

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

**GERGIS GHOBRIAL, *Applicant***

**vs.**

**SURGICAL AFFILIATES MANAGEMENT GROUP, INCORPORATED; HARTFORD  
CASUALTY INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ12906041; ADJ13548947  
(Long Beach District Office)**

**OPINION AND ORDER GRANTING  
PETITIONS FOR RECONSIDERATION AND  
DECISION AFTER RECONSIDERATION**

Applicant, who is representing himself, and defendant have filed separate Petitions for Reconsideration of a workers' compensation administrative law judge's (WCJ) Joint Findings of Facts and Order of May 6, 2024, wherein it was found in case ADJ12906041 that "Applicant is entitled to a temporary total disability period from February 1, 2020 until February 1, 2022" and "Defendant is to take credit for the EDD resolution against temporary total disability owed to the Applicant."<sup>1</sup> In case ADJ12906041, while employed on October 31, 2019 as a general and trauma surgeon, applicant sustained industrial injury to the psyche and claims injury to the heart, wrists, hands, neck, back, brain, and balance and in the forms of sleep disorder and chest pain.

Applicant contends that the WCJ erred in (1) finding that his temporary disability period commenced on February 1, 2020 rather than December 28, 2019, (2) allowing defendant a credit in the amount of its settlement of the EDD lien and in (3) limiting applicant's temporary disability period to 104 weeks.<sup>2</sup> Like the applicant, defendant also contends in its Petition that the WCJ should have found that applicant's temporary disability period commenced on December 28, 2019.

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<sup>1</sup> Although both the WCJ's decision and the respective petitions contain case number ADJ13548947 in the caption, the decision contained a finding that "All issues pertaining to this case [ADJ13548947] raised at the trial are premature as this case was not properly activated for hearing." The petitions pertain only to the findings in case ADJ12906041.

<sup>2</sup> In the conclusion of his Petition, applicant also "requests that payment rate [sic] will be of the year 2023 maximum rate, because Defendant's payment of TTD was delayed more than two years (Cal. Lab. Code § 4661.5). However, because the WCJ did not make any determination regarding the temporary disability rate or even issue an Award of temporary disability, applicant has not been aggrieved by any finding of the WCJ on this issue, and we do not reach this issue in the first instance. We note that defendant did appear to comply with Labor Code section 4661.5 when making temporary disability indemnity payments in this case.

Defendant also contends that the WCJ should have found it entitled to a credit for temporary disability indemnity paid by the defendant commencing on December 23, 2023 and ongoing. Defendant has filed an Answer to applicant's Petition and the WCJ issued two separate Reports and Recommendations on Petitions for Reconsideration.

As explained below, we agree with both parties that the temporary disability period should be the 104-week period commencing on December 28, 2019. We therefore grant reconsideration and amend the WCJ's decision to so reflect. We otherwise affirm the WCJ's decision.

Qualified medical evaluator psychologist Jeffery Coker, Psy.D. opined that applicant has been temporarily totally disabled since the date of injury. (March 16, 2024 report at p. 2.) However, applicant continued working for a short time after his injury and wage loss is a necessary element of compensable temporary disability. (*Herrera v. Workmen's Comp. Appeals Bd.* (1969) 71 Cal.2d 254, 260 [34 Cal.Comp.Cases 382].) The WCJ determined that applicant was entitled to temporary disability commencing on February 1, 2020 because he "testified at trial that he closed his practice in January 2020" and that "February 1, 2020 was chosen as the start date for temporary disability because, while the Applicant testified at trial that his practice closed in January 2020, an exact date for his practice was not specified." (Opinion on Decision at pp. 2-3 & fn5.)

However, while applicant testified that he "kept his office open" until an unspecified date in January 2020, during the period after his injury he told his staff "that he could not focus on work," he "rescheduled all" of his patients, and performed his last surgery in December [of 2019]." (Minutes of Hearing and Summary of Evidence of April 4, 2024 trial at p. 14.) Although "he gave his staff until January" it is clearly inferred that applicant sustained wage loss in an amount greater than the statutory maximum temporary disability rate as of December 2019. Consistent with the applicant's application for unemployment disability benefits, and the payment of such benefits by EDD, we find that applicant was temporarily disabled as of December 28, 2019.

With regard to applicant's other contentions, we affirm the decision. While applicant cites to *Hawkins v. Amberwood Products* (2007) 72 Cal.Comp.Cases 807 (Appeals Board en banc) for the proposition that he is entitled to more than 104 weeks of temporary disability indemnity, *Hawkins* interpreted Labor Code section 4656(c)(1) which is only applicable to dates of injury from April 19, 2004 to December 31, 2007. The instant case is subject to section 4656(c)(2) which limits compensable temporary disability to 104 weeks from the date of injury rather than "the date

of commencement of temporary disability payment.” With regard to applicant’s contention that defendant is not entitled to a credit for its settlement of EDD’s lien claim, such a credit is contemplated by Labor Code sections 4903(f) and 4904. Although in this case the defendant paid the entire amount of the lien claim before trial, an absurd result would be reached if sections 4903 and 4904 mandated payment of an unresolved lien at trial, but allowed a credit to be disallowed only because the lien was settled prior to trial. Such a result would disincentivize settlement and lead to double recovery.

With regard to defendant’s contention that it should be granted a credit for temporary disability indemnity payments commencing in December of 2023 and continuing, as noted by the WCJ, this was not raised as an issue at trial, and we therefore do not consider this contention.

Accordingly, we will grant reconsideration and amend the WCJ’s decision to reflect that applicant’s injury caused temporary disability from December 28, 2019 to December 26, 2021. We otherwise affirm the WCJ’s decision. Because we find that applicant was temporarily disabled on an industrial basis for the entire period that he received unemployment disability benefits, the WCJ’s recommendation in the Report and Recommendation on Petition for Reconsideration that the decision be amended to reflect that defendant only receive credit for the days that applicant was industrially temporarily disabled is now moot.

For the foregoing reasons,

**IT IS ORDERED** that Applicant’s and Defendant’s Petitions for Reconsideration of the Joint Findings of Facts and Order of May 6, 2024 are **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Joint Findings of Facts and Order of May 6, 2024 is **AMENDED** as follows:

**ADJ12906041**

**FINDINGS OF FACT**

1. The Applicant is entitled to a temporary total disability period from December 28, 2019 until December 26, 2021.
2. Defendant is entitled to take credit for the EDD resolution against temporary total disability owed to the Applicant.

3. The issue of Parts of Body is deferred as the issue was not ripe for determination.

4. The issue of prior attorney's fees is premature.

**ADJ13548947**

**FINDINGS OF FACT**

1. All issues pertaining to this case raised at the trial are premature as this case was not properly activated for hearing.

**ORDER**

**IT IS ORDERED** as follows:

- a. Exhibit 23, Exhibit 24 and Exhibit K are hereby admitted into the record.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**KATHERINE A. ZALEWSKI, CHAIR**  
**CONCURRING NOT SIGNING**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**July 12, 2024**

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

**GERGIS GHOBRIAL  
ALBERT AND MACKENZIE**

**DW/oo**

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