

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

**PAUL GILBERT, *Applicant***

**vs.**

**PARAMOUNT GLOBAL / CTD RADFORD STUDIOS,  
permissibly self-insured, administered by SEDGWICK, *Defendants***

**Adjudication Numbers: ADJ15865162; ADJ15865183**

**Los Angeles District Office**

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

Defendant seeks reconsideration of the “Findings and Order” (F&O) issued on July 29, 2024 in ADJ15865183, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant was entitled to 104 weeks of temporary disability from defendant and that temporary disability was stayed in this case while applicant collected temporary disability from another employer in a different case (ADJ15865162).

Defendant argues that the temporary disability period between the two dates of injury run concurrently.

We have received an Answer from applicant.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ’s Report. Based on our review of the record and for the reasons discussed below, we will grant reconsideration and as our Decision After Reconsideration we will rescind the WCJ’s July 29, 2024 F&O and return this matter to the trial level for further proceedings.

## **FACTS**

In ADJ15865162, applicant claimed injury to various body parts while employed by MBS Holdings, Inc., insured by Pacific Indemnity Co. / Chubb Group of Insurance Companies, as a special effects metal fabricator on January 26, 2022.

On October 18, 2023, a WCJ approved a Stipulation between applicant and defendant that: applicant's average weekly wage is \$2,080.00, resulting in a temporary disability rate of \$1386.67 per week; that defendants agree to pay the applicant \$2,938.85 to cover the difference in the corrected weekly TD benefits for the period of January 27, 2022 to October 4, 2023 and a self-imposed 10% penalty, less 15% as attorney's fees.

In ADJ15865183, the parties stipulated that applicant, while employed on April 7, 2021, as a special effects person, by CTD Radford Studios, sustained injury arising out of and in the course of employment to his left forearm and left wrist. At the time of injury, the employer was permissibly self-insured and administrated by Sedgwick.

On July 10, 2024, the parties proceeded to trial in ADJ15865183 on the issues of whether the statutory time period under Labor Code Section 4656(c)(1) and (2) runs concurrently when temporary disability is concurrently caused by two injuries from different employers; and whether the temporary disability sought for the period from January 25, 2024 to the present and continuing was caused by a subsequent injury with the other employer (ADJ15865162).

They stipulated that at the time of injury, the employee's earnings were \$2,034.46 per week, warranting indemnity rates of \$1,356.31 for temporary disability; and that the employer has paid the following compensation: temporary disability at the rate of \$1,356.31 for the period April 8, 2021, to January 12, 2022. They further stipulated that applicant collected temporary disability indemnity in ADJ15865162 from January 27, 2022, to January 24, 2024, at a weekly rate of \$1,356.31, and payment was issued by Pacific Indemnity Company.

## **DISCUSSION**

### **I.**

Former 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.

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 August 26, 2024, and 60 days from the date of transmission is Friday, October 25, 2024. This decision is issued by or on Friday, October 25, 2024, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on August 26, 2024, and the case was transmitted to the Appeals Board on August 26, 2024. 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 August 26, 2024.

## II.

Pursuant to Labor Code section 4656(c)(2):

Aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury.

(Lab. Code, § 4656(c)(2).)

Where separate injuries result in concurrent periods of temporary disability, the 104-week limitation periods run concurrently. (*Foster v. Workers' Comp. Appeals Bd.*, (2008) 161 Cal.App.4th 1505 [73 Cal.Comp.Cases 466].) In such a case, the temporary disability benefits paid in one case are counted toward the 104-week limitation in both.

There is nothing in the language of section 4656(c)(1) suggesting the limitations period for a single injury causing temporary disability should be tolled for any period during which a worker is entitled to temporary disability benefits based on another injury. There is no language in the statute suggesting the limitations period will not run concurrently where multiple injuries cause an overlap, either partial or complete, during periods of temporary disability.

(*Id.* at pp. 1511-1512.)

However, the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (§ 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Whether temporary disability runs concurrently requires findings of fact to be made in each case. We cannot address the merits of whether applicant's temporary disability ran concurrently between his two cases because only one case has been submitted for decision, and applicant's cases were not consolidated for hearing. (Cal. Code Regs., tit. 8, § 10396.)

Separate findings of fact must issue as to periods of temporary disability in case one and case two. Where the two periods overlap, temporary disability runs concurrently. This requires the cases to be consolidated and heard together. Here, findings of fact were not made as to the periods of temporary disability in applicant's other case. To be clear, the fact that the defendant appears to have paid temporary disability in case two does not by itself prove that temporary disability was due and payable. This requires a clear stipulation of the parties in case two, or medical evidence establishing temporary disability, none of which is in evidence.

Accordingly, as our Decision After Reconsideration we will grant reconsideration and as our Decision After Reconsideration, we will rescind the WCJ's July 29, 2024 F&O and return this matter to the trial level for further proceedings.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings and Order issued on July 29, 2024, is **GRANTED**.

**IT IS FURTHER ORDERED** that as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on July 29, 2024, is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**October 25, 2024**

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

**PAUL GILBERT  
LAW FIRM OF ROWEN, GURVEY & WIN  
MISA, STEFEN, KOLLER, WARD, LLP AKA EWORDSOLUTIONS  
TROVILLION, INVEISS, DEMAKIS & HANSEN**

**EDL/mc**

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