

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

BEATRIZ MACIAS (Deceased), *Applicant*

vs.

**COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT, permissibly self-insured,
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11229680
Van Nuys District Office**

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

Applicant seeks reconsideration of the Findings of Fact and Award (F&A) issued by a workers' compensation administrative law judge (WCJ) on July 21, 2025, wherein the WCJ found that applicant, while employed by defendant as a deputy sheriff on December 12, 2017, sustained injury arising out of and during the course of employment in the form of metastatic breast cancer and to her right upper extremity ulnar nerve, causing permanent disability of 100 percent. Permanent disability benefits were awarded, commencing on August 11, 2018 and ending on April 1, 2025¹, less credit for (1) permanent disability paid pursuant to the 21 percent stipulated award dated March 12, 2021, (2) days worked where the decedent earned full salary, (3) payments made pursuant to Labor Code² section 4850, and (4) temporary total disability indemnity paid. Reasonable attorney fees in the amount of 15 percent of the applicant's net payment were also awarded.

Applicant contends that the application of a credit against the award of permanent disability for earnings, temporary disability, and section 4850 benefits, including temporary disability and

¹ While we note there is no death certificate in evidence, it appears undisputed that April 1, 2025 was the date of applicant's death.

² All further references are to the Labor Code, unless otherwise noted.

section 4850 benefits paid in another case, was in excess of the WCJ's powers and was not justified by the evidence.

Defendant contends in its Answer that the application of the credit was appropriate to avoid a double recovery in light of the substantial sums already paid to applicant in the form of salary, section 4850 benefits, and temporary disability after the permanent disability benefits commencement date.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report of the WCJ. Based on our review of the record, and for the reasons stated herein, we will grant reconsideration, and amend the WCJ's decision to allow credit only for permanent disability paid pursuant to the reopened 21 percent award, and to strike any credit for days worked, payments made pursuant to section 4850, or temporary total disability indemnity paid. (Finding of Fact #4.) We otherwise affirm the F&A.

FACTS

This case proceeded to trial on July 17, 2025. At trial, the parties stipulated that applicant, while employed on December 12, 2017, as a deputy sheriff by defendant, sustained injury arising out of and in the course of employment to "breast cancer, metastatic breast cancer and liver, and right upper extremity ulnar nerve." (Minutes of Hearing and Summary of Evidence, July 17, 2025, page 2, paragraphs 1-2.) The parties further stipulated that at the time of injury, applicant's earnings were \$2,438.63 per week, warranting statutory maximum rates for temporary disability and permanent disability. (*Id.* page 2, paragraph 3.)

With respect to benefits paid, the parties stipulated that in this case, Case Number ADJ11229680, defendant paid section 4850 benefits from January 26, 2018 through January 9, 2019 at the rate of \$1,172.57 per week, and from April 13, 2022 through April 25, 2022 and from April 27, 2022 through April 29, 2022 at the rate of \$1,539.71 per week. (*Id.* page 2, paragraph 4.) The parties agreed that temporary total disability benefits were also paid from April 30, 2022 through December 12, 2022 at the rate of \$1,539.71 per week, and permanent disability benefits were paid from March 12, 2021 at the rate of \$290.00 per week. (*Ibid.*) The parties further stipulated that applicant was paid \$19,843.25 in permanent disability indemnity, and her attorney was previously awarded \$3,501.75 in fees on the 21 percent award of March 12, 2021. (*Ibid.*)

Included in the stipulations was the fact that defendant had paid benefits under a different case, Case Number ADJ15218745. In that case, which was characterized as “an orthopedic claim,” defendant paid section 4850 benefits from February 7, 2023 through February 6, 2024 at the rate of \$1,539.71, temporary total disability benefits from February 7, 2024 through December 31, 2024 at the rate of \$1,619.15, and temporary total disability benefits from January 1, 2025 through February 3, 2025 at the rate of \$1,680.29. (*Id.* pages 2-3, under numbered paragraph 4.)

The issues submitted for decision at trial were permanent disability, attorney fees, the commencement date for permanent disability resulting from applicant’s petition to reopen for new and further disability, and whether the matter should proceed forward to trial or be taken off calendar for further discovery and cross-examination of the Agreed Medical Evaluator (AME) on defendant’s motion. (*Id.* page 3, numbered lines 12-19.) The parties submitted joint exhibits consisting of medical reports from both AME Robert Meth, M.D., and reports and a deposition transcript from AME Marc Meth, M.D. (*Id.*, pages 3-4.) Defendant offered a subrosa video which was not admitted into evidence based on lack of foundation. (*Ibid.*)

On July 21, 2025, the WCJ issued the F&A, finding that applicant sustained 100 percent permanent total disability, based on the medical reporting of Dr. M. Meth, less credit for sums previously paid for permanent disability, days worked, payments made pursuant to section 4850, temporary total disability benefits paid, and reasonable attorney fees as to the net payment awarded, with payments to commence on August 11, 2018.

It is from this F&A that applicant seeks reconsideration.

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 14, 2025 following the Petition for Reconsideration, and 60 days from the date of transmission is Monday, October 13, 2025. This decision is issued by or on Monday, October 13, 2025, so that we have timely acted on the Petition for Reconsideration 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 of Workers’ Compensation Administrative Law Judge on Petition for Reconsideration, the Report was served on August 14, 2025, and the case was transmitted to the Appeals Board on August 14, 2025. 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 14, 2025.

II.

Here, neither party has challenged the findings that applicant was 100 percent disabled, or that total permanent disability benefits were to commence on August 11, 2018 and continue through the date of applicant’s death on April 1, 2025. (See Lab. Code, § 5904.) Applicant’s Petition for Reconsideration does not challenge the decision’s allowance of credit for permanent disability paid in this case; it challenges only the credit from permanent disability benefits for

earnings, and for temporary disability and section 4850 benefits that were paid under both this case and another case. Our inquiry is therefore limited to whether the WCJ properly allowed credit for anything other than for permanent disability that was paid in this case. We conclude that in this case the record does not justify any credit for temporary disability indemnity, salary, or payments of benefits in lieu of temporary disability under section 4850.

If the award in this case were an award of temporary disability, and not permanent disability, it would necessarily account for earnings during the temporary disability period, and credit would likely be allowed against such an award in the amount of any payment of temporary disability benefits paid, including benefits paid under section 4850 during the first year of temporary disability. However, such a credit would ordinarily not extend to any sums paid in other cases.

The award in this case is not an award of temporary disability benefits, but of permanent disability indemnity. Permanent disability, unlike temporary disability, does not compensate solely for lost wages. As acknowledged by the California Supreme Court in *Brodie v. Workers' Compensation Appeals Board*, permanent disability is understood as “the irreversible residual of an injury.” (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1320 [72 Cal.Comp.Cases 565], citing *Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1111 [71 Cal.Comp.Cases 1229].)

“A permanent disability is one ‘...which causes impairment of earning capacity, impairment of the normal use of a member, or a competitive handicap in the open labor market.’” (*Id.*, citing *State Compensation Ins. Fund v. Industrial Accident Com. (Hutchinson)* (1963) 59 Cal.2d 45, 52 [28 Cal.Comp.Cases 20].) “Thus, permanent disability payments are intended to compensate workers for both physical loss and the loss of some or all of their future earning capacity.” (*Id.*, citing Lab. Code, § 4660(a), and *Livitsanos v. Superior Court* (1992) 2 Cal.4th 744, 753 [57 Cal.Comp.Cases 355].) An employer is therefore not entitled to take credit for wages it paid the employee while the employee is receiving payments of permanent disability, which is intended to compensate for physical loss among other lifelong effects of a physical handicap.

Section 4850(a) states that whenever any person is “temporarily or permanently” disabled due to a work injury, that person is entitled to “a leave of absence while so disabled without loss of salary in lieu of temporary disability payments” up to a year or until retired “on permanent disability pension” and “actually receiving disability pension payments, or advanced disability

pension payments...” (Lab. Code, § 4850(a).) Thus, benefits paid pursuant to section 4850 are in lieu of temporary disability benefits, but not in lieu of permanent disability benefits.

Section 4854 prohibits the payment of section 4850 benefits while receiving a salary, but there is no similar limitation on payment of section 4850 benefits while receiving installments of permanent disability indemnity. (Lab. Code, §§ 4850, 4854.)

Further, section 4661 provides that “Where an injury causes both temporary and permanent disability, the injured employee is entitled to compensation for any permanent disability sustained by him *in addition to* any payment received by such injured employee for temporary disability.” (Lab. Code, § 4661, emphasis added.)

Finally, to the extent that any temporary disability overpayment exists, such credit is discretionary and subject to equitable estoppel. (Lab. Code, § 4909; *Maples v. Workers’ Comp. Appeals Bd.* (1980) 111 Cal.App.3d 827, 838 [45 Cal.Comp.Cases 1106]; *J.C. Penney Co. v. Workers’ Comp. Appeals Bd. (Edwards)* (2009) 175 Cal. App. 4th 818, 826 [74 Cal. Comp. Cases 826].)

Here applicant died of industrial cancer at the age of 51, resulting in an actual loss of decades of earnings and pension in excess of maximum benefit rates, so any unjust enrichment argument is inapposite. The Legislature has determined that employees in the public safety sector are entitled to enhanced temporary disability benefits under section 4850, and in this case, applicant has not been unjustly enriched by the provision of such benefits in addition to statutorily prescribed temporary disability and permanent disability benefits for her injuries.

Accordingly, we grant the Petition for Reconsideration, and affirm the F&A, except that we amend it to strike the words “less credit for days worked where the decedent earned full salary, less credit for payments made pursuant to Labor Code § 4850, less credit for temporary total disability indemnity paid” from Finding of Fact #4.

For the foregoing reasons,

IT IS ORDERED that applicant’s Petition for Reconsideration of the F&A issued on July 21, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of July 21, 2025 is **AFFIRMED, EXCEPT** that Finding of Fact #4 is **AMENDED** to read as follows:

4. The injury caused permanent disability of 100%, commencing at the applicable statutory rate on August 11, 2018 and ending on April 1, 2025, less credit for permanent disability paid pursuant to the 21% award dated March 12, 2021, and less reasonable attorney fees in the amount of 15% of the applicant's net payment awarded, with the WCJ to retain jurisdiction in the event of a dispute.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 13, 2025

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

**ALBERT GONZALEZ (FOR BEATRIZ MACIAS, DECEASED)
COOKSEY & MARENSTEIN
TENNHOUSE, MINASSIAN & ADHAM**

CWF/cs

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