

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

JOHN RICHARD SEDANO, *Applicant*

vs.

**LIVE ACTION GENERAL ENGINEERING INC.; NATIONAL CASUALTY
INSURANCE, administered by GALLAGHER BASSETT, *Defendants***

**Adjudication Numbers: ADJ17550375; ADJ17550386
Lodi District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION
AND ORDER
IMPOSING SANCTIONS**

We previously granted reconsideration of the “Findings of Fact, Award & Order” (F&A) issued on March 24, 2025, by the workers’ compensation administrative law judge (WCJ) and issued a Notice of Intent to impose sanctions of up to \$2,500.00.

The WCJ found, in pertinent part, that defendant did not provide a bona fide offer of modified duty to applicant and awarded temporary disability accordingly.

Defendant appears to argue that temporary disability should not have been awarded because an offer of work was made and that the award is not supported by substantial medical evidence. Defendant further argues that the WCJ failed to apply apportionment under Labor Code sections 4663 and 4664, an issue that was not raised or decided.

We have received an Answer from applicant. The Presiding WCJ filed a Report and Recommendation (Report) recommending that we deny reconsideration and admonish defendant for its conduct in this case.¹

On June 30, 2025 we issued a Notice of Intent to impose sanctions against defendant as the petition for reconsideration failed to cite the evidentiary record, improperly attached documents already contained in the record, raised issues not raised or decided at trial, failed to cite to proper legal authority, and appeared to create citations that did not exist. We received a curt response

¹ The Presiding WCJ filed the Report due to the unavailability of the trial judge. (Cal. Code Regs., tit. 8, § 10962.)

from defendant apologizing for these errors and advising that steps have been taken to ensure they do not recur.

We have considered the allegations of the Petition for Reconsideration, the Answer, the Opinion on Decision, the contents of the Presiding WCJ's Report, and defendant's response to the Notice of Intent. Based on our review of the record and for the reasons stated in our June 30, 2025 "Opinion and Order Granting Petition for Reconsideration and Notice of Intent to Impose Sanctions", which we adopt and incorporate, and pursuant to Labor Code section 5813 and WCAB Rule 10421 (Cal. Code Regs., tit. 8, § 10421), as our Decision After Reconsideration we will affirm the March 24, 2025 F&A and impose sanctions of \$750.00 jointly and severally against defendant employer Live Action General Engineering, Inc.; defendant's insurer National Casualty Company; defendant's administrator Gallagher Bassett Services, Inc.; and defendant's attorneys Dietz, Gilmor & Chazen, APC and Maryem Sarwari (CA BAR #244783).

As to the merits of whether temporary disability is due, and per the WCJ's Report:

Applicant is a 68 year old iron workers' union member who was assigned work out of a union hall. He sustained an admitted injury to his low back on March 20, 2023, while employed at Live Action General Engineering. The injury was originally denied. After exhausting one year of state disability benefits the applicant elected to take his union retirement. Applicant understood that if he returned to work after accepting retirement, he would lose his retirement benefit.

After Applicant retired, on October 18, 2024, defendant offered a modified position. Applicant did not accept the offer. [Petitioner] asserts the offer of modified work bars temporary disability benefits.

It was found that the applicant is temporarily partially disabled and the employer is estopped from asserting the modified work offer bars applicant from receiving temporary disability. It was also independently found the modified work offer was not medically supported and that temporary disability was not barred for that reason as well.

* * *

1.

Applicant's Claim for Temporary Disability

Applicant is seeking temporary disability for the periods of April 4, 2024, through August 7, 2024, and October 21st, 2024, to present and continuing.

On September 1, 2023, PQME Banks evaluated the Applicant for his March 20, 2023, injury and found the Applicant had not reached maximum medical

improvement. (EXH 1, page 27). On June 6, 2024, PQME Banks re-evaluated the Applicant with report issuing dated July 5, 2024, finding the Applicant had still not reached maximum medical improvement and provided work restrictions. (EXH 2 page 45 - 46).

On September 19, 2024, Applicant was seen by treating physician Zafar Parvez, MD, who confirmed Applicant was not at maximum medical improvement and provided work restrictions until patient receives follow-up and reevaluation. (EXH C PDF page 11).

In summary, Applicant sustained injury on March 20th, 2023, he last worked March 29, 2023, was on state disability for one year, and retired from the union in approximately April 2024. The employer paid temporary disability from August 8, 2024, through October 20, 2024. The employer offered Applicant modified work on October 18, 2024. There are no treatment reports of record after Dr. Parvez reported on September 17, 2024. The EDD lien for state disability was deferred at trial.

“Temporary disability is incapacity to work that is reasonably expected to be cured or materially improved with proper medical treatment.” Chavira v WCAB (1991) 253 CA3d 463,473, 56 CCC 631. Temporary disability benefits are generally paid until the medical condition becomes permanent and stationary or the applicant returns to work. See Livitsanos v Superior Court (1992) 2 C4th 744, 753, 57 CCC 355.

The Applicant has not worked since March 29, 2023, and thereafter received a year of state disability. The evaluating physicians found Applicant not MMI/P&S with work restrictions. Dr. Parvez found Applicant would remain in this state until the Applicant receives follow-up and reevaluation. The record through date of trial is devoid of any evidence the Applicant received follow-up and reevaluation. Considering the totality of the evidence, Applicant is found temporarily partially disabled from March 30, 2023, the day after he last worked, through the date of trial on February 10, 2025. To determine Applicant’s status after trial will require updated medical opinion(s).

2.

Offer of Modified Work

WCAB Panel decisions are not binding, however it is appropriate to refer to them where the legal rationale is reasonable and logically persuasive. The following discussion from a Board Panel decision provided below is relevant:

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 den.].) Using similar reasoning, we have suggested that an injured worker terminated for cause during a period in which [he] or she is 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 den.]; Drews v. Workers' Comp. Appeals Bd. (2004) 69 Cal.Comp.Cases 799, 801-802 [writ den.]; Butterball Turkey Co. v. Workers' Comp. Appeals Bd. (Esquivel) (1999) 65 Cal.Comp.Cases 61 [writ den.].) 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. (Spiva v. Baby Connection, 2019 Cal. Wrk. Comp. P.D. LEXIS 381, (Cal. Workers' Comp. App. Bd. September 16, 2019).)

When considering temporary disability, the focus is on Applicant's conduct.

Here Applicant's conduct did not disqualify him from receiving temporary disability, but rather Defendant's conduct, conduct upon which Applicant relied, led him to not be available for modified work.

Equitable estoppel in the Workers' Compensation setting was described by the California Supreme Court in the case of Honeywell v. Workers' Comp. Appeals Bd., 70 Cal. Comp. Cases 97, 2005 Cal. Wrk. Comp. LEXIS 55, 35 Cal. 4th 24, 105 P.3d 544, 24 Cal. Rptr. 3d 179.

The basic principles of equitable estoppel are well established and easily stated. "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it." (Evid. Code, § 623.)" "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." " (City of Long Beach v. Mansell (1970) 3 Cal.3d 462, 489 [476 P.2d 423, 91 Cal. Rptr. 23], quoting Driscoll v. City of Los Angeles (1967) 67 Cal.2d 297, 305 [431 P.2d 245, 61 Cal. Rptr. 661].) Honeywell, supra.

Here, the record is unclear as to when Defendant accepted Applicant's claim as industrial. What is clear, however, is that after Applicant was injured Defendant did

not provide Applicant with temporary disability forcing him to use and exhaust one year of State Disability provided by the Employment Development Department (EDD). Once the EDD benefits ran out, Defendant did not initiate temporary disability and Applicant who was facing a deficit of income was forced to take his union retirement.

Applicant reasonably relied on Defendant's failure to provide temporary disability when deciding to take his union retirement. Taking the retirement was detrimental to the Applicant as he was forced to take it earlier than he had planned and, once he took it, he could lose his retirement if he later accepted modified work.

In simple terms, 1) Defendant was aware it was not providing temporary disability, 2) Applicant had the right to believe Defendant did not intend to provide temporary disability, 3) Applicant was unaware Defendant would later provide temporary disability, and 4) relying on Defendant's failure to provide temporary disability Applicant took his union retirement.

Assessing the facts of this case leads to the conclusion Defendant is estopped from offering applicant modified duty as a means of limiting liability for temporary disability.

Independent of estoppel, the offer of modified work is invalid as there is a conflict in the medical record which needs resolution. The PQME found restrictions including the applicant should be allowed 2 unscheduled breaks per hour for duration of time of at least 3 minutes but not greater than then 5 minutes." (EXH 2 page 45 - 46).

The employer's modified work offer was no lift, push, pull over 5lbs, no twisting or bending, (EXH B). The offer makes no mention of unscheduled breaks. This creates a conflict in the work restrictions.

Once a PQME resolves an issue such as work restrictions, a new medical conflict regarding that issue requires resolution through the Labor Code §4062 process before proceeding. For this reason as well, and independent of equitable estoppel, the offer of modified work was invalid.

3.

Claim of Overpayment Based on Rate Change

The Defendant asserts an overpayment of temporary disability based on a rate change to \$730 per week based upon payroll records. The parties, however, stipulated that at the time of injury, the employee's earnings were \$1,497.25 per week warranting an indemnity rate at \$998.15 for temporary disability. There is no basis to disturb the parties' stipulation as to earnings and temporary disability rate.

(WCJ's Report, pp. 2-6.)

As to whether sanctions are appropriate pursuant to our Notice of Intent, defendant does not challenge the multitude of errors that exist in its petition for reconsideration. Defendant simply apologizes, advises that the errors will not recur, and requests a reduction in sanction as this is the first instance of such conduct. Based upon defendant's response and noting that is the first time we have seen this type of conduct from defendant, we have reduced the level of sanctions to \$750.00.

Accordingly, as our Decision After Reconsideration we will affirm the March 24, 2025 F&A and impose sanctions of \$750.00 jointly and severally against defendant employer Live Action General Engineering, Inc.; defendant's insurer National Casualty Company; defendant's administrator Gallagher Bassett Services, Inc.; and defendant's attorneys Dietz, Gilmor & Chazen, APC and Maryem Sarwari (CA BAR #244783).

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Award & Order" (F&A) issued on March 24, 2025, by the WCJ is **AFFIRMED**.

IT IS FURTHER ORDERED that pursuant to Labor Code section 5813 and WCAB Rule 10421 (Cal. Code Regs., tit. 8, § 10421) defendant employer **LIVE ACTION GENERAL ENGINEERING, INC.**; defendant's insurer **NATIONAL CASUALTY COMPANY**; defendant's administrator **GALLAGHER BASSETT SERVICES, INC.**; and defendant's attorneys **DIETZ, GILMOR & CHAZEN, APC** and **MARYEM SARWARI** (CA BAR #244783), to jointly and severally pay sanctions of \$750.00 payable to the General Fund.

Payment shall be made within twenty (20) days (plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Order.

Payment shall be made by check payable to the Workers' Compensation Appeals Board, Tax I.D. 94-3160882, for transmission to the General Fund and shall reference *John Sedano v. Live Action General Engineering*, et al., ADJ17550375; ADJ17550386.

Payment shall be sent to: Workers Compensation Appeals Board, Office of the Commissioners, 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102, ATTENTION: Julie Podbereski.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 29, 2025

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

**JOHN RICHARD SEDANO
CENTRAL VALLEY INJURED WORKER LEGAL CLINIC, INC.
DIETZ, GILMOR & CHAZEN, APC**

EDL/mc

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