in the school employment context, relieving the district of the obligation to demonstrate managerial need on a case-by-case basis.

Education Code section 45192 provides, in pertinent part, that "[w]hen all available leaves of absence, paid or unpaid, have been exhausted and if the employee is not medically able to assume the duties of the person's position, the person shall, if not placed in another position, be placed on a reemployment list for a period of 39 months." As the WCAB explained in *Romero*, the phrase "all available leaves of absence, paid or unpaid" refers to leave benefits accrued through district employment in the form of sick leave and vacation, together with any unpaid leave specifically approved by the district. The phrase does not encompass workers' compensation temporary disability indemnity, which by its nature may be

paid for indefinite periods and is not a finite "leave" bank capable of being "exhausted" within the meaning of the statute.

IV. Credibility Determination

The trier of fact is in the unique position to observe the demeanor of witnesses, evaluate their candor, and assess the internal consistency of their testimony against the documentary record. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319.) Findings of credibility are entitled to substantial deference. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281.)

Having observed applicant testify on February 10, 2026, having reviewed her testimony against the contemporaneous documentary evidence, and having weighed her account against the testimony of the other witnesses, the Court finds applicant Soheir Rizk not to be a credible witness. Specifically:

(a) Applicant's testimony was internally inconsistent and shifted in material respects. Although she described her placement on the 39-month re-employment list as a "termination," and characterized her separation as wrongful, she also conceded under cross-examination that she was "rehired" in June 2022. She maintained that being placed on the list was equivalent to a termination, while simultaneously acknowledging both that she received the May 28, 2021 letter advising of placement on a re-employment list and that she returned to LAUSD employment without having to seek any external remedy. Her conflation of "termination" and "separation" with placement on the rehire list was not, as she insisted, a matter of formal equivalence; it was a rhetorical posture inconsistent with the documentary record.

(b) Applicant's testimony regarding her purported May 26, 2021 request for an extension of leave of absence was unsupported by any proof of service or contemporaneous documentation. Applicant testified that everything was "paperless" during the pandemic and that she had communicated by email and telephone with one Ms. Nunez, but she produced no email, no telephone log, no fax confirmation, and no acknowledgment from LAUSD, notwithstanding that the burden of proving a section 132a violation rests upon the applicant. The absence of any documentary corroboration, in a record otherwise replete with leave-related correspondence preserved by both parties, undermines the credibility of her account.

(c) Applicant's testimony regarding her activities while on leave of absence was evasive and contradicted by Defendant's Exhibit J. Applicant testified that her December 2021 travel to Egypt was for "family reasons and a funeral type of ceremony" and denied owning or operating a business in Egypt. Defendant's Exhibit J consists of social media postings, the content of which (including a July 13, 2022 post regarding an open house and sale, congratulatory commentary from associates, and references to a clothing store) is inconsistent with applicant's sworn account. The Court does not rely on Exhibit J to find that applicant owned the business in question, nor does the Court find such ownership relevant to whether

LAYSD's May 2021 conduct violated section 132a. Exhibit J is considered solely for its bearing on applicant's candor, and in that respect it weighs against her.

(d) Applicant's testimony regarding the LAUSD collective bargaining agreement was demonstrably inaccurate. Applicant insisted that LAUSD had relied on Article 11 (which she characterized as governing non-industrial illness leave) rather than Article 12 (which she characterized as governing industrial leave), and accused LAUSD of "deception by copying from Article 11." The testimony of Ms. Davdyan, which the Court credits, established that the relevant Memorandum of Understanding provisions, including section 11.5 (paid and unpaid leave and placement on the rehire list following exhaustion) and section 11.9 (the availability of paid and unpaid leave), apply to both industrial and non-industrial leave. Applicant's sweeping accusation of deception was made without foundation and without any attempt to reconcile her interpretation with the actual contractual text in evidence as Defendant's Exhibit G.

(e) Applicant's comparator testimony was, on cross-examination, revealed to be misdirected. Applicant elicited testimony from Ms. De La Toba, a fellow LAUSD employee, in an attempt to show that similarly situated employees on industrial leave were treated more favorably. Ms. De La Toba candidly conceded that she had never reached the point of being placed on a 39-month rehire list because her leave bank was never exhausted-precisely the circumstance that, under Education Code section 45192, would have triggered such a placement. Ms. De La Toba's testimony, far from supporting applicant's claim of disparate treatment, confirmed defendant's position that placement on the rehire list is uniformly triggered by exhaustion of leave benefits and is not discretionary based on the industrial or non-industrial nature of the underlying condition. By contrast, the Court finds the testimony of Ms. Cervantes, Ms. Davdyan, and Mr. Fuentes to be credible. Each witness testified consistently with the documentary evidence; each acknowledged the limits of his or her personal knowledge candidly; and each provided a coherent and internally consistent account of the LAUSD leave administration process. Ms. Cervantes' testimony regarding the mechanics of leave exhaustion and the payroll-driven trigger for placement on the rehire list, and Ms. Davdyan's testimony regarding her grievance investigation and her review of MOU sections 11.1, 11. 5, 11. 9, and 12 .1, are accepted as true.

V. Application of 132a to the Facts

A. Applicant's Prima Facie Burden. Even crediting, *arguendo*, that placement of applicant on the 39-month re-employment list while she was receiving temporary disability indemnity constituted an adverse action and that she therefore satisfied her threshold burden under *Judson Steel*, the analysis does not end there. The burden shifts to defendant to establish a legitimate, non-discriminatory basis for its action.

B. Defendant's Business Necessity Defense. Defendant has met its burden. The credible evidence establishes that applicant's paid leave benefits, meaning her accrued sick leave and vacation hours, were exhausted as of May 23, 2021. Ms. Cervantes' testimony, corroborated by Defendant's Exhibits D and H (including the Remuneration Statement and Inter-Office Correspondence from payroll manager Jeanette Pineda dated May 27, 2021), established that the exhaustion of accrued benefits triggered the payroll department's notification to human resources, which in turn triggered the placement on the 39-month rehire list effective May 24, 2021. The backdating of the effective date to May 24, 2021 was explained by Ms. Cervantes as a function of the payroll reconciliation process and is not evidence of pretext.

This is precisely the factual posture addressed in *Romero v. Workers' Comp. Appeals Bd.*, supra. In *Romero*, as here, the applicant was an LAUSD employee who was placed on the 39-month re-employment list while in receipt of temporary disability indemnity, after his accrued sick and vacation benefits had been exhausted. The WCAB held that the district's action did not violate section 132a because Education Code section 45192 mandated the placement once the finite "bank" of paid leave benefits was exhausted, regardless of whether the employee was concurrently receiving workers' compensation temporary disability. The reasoning in *Romero* is sound and is adopted in full by this Court.

Applicant's contention, that her receipt of temporary disability indemnity meant that "all available leaves of absence" had not been "exhausted" within the meaning of section 45192, was specifically considered and rejected in *Romero*. The term "exhausted" presupposes a finite quantity. Temporary disability indemnity, which may be paid for up to 104 compensable weeks within a five-year period (Lab. Code, § 4656, subd. (c)(2)), is not a leave benefit administered by the school district and is not subject to depletion through use in the same way that an accrued sick or vacation bank is. To accept applicant's interpretation would mean that no industrially-injured school district employee could ever be placed on the re-employment list so long as TD continued, a result manifestly at odds with the statute's purpose, which (as *Romero* observed) is to provide school administrators with the certainty and flexibility necessary to manage staffing in the school environment.

C. The Availability of Unpaid Leave. Applicant did not request unpaid leave. The credible testimony of Ms. Cervantes established that unpaid leave is permissive, not mandatory; it must be affirmatively requested by the employee; and the form by which such a request is made is not included with the standard leave-of-absence packet because such a request is not the default. Although applicant testified that she submitted paperwork on May 26, 2021 to extend her leave, she produced no proof of service or other corroboration, and as set forth above the Court does not credit her testimony in this regard. Even if such a submission were made, the Court finds, consistent with *Romero*, that an

unrequested or unapproved unpaid leave does not toll the operation of Education Code section 45192 once accrued paid benefits are depleted.

D. Absence of Discriminatory Animus. There is no credible evidence in the record that LAUSD acted out of animus toward applicant's industrial injury or her assertion of workers' compensation rights. Mr. Fuentes, applicant's direct supervisor, testified credibly that, in May 2021, he was not even aware that applicant had a workers' compensation claim, that he had no authority over leave-of-absence decisions, and that placement on the 39-month list was made by the human resources department without his input. Ms. Cervantes and Ms. Davdyan administered the relevant policies in a manner consistent with the MOU and the Education Code. The action was, in the words of the *Romero* court, "not merely entitled but obligated" once the conditions of section 45192 were satisfied.

VI. Temporary Disability

Applicant's 132a Petition, and her argument and briefing, could be construed to seek additional temporary disability indemnity. To the extent any such claim is embedded in the Petition, the Court agrees with defendant that it is barred on multiple grounds.

First, the issue of temporary disability through April 21, 2023 was resolved by stipulation of the parties dated April 21, 2023 (Defendant's Exhibit A), which was incorporated into the three Stipulated Awards issued February 27, 2024. Under the doctrines of *res judicata* and *collateral estoppel*, applicant is precluded from relitigating that issue. (*Busick v. Workmen's Comp. Appeals Bd.* (1972) 7 Cal.3d 967, 970, 972; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) Each element of issue preclusion is met: the issue of temporary disability through April 21, 2023 is identical to that previously decided; it was actually litigated and resolved by stipulation incorporated into a final award; the prior decision is final and on the merits; and applicant is the same party against whom preclusion is now sought.

Second, to the extent applicant claims a new period of temporary disability commencing after the April 21, 2023 stipulation date, this Court lacks jurisdiction to award such benefits. The dates of injury in the three consolidated cases are August 17, 2017, October 30, 2017, and a cumulative trauma period ending November 7, 2019. No timely petition to reopen for new and further disability was filed within five years of any of these dates of injury. (Lab. Code, §§ 5410, 5804; *Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 291, 301-302.) Additionally, Labor Code section 4656, subdivision (c)(2), bars the payment of temporary disability indemnity for any period of disability occurring beyond five years from the date of injury.

Third, and independently, applicant's June 7, 2021 Petition for Benefits under Labor Code section 132a alleged discriminatory discharge (in the form of placement on the 39-month rehire list on May 28, 2021). It did not allege failure to pay temporary disability as a discriminatory act. An asserted violation that was not pleaded in the section 132a petition cannot serve as the basis for a finding of violation. (*Duclson v. City of Long Beach* (1983) 48 Cal. Comp. Cases 511, 519.)

VII. Conclusion

For the reasons set forth above, the Court finds that defendant Los Angeles Unified School District did not engage in conduct prohibited by Labor Code section 132a. Defendant's placement of applicant on the 39-month re-employment list effective May 24, 2021 was an action mandated by Education Code section 45192 and the collective bargaining agreement following the exhaustion of applicant's accrued paid leave benefits, and was supported by the business-necessity defense as codified in section 45192. Applicant's Petition is denied in its entirety in each of the consolidated cases. Applicant is not entitled to reinstatement, to reimbursement of lost wages and benefits, nor to the increased compensation provided by section 132a.

(Opinion on Decision, at pp. 1-9.)

III.

Under section 132a, “[i]t is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.” Section 132a protects an employee from retaliation or discrimination by an employer because of an exercise of workers’ compensation rights. (*City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143 [63 Cal.Comp.Cases 944] (*Moorpark*); *Judson Steel Corp. v. Workers’ Comp. Appeals Bd.* (1978) 22 Cal.3d 658 [43 Cal.Comp.Cases 1205]; *Department of Rehabilitation v. Workers’ Comp. Appeals Bd. (Lauher)* (2003) 30 Cal.4th 1281, 1298-1299 [68 Cal.Comp.Cases 831]; *Franco v. MV Transportation, Inc.* (2019) 84 Cal.Comp.Cases 666, 678.) Section 132a has been “interpreted liberally to achieve the goal of preventing discrimination against workers injured on the job,” while not compelling an employer to “ignore the realities of doing business by ‘reemploying’ unqualified employees or employees for whom positions are no longer available.” (*Lauher, supra*, at 1298–1299 [citations omitted].)

Pursuant to section 132a, “[a]ny employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim ... or an application for adjudication, or because the employee has received a rating, award, or settlement, ... testified or made known his or her intention to testify in another employee’s case ...” may be guilty of a misdemeanor and responsible for the payment of increased compensation, costs, lost wages, and work benefits to the injured employee. (Lab. Code, § 132a; *Franco, supra*, at 678.) However, an employer “does not necessarily engage in ‘discrimination’ prohibited by section 132a merely because it requires an employee to shoulder

some of the disadvantages of his industrial injury.” (*Lauher, supra*, at 1300; *Franco, supra*, at 679.)

Thus, “[t]o meet the burden of presenting a prima facie claim of unlawful discrimination in violation of section 132a, it is insufficient that the industrially injured worker show only that ... he or she suffered some adverse result as a consequence of some action or inaction by the employer that was triggered by the industrial injury. The claimant must also show that he or she had a legal right to receive or retain the deprived benefit or status, and the employer had a corresponding legal duty to provide or refrain from taking away that benefit or status.” (*Lauher, supra*, at 1300; *Franco, supra*, at 679.) Stated another way, an injured worker must show they were subject to “disadvantages not visited on other employees because they were injured.” (*Id.*)

In this case, for the reasons stated by the WCJ in the Report and Opinion on Decision, we agree that applicant did not meet her burden of proof to establish a violation of section 132a. Moreover, we have given the WCJ’s credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ’s credibility determinations. (*Id.*)

Accordingly, we will deny applicant’s Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 4, 2026

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

**SOHEIR RIZK
LAW OFFICE OF HANNA BROPHY**

PAG/cm

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