

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

MARIA NAVARRETE MEDRANO, *Applicant*

vs.

**SANTA ROSA CITY SCHOOL DISTRICT, permissibly self-insured, administered by
REDWOOD EMPIRE SCHOOLS INSURANCE GROUP, *Defendants***

**Adjudication Number: ADJ19327586
Santa Rosa District Office**

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

Applicant filed a Petition for Reconsideration (Petition) of the Findings and Orders (F&O) issued June 16, 2025, wherein the workers' compensation administrative law judge (WCJ) found that defendant satisfied their burden in showing that modified work was available within the applicant's restrictions and consequently ordered applicant's claim for temporary disability benefits denied. The WCJ also found that applicant had not reached permanent and stationary status.

In the Petition, applicant contends that defendant failed to make a valid offer of modified or alternative work and therefore applicant is entitled to temporary disability.

Defendant filed an Answer.

The WCJ's Report and Recommendation (Report) recommends the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report of the WCJ with respect thereto.

Based on our review of the record and for the reasons discussed below, we will grant reconsideration, defer the issues of earnings, work restrictions, modified work, and wage loss pending further proceedings, and otherwise affirm the findings of the WCJ.

I.

Former Labor Code section 5909¹ 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. (Former 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.

(Lab. Code, § 5909.)

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 6, 2025, and 60 days from the date of transmission is Sunday, October 5, 2025. The time limit is also extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600(b).) Here, October 5, 2025, is a Sunday which by operation of law means this decision is due by the next business day, which is Monday, October 6, 2025. This decision issued by or on October 6, 2025, 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

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

According to the proof of service, the Report was served on August 6, 2025, and the case was transmitted to the Appeals Board on August 6, 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 6, 2025.

II.

Here, applicant seeks payment of temporary disability benefits, and based on our review of the record, we highlight the following evidence.

A November 14, 2023, Job Accommodation/Interactive Process Form states “at all times Maria will not carry more than ten pounds of equipment. Sites will pick up equipment as necessary.” Under comments was written “Only minor adaptations of this.” The form has a box marked accepted and is signed by applicant. (Exhibit F, pages 1-2.)

There is a November 17, 2023, email from Daniel Bigelow to applicant which states in part: “You are an excellent worker with a true dedication to getting the job done. The district admins have decided that going forward, my hourly interpreters cannot exceed 120 billed hours of work per month. This is purely an administrative decision and beyond my control. This means a maximum of 120 hours, total, on all timecards. (Special Ed+ Board+ Gen ED). This policy will not affect your timecards for November, this is only for December and beyond.” (Exhibit H.)

For March 15, 2024 through April 2, 2024, there are “All Notes” (this appears to be claims notes for the workers compensation adjustor), which includes as part of a March 20, 2024, entry “they just had an opening for a full time permanent translator and it was offered to her, but she did not want the job because it pays less than the position she has now.” (Exhibit C.)

There are emails from March 21, 2024, through July 24, 2024, between applicant and individuals at Santa Rosa City Schools regarding applicant’s hourly pay rate. (Exhibit 4.) There are emails from April 19, 2024, through May 31, 2024, with Tamra Oser apparently concluding applicant’s last day of work was May 31, 2024. (Exhibit B.)

On July 2, 2024, Michelle Han Lee, M.D., with Kaiser Permanente, evaluated the applicant and issued a Primary Treating Physician's Progress Report (PR-2) stating applicant was returned to full duty on July 2, 2024, with no limitations or restrictions. (Exhibit A, page 5.)

There is a July 24, 2024, email forwarding a letter dated March 11, 2024, from applicant to Anna Trunnel and Steve Mizera regarding accommodations for back pain and applicant's hourly rate of pay. (Exhibit 5.)

On October 2, 2024, applicant's deposition was taken. (Exhibit E.) Applicant first sought medical care in November 2023 and received a letter from the doctor putting applicant on modified duties. (Exhibit E, page 23, lines 13-22.) Applicant went to the Kaiser emergency room (ER) on March 12, 2024, because of pain in her back and half her face was numb. (Exhibit E, page 35, line 22, to page 36, line 3.) Applicant last worked approximately on May 4, 2024. (Exhibit E, page 14, lines 9-23.)

There is an October 15, 2024, Panel Qualified Medical Evaluation (PQME) report from Jordan Newmark, M.D., who provided work restrictions of no "repetitive lifting, pushing, and pulling of objects greater than 10 lbs for greater than 20 minutes per hour. Avoid bending and stooping with the lumbar spine. Allow changes in position from sitting to standing at will. The applicant should be provided with ergonomic equipment. The applicant should be allowed one 5-minute break per 75-minutes of work for rest and changing positions." The PQME also found "the applicant has not reached MMI / P&S status." "The applicant has been temporarily and partially disabled on a medical basis from 02/01/2023 as listed on the DFR [doctor's first report], through that of the present time." (Exhibit 3, PQME Dr. Newmark, October 15, 2024, page 12.) The report also provides a digest of treating records including from Dr. Michele Lee at Kaiser: March 1, 2024, "no lifting, carrying, pushing or pulling over 15 pounds"; April 11, 2024, "same restrictions"; May 22, 2024, "no lifting, carrying, pushing or pulling over 10 pounds"; and the July 2, 2024, "full duty without restrictions." (Exhibit 3, PQME Dr. Newmark, October 15, 2024, pages 9-10.) PQME Dr. Newmark explained:

Given the lack of medical records regarding a previous 2014, non-industrial MVA with subsequent chronic low back pain, along with my above analysis of the MRI report, in conjunction with my history and physical examination of the applicant, I respectfully disagree with the conclusions reached by Dr. Lee in evaluating this case. To a reasonable degree of medical probability, the applicant sustained industrial cumulative trauma to her lumbar spine, without yet having reached MMI / P&S status.

(Exhibit 3, PQME Dr. Newmark, October 15, 2024, pages 9-10.)

On January 17, 2025, a New Patient Initial Visit report was issued by Arzhang Zeresghi, M.D., which includes a medical history that states in part “[m]ild stroke, March 12, 2024,” and under social history “[s]he continues to work in a modified capacity.” (Exhibit 6, PDF page 8, report page 2.) Work Status is “[n]o lifting, pulling or pushing more than 10 pounds. No repetitive bending at the waist. May alternate between sitting standing as needed. Not permanent and stationary.” (Exhibit 6, PDF page 14, report page 8.)

In a February 21, 2025, visit note with Arzhang Zeresghi, M.D., the doctor provides the same information and work restrictions as in the prior report. (Exhibit G, page 2, 4.)

The applicant, the Assistant Superintendent of Human Resources, and the School District’s Translator Supervisor all testified over two days of trial regarding applicant’s hourly rate, hours worked, and job offers. (Minutes of Hearing, April 7, 2025, and April 30, 2025.)

III.

As found by the WCJ in the F&O, applicant while employed during the cumulative period through April 25, 2024, as an interpreter, sustained injury arising out of and in the course of employment to her low back and had not yet reached permanent and stationary status.

A.

Applicant seeks reconsideration of the F&O because “[u]nder 8 CCR § 10133.35, the employer is required to use the DWC-AD Form 10133.35 to make a valid offer of modified or alternative work.” (Petition, page 2, line 9-10.)

For injuries such as applicant’s which occur after January 1, 2013, Labor Code section 4658.7 allows an employer to make an offer of “regular, modified, or alternative work” in lieu of providing a supplemental job displacement benefit if the offer is made “no later than 60 days after receipt by the claims administrator” of a medical report in the form created by the administrative director “finding that the disability from all conditions for which compensation is claimed has become permanent and stationary and that the injury has caused permanent partial disability.” (Lab. Code § 4658.7(a)-(b)(1).)

The record does not contain an administrative director form from a reporting physician, (Form DWC-AD 10133.36 “Physician's Return-to-Work & Voucher Report,”) nor a “Notice of

Offer of Regular, Modified, or Alternative Work” form, (Form DWC-AD 10133.35). (Cal.Code.Reg., title 8, §§ 10133.36 and 10133.35.) Instead, the PQME found applicant temporarily and partially disabled on a medical basis from February 1, 2023, through the present. (Exhibit 3, PQME Dr. Newmark, October 15, 2024, page 12.)

Applicant’s reliance on AD Rule 10133.35 is unfounded as there is no Physician's Return-to-Work & Voucher Report or equivalent permanent and stationary report triggering the employer’s option to issue a Notice of Offer of Regular, Modified, or Alternative Work.

B.

Although the Petition only raises as error application of AD Rule 10133.35, it is clear applicant is seeking temporary disability benefits from March 12, 2024, and continuing. (Minutes of Hearing, April 7, 2025, page 2, lines 29-31.)

We observe that a grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

Temporary disability may be total (incapable of performing any kind of work) or partial (capable of performing some kind of work). (*Huston v. Workers’ Comp. Appeals Bd.* (1979) 95 Cal. App. 3d 856, 868 [44 Cal.Comp.Cases 798].) “If the partially disabled worker can perform some type of work but chooses not to, his "probable earning ability" will be used to compute wage-loss compensation for partial disability.” “If the temporary partial disability is such that it effectively prevents the employee from performing any duty for which the worker is skilled or there is no showing by the employer that work is available and offered, the wage loss is deemed total and the injured worker is entitled to temporary total disability payments.” (*Huston, supra*, at 868.) Further, an offer of regular, modified, or alternative work must be bona fide. (*Dennis v. State of California* (2020) 85 Cal.Comp.Cases 28, 43 (Appeals Board en banc).)

Different calculations must be applied depending on whether the worker is temporarily totally disabled or temporarily partially disabled and entitled to wage loss benefits. The starting point for the calculation of both is the average weekly wage calculated under Labor Code section 4453. (*Gamble v. Workers' Comp. Appeals Bd.* (2006) 143 Cal. App. 4th 71, 87 [71 Cal.Comp.Cases 1015].) The average weekly earnings are then used to calculate the amount of either temporary total disability under Labor Code section 4653 or temporary partial disability under sections 4654 and 4657.

1.

Here the WCJ found in the F&O the “applicant has not yet reached Permanent and Stationary Status.” (F&O, page 1, finding 4.) This finding is well supported in the medical record. (Exhibit 3 PQME Dr. Newmark, October 15, 2024; Exhibit 6; and Exhibit G.) Although Kaiser Dr. Lee returned applicant to full duty on July 2, 2024, PQME Newmark considered this possible permanent and stationary date but rejected it. (Exhibit 3, PQME Dr. Newmark, October 15, 2024, pages 10-11.) We agree the applicant has not yet reached permanent and stationary status.

As the applicant was not found permanent and stationary, the analysis next moves to defining any partial or total disability.

2.

It appears from the record there is no evidence applicant has been temporarily totally disabled but instead has been temporarily partially disabled. There is, however, no finding by the WCJ as to the actual work restrictions causing this temporary disability.

As noted above, Kaiser Dr. Lee returned applicant to full duty on July 2, 2024, with no limitations or restrictions. (Exhibit A, page 5.) After considering and rejecting Dr. Lee’s opinions, PQME Newmark in the October 15, 2024, report provided work restrictions of no “repetitive lifting, pushing, and pulling of objects greater than 10 lbs for greater than 20 minutes per hour. Avoid bending and stooping with the lumbar spine. Allow changes in position from sitting to standing at will. The applicant should be provided with ergonomic equipment. The applicant should be allowed one 5-minute break per 75-minutes of work for rest and changing positions.” (Exhibit 3, PQME Dr. Newmark, October 15, 2024, page 12.)

Subsequently, treating physician Dr. Zereshki reported applicant was restricted to no lifting, pulling, or pushing more than 10 pounds, no repetitive bending at the waist, and may alternate between sitting and standing as needed in reports dated January 17, 2025, and February 21, 2025. (Exhibit 6, PDF page 14, report page 8; Exhibit G, page 4.)

It appears that applicant's work restrictions during the claimed period of temporary partial disability were likely more limiting than the simple "not carry more than ten pounds of equipment" as provided in the November 14, 2023, Job Accommodation/Interactive Process Form. (Exhibit F.)

Further proceedings are necessary to allow the WCJ to review the record and determine applicant's work restrictions and the periods of time for which they are operative. Such determination is critical to an analysis of temporary partial disability and any corresponding offer of modified work.

3.

It is well settled that the modified work offered by the employer must be within the employee's restrictions. If an employer offers work that is beyond the limitations caused by the industrial injury, the employee's refusal to accept a physically inappropriate position will not result in a denial of temporary disability. (*Aluminum Co. of America v. WCAB (West)* (1971) 36 CCC 514 (writ denied).)

The WCJ found defendant satisfied its burden in showing that modified work was available within the applicant's restrictions. (F&O, page 1, finding 3.) This finding was made based on the November 14, 2023, Job Accommodation/Interactive Process Form, (Exhibit F), which led to the WCJ concluding "[a]t this point, it is determined that the employer's legal obligation was satisfied." (F&O, Opinion on Decision, page 1).

We are not convinced on this record that the offer of modified work was actually within applicant's restrictions. The Job Accommodation/Interactive Process Form provided only that applicant "will not carry more than ten pounds of equipment" and further allowed "[o]nly minor adaptations of this." (Exhibit F, pages 1-2.) These modified work activities clearly exceed the work restrictions as found by PQME Newmark and as found in subsequent treatment reports.

The use of this form is also problematic as it was completed more than three months before applicant's claimed period of temporary disability, which began on March 12, 2024. It is unclear

if the form included all of applicant's restrictions at the time the form was completed as applicant testified Kaiser provided work restrictions, but the employer never completely complied with those restrictions. (Minutes of Hearing, Summary of Evidence, April 7, 2025, page 5, lines 37-40.) The record does not appear to contain the medical report(s) upon which the form was based.

The WCJ also concluded that applicant declined an offer of a permanent position. (F&O, Opinion on Decision, page 1.) The WCJ states the "applicant was eligible to apply for this permanent position but did not do so." (F&O, Opinion on Decision, page 1.)

Here, beyond concern the work available exceeded applicant's work restrictions, we are unclear if defendant's offer of a position as communicated to the applicant was as a bona fide offer of modified employment or instead an invitation to applicant to apply for the position.

Preliminary negotiation or an invitation to make an offer is not a legally operative offer. As noted by the California Supreme Court, "[a]n offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." (*City of Moorpark v. Moorpark Unified School District* (1991) 54 Cal.3d 921, 930.)

We have found that an applicant may be estopped from claiming temporary disability indemnity corresponding to periods that he or she has refused suitable modified work without good cause. (*Vittone v. Workers' Comp. Appeals Bd.* (2001) 66 Cal.Comp.Cases 435 (writ denied).) Using similar reasoning, we have suggested that an injured worker terminated for cause during a period in which they were offered modified work is not entitled to temporary disability indemnity. (*Manpower Temporary Services v. Workers' Comp. Appeals Bd. (Rodriguez)* (2006) 71 Cal.Comp.Cases 1614 (writ denied); *Drews v. Workers' Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 799, 801-802 (writ denied); *Butterball Turkey Co. v. Workers' Comp. Appeals Bd. (Esquivel)* (1999) 65 Cal.Comp.Cases 61 (writ denied).) The rationale expressed in these cases is that conduct leading to a justified termination is, in effect, tantamount to a refusal to perform modified work. In either case, it is applicant's conduct, rather than the work injury, which is disqualifying the applicant from employment.

It is not clear on this record if applicant's denial of an invitation to apply for a job was conduct that disqualified applicant from modified employment.

Defendant has the burden to identify and offer physically appropriate modified or alternative work if defendant wants to be relieved of the liability to pay temporary disability. (*SME*

Steel Contractors, Inc. v. Workers' Comp. Appeals Bd. (Watkins) (2019) 84 Cal.Comp.Cases 856 (writ denied); *Meyers v. Industrial Accident Com.* (1940) 39 Cal. App. 2d 665, 669). Typically requiring someone to apply for a job implies there is a competitive process for the position. This logically means the job is not guaranteed unless a successful hiring process is completed. Applicant was apparently informed *she could apply for a job*, and she would get it. It is unclear if applicant was actually *offered a modified job* and, if so, were the terms of the position sufficiently certain in terms of pay rate, hours and duties such that applicant can be found to have disqualified herself from that employment by declining to apply.

Even if it is ultimately found applicant knowingly turned down an appropriate modified position, applicant may still be entitled to temporary partial disability on a wage loss basis with the defendant given credit for the earnings applicant foregoes. Only if it is established that applicant has completely removed herself from the workforce is there a complete bar to temporary disability.

Further proceedings are necessary to determine if applicant was offered a bona fide modified position, the terms of such position and if applicant's conduct amounted to a refusal of modified work.

4.

In cases of temporary partial disability, the disability payment is two-thirds of the wage loss during the disability. (Lab. Code, § 4654.) Wage loss is calculated by subtracting wages earned during the period of temporary partial disability from the employee's average weekly wage. (Lab. Code, § 4657.)

The calculation of an award of temporary partial disability requires (1) a determination of the employee's average weekly earnings, (2) a determination of the period the employee was temporarily partially disabled, (3) a determination of the applicant's weekly earning capacity during the period of disability, and (4) a calculation of two-thirds the weekly wage loss.

In addressing the employee's average weekly earnings under section 4453(c), the WCJ should consider the January 10, 2023, payroll statement for pay period December 1 through December 31, 2022, with gross pay of \$8,837.50 (Exhibit 2), the Earning History for pay date April 1, 2023, through June 30, 2024, with pay total of \$97,695.39 (Exhibit D), the 2023 W-2 with wages of \$108,025.00 (Exhibit 1), the September 18, 2024, pay stub (identified as an invoice) for

“BACK OT PAY 2022-2024” in the amount of \$9,404.86 (Exhibit 7), and any additional relevant information of record regarding applicant’s earnings.

The WCJ noted applicant’s hours were administratively reduced by the employer. (F&O, Opinion on Decision, page 1.) This reduction in hours may or may not have implications for applicant’s earning capacity and wage loss. As applicant was temporarily partially disabled, a reduction in hours could on its own lead to wage loss.

Hypothetically and for illustration only, we note if an applicant had earned \$50.00 per hour for a forty-hour week the applicant’s average weekly wage would be \$2,000.00. Further, if modified work were offered at the same hourly rate reduced to twenty-eight hours per week, the weekly modified work earnings would be \$1,400.00 per week. With this hypothetical applicant would still have a weekly wage loss of \$600.00 per week, two-thirds of which would yield \$400.00 weekly in temporary partial disability.

In summation, following our independent review of the entire record occasioned by applicant’s Petition, we are persuaded that applicant is not permanent and stationary, and that further proceedings are necessary to address average weekly earnings, work restrictions, modified work offers, and wage loss. We make no finding as to applicant’s average weekly earnings, work restrictions, or the effect of defendant’s offer(s) of modified work on wage loss.

Accordingly, we grant applicant’s Petition for Reconsideration, amend in part and affirm in part the July 7, 2025, F&O and return the case to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the July 7, 2025, Findings and Orders is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the July 7, 2025, Findings and Orders is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

3. The issues of average weekly earnings, work restrictions, modified work, and wage loss are deferred pending further proceedings.

5. The issue of attorney fees is deferred pending further proceedings.

ORDERS

IT IS ORDERED that further proceedings are necessary to address average weekly earnings, work restrictions, modified work, wage loss, and attorney fees.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 6, 2025

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

**MARIA NAVARRETTE MEDRANO
MEECHAN ROSENTHAL & KARPILO
MULLEN & FILIPPI**

PS/oo

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