

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

VICENTE RAMIREZ, *Applicant*

vs.

**FAMILY RANCH;
ZENITH INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ20699429
Fresno District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings of Fact and Award (F&A) issued on June 6, 2025 by the workers' compensation administrative law judge (WCJ), wherein the WCJ found in pertinent part that defendant failed to prove applicant was hired as a seasonal employee; that applicant had a reasonable expectation of continued employment; and that applicant was entitled to temporary disability indemnity.

Defendant contends the WCJ erred because the evidence did not support the finding applicant had a reasonable expectation of continued employment and the evidence did not support the findings as to applicant's average weekly wage (AWW) or the temporary disability rate.

We have not received an Answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons stated in the Report, which is adopted and incorporated herein, and for the reasons discussed below, we will deny reconsideration.

FACTUAL BACKGROUND

The record reflects that while employed on January 29, 2025 as a farm laborer, applicant sustained injury arising out of and in the course of employment to his left knee, right ankle, right lower leg and foot, right chest. Applicant also claimed injury arising out of and in the course of employment to his hips and back.

The matter proceeded to trial on the issues of the temporary disability period, which applicant claimed was March 2025 and ongoing, and whether applicant had a reasonable expectation of continued employment. (Minutes of Expedited Hearing, May 6, 2025, p. 2, lines 12-14.)

On June 6, 2025, the WCJ issued the F&A that is the subject of the Petition for Reconsideration herein.

On July 1, 2025, defendant sought reconsideration of the F&A.

DISCUSSION

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 July 16, 2025 and 60 days from the date of transmission is Sunday, September 14, 2025. The next business day that is 60 days from the date of transmission Monday, September 15, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, September 15, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 by the workers’ compensation administrative law judge, the Report was served on July 16, 2025, and the case was transmitted to the Appeals Board on July 16, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 16, 2025.

II.

The Workers’ Compensation Act provides for temporary and permanent disability indemnity. (Lab. Code, § 4650 et seq.) Temporary disability indemnity is intended primarily to substitute for the worker’s lost wages, in order to maintain a steady stream of income. (*Chavira v. Workers’ Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 473 [56 Cal.Comp.Cases 631].) Unlike permanent disability, which compensates an injured employee for diminished future earning capacity or decreased ability to compete in the open labor market, temporary disability is intended

¹ WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

as a substitute for lost wages during a period of transitory incapacity to work. (*Livitsanos v. Superior Court* (1992) 2 Cal.4th 744, 753; see also *Signature Fruit Co. v. Workers' Comp. Appeals Bd. (Ochoa)* (2006) 142 Cal.App.4th 790, 795 [71 Cal.Comp.Cases 1044].)

Whether an employee is a seasonal employee or a regular full-time employee can affect the calculation of temporary disability indemnity. A seasonal employee's AWW is determined based on in-season earning capacity and off-season earning capacity. (See *Jimenez v. San Joaquin Valley Labor, Superior Nat'l Ins. Co. (Jimenez)* (2002) 67 Cal.Comp.Cases 74, 79 (Appeals Board en banc); *Ochoa, supra*, at p. 803.) "Seasonal work" as defined by AD Rule 10116.9(q) means employment as a daily hire, a project hire, or an annual season hire. (Cal. Code Regs. tit. 8, §10116.9(q).) True seasonal employees are those "who work reasonably identifiable and defined seasons of reasonably identifiable and defined duration." (*Jimenez, supra*, at p. 79, fn 9.)

We considered whether a farm laborer was a regular worker or a seasonal worker at the time of injury in *Gamez v. Cal Enterprise Labor Solutions* (2020) 2020 Cal. Wrk. Comp. P.D. LEXIS 143 (Appeals Board panel decision), writ den. sub nom. *Meadowbrook Insurance Co. v. Workers' Comp. Appeals Bd. (Gamez)* (2020) 85 Cal.Comp.Cases 871.² As we indicated in *Gamez*, the determination of whether an injured worker is a seasonal worker or a regular worker is a fact driven inquiry, with evidence from before the time of injury being more probative than evidence from after the injury. Therein, we upheld the conclusion of the WCJ that the preponderance of the evidence supported a finding that the injured worker was a regular employee and did not support finding the injured worker was a seasonal worker. (*Gamez v. Cal Enterprise Labor Solutions, supra*, at *4.) Evidence cited by the WCJ in finding applicant was not a seasonal worker included applicant's testimony, which reflected the employer did not tell applicant that the work was seasonal, what type of work he would be doing for a certain job, or his job title. (*Id.*) Further, A Worker Information – Terms and Conditions of Employment was found to be a reasonable means to determine the nature of applicant's employment because it was prepared before applicant's injury. (*Id.*) Payroll earnings records showing potential earnings beyond the

² Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to *Gamez* because it considered a similar issue.

season were also found to be better evidence. (*Id.* at *7.) An accident report indicating applicant was a seasonal employee, which was prepared after the accident, was not found to be controlling. (*Id.* at *6.)

Here, the crux of the issue is whether applicant was a seasonal employee or a regular employee, that is, one with the expectation of continued employment because the determination affects calculation of applicant's AWW and temporary disability rate. For the reasons detailed below, we find the preponderance of the evidence does support the WCJ's finding that applicant was not a seasonal employee.

In support of defendant's contention that applicant should be considered a seasonal worker, defendant puts particular emphasis on evidence that applicant's co-workers stopped working on February 4, 2025 (Joint Exh. DD; EE), and applicant's testimony that he was aware his co-workers were taken off the job at the same time. (Minutes of Expedited Hearing, May 6, 2025, p. 3, lines 20-21.) However, this evidence is from *after the date of injury* and, as such, provides little if any corroboration as to whether applicant had an expectation of continued employment *at the time of injury*.

Defendant also cites a handwritten statement from Cesar Lozano, applicant's supervisor, stating the people working for him were temporary. (Def. Exh. B, Supervisor's Statement, April 30, 2025, p. 1, ¶ 2.) Although it may have been Mr. Lozano's belief that applicant was a temporary employee, Mr. Lozano's statement does not reflect, and there is no other evidence indicating, anyone informed applicant he was a "temporary" employee. Notably, applicant testified he did not remember who his supervisor was. (Minutes of Expedited Hearing, May 6, 2025, p. 4, lines 3-4.) Applicant's testimony raises questions as to how much interaction actually occurred between applicant and Mr. Lozano, and defendant failed to call Mr. Lozano to testify.

Additionally, defendant calls attention to a one-page, undated, unsigned, and partially cutoff document to claim applicant was informed at the time of onboarding that the position was seasonal. (Def. Exh. A; WH 516 -Onboarding document.) While Item 10 on Exhibit A states in English and Spanish that the period of employment is seasonal, there is no evidence linking this document to applicant. On its face, the document does not bear applicant's name or other contact information, it is not signed by applicant, and there is no indication applicant was given the document or read the document. Further, applicant testified he never saw defendant's Exhibit A

(Minutes of Expedited Hearing, May 6, 2025, p. 3, line 24), and this testimony was not rebutted by defendant.

Although defendant's witness, Joanna Pinon, testified all workers were given an onboarding packet (Minutes of Expedited Hearing, May 6, 2025, p. 4, lines 10-11), she did not testify, and no evidence was provided, that applicant in fact received the onboarding packet or defendant's Exhibit A. Ms. Pinon further testified that it was her understanding the onboarding documents were translated to applicant, but she did not actually know if applicant could read and did not know for sure if somebody read the documents to him. (Minutes of Expedited Hearing, May 6, 2025, p. 5, lines 5-7.) Ms. Pinon was also unable to testify definitively that applicant was told he was hired for seasonal work, just that she "did not believe" that applicant was told he was hired on a full-time basis. (Minutes of Expedited Hearing, May 6, 2025, p. 5, lines 13-14.) In summary, there is nothing in the record establishing that applicant ever saw Exhibit A or that he was otherwise told he was being hired on a seasonal or limited basis.

The WCJ found applicant provided credible testimony. (Opinion on Decision, June 6 2025, p. 4, ¶ 2, p. 5, ¶ 3; Report, July 16, 2025, p. 6, ¶ 2, p. 7, ¶ 2.) We have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500, 504-505].) Moreover, following our independent review of the record, we conclude there is no evidence of considerable substantiality that would warrant disturbing the WCJ's conclusions as to the weight of the evidence. (*Id.*)

As detailed above, the preponderance of the evidence does not support finding applicant was a seasonal worker, and he had a reasonable expectation of continued employment. Because applicant is not found to be a seasonal worker, consideration of an off-season is unnecessary, and we find no reason to adjust the WCJ's calculation of applicant's AWW or temporary disability rate.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 15, 2025

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

**VICENTE RAMIREZ
LAW OFFICES OF TIMOTHY BARTELL
CHERNOW, PINE AND WILLIAMS**

DC/cs

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

REPORT AND RECOMMENDATION

ON PETITION FOR RECONSIDERATION – TRANSMITTAL DATE: 7/16/2025

I

INTRODUCTION

- | | |
|--|---|
| 1. Applicant's Occupation: | Farm Laborer |
| Age at Injury: | 57 |
| Date of Injury: | 1/29/2025 |
| Parts of Body Alleged Injured: | Left Knee, Right Ankle, Right Lower Leg and Foot, Right Chest |
| Manner in Which Injury Alleged Occurred: | Applicant stepped on a water hose and got tangled up and was dragged by a motorcycle driven by a coworker |
| 2. Identity of Petitioner: | Defendant Zenith Insurance Company |
| Timeliness: | The Petition was timely filed on 7/1/2025 |
| Verification: | The Petition was Verified. |
| 3. Date of Award: | 6/6/2025 |
| 4. Petitioner contends: | |
| a. | The evidence does not justify the Findings of Fact that Mr. Vicente Ramirez had a reasonable expectation of continued employment. |
| b. | The evidence does not justify the findings of fact regarding applicant's average weekly wage and the TD rate. |

II

FACTS

Vicente Ramirez, while employed on 1/29/2025, as a farm laborer, sustained injury arising out of and occurring in the course and scope of employment to his Left Knee, Right Ankle, Right Lower Leg and Foot, Right Chest. The Applicant's claim was accepted for liability.

The Applicant underwent treatment at Kings Medical Center (*Exhibit AA, EAMS DOCS ID # 79145663, Exhibit BB, EAMS DOC ID # 79145684*).

The Applicant was paid from 12/30/2024 through 1/29/2025, the date of injury (*Exhibit CC, EAMS DOC ID # 79145709*).

The Applicant was not paid anything after 1/29/2025.

At Expedited Trial, the undersigned found that the Defendant failed to prove that the Applicant was hired as a seasonal employee and that the Applicant had a reasonable expectation of continued employment. Based upon an average weekly wage of \$658.00 per week, and a TD rate of \$438.67 per week, temporary disability indemnity, and reasonable attorney's fees were awarded. It is from this Finding and Award that Defendant seeks reconsideration.

III

DISCUSSION

REASONABLE EXPECTATION OF CONTINUED EMPLOYMENT

Defendant contends that the evidence does not justify the Findings of Fact that Mr. Vicente Ramirez had a reasonable expectation of continued employment. In support of its position, Defendant cites the Applicant's testimony that all the people he worked with were taken off work around the same time. Additionally, Defendant cites *Exhibit B, EAMS DOC ID# 79145793* (admitted into evidence) from the Applicant's supervisor Cesar Lozano that the people working for him were temporary. Defendant also cites wage information provided for the workers, Vicente Ramirez (Applicant) - *Exhibit CC, EAMS DOC ID # 79145709*, Juvenal Tovar - *Exhibit DD, EAMS DOC ID # 79145716*, Guadalupe Barrientos - *Exhibit EE, EAMS DOC ID # 79145728* and Luis Ramirez - *Exhibit FF, EAMS DOC ID # 79145742*.

Defendant also notes that the other workers stopped working on 2/4/2025, but Luis Ramirez (*Exhibit FF, EAMS DOC ID # 79145742*) worked beyond 2/4/2025 because one other employee was needed but all the other employees stopped as of 2/4/2025. Defendant further argues that the Applicant's supervisor's statement noted that they were all hired to work with the gophers just as the Applicant. Defendant's argument also seems to weigh heavily on the fact that only one employee (Luis Ramirez) stayed on after 2/4/2025 as proof that the other workers were seasonal workers.

8 CCR § 10116.9(q) defines seasonal work as a daily hire, a project hire or an annual season hire. The Applicant testified (which is not controverted) that he was hired for job duties at Family Ranch killing gophers and squirrels, as well as fixing irrigation hoses at the pistachio groves because of coyotes biting the hoses and ripping them (*Minutes of Expedited Hearing page 3, lines 16-17*). While Defendant states that the Applicant and the other workers were hired seasonally for these jobs, there was no evidence provided by Defendant that killing gophers and squirrels, as well

as fixing irrigation hoses at the pistachio groves because of coyotes biting the hoses and ripping them was a seasonal work.

The only testimony regarding this type of work being seasonal vs. year round was the Applicant's testimony that he expected the work to really be year around because gophers don't go away (*Minutes of Expedited Hearing page 3, lines 22-23*) and Joanna Pinon's testimony that gophers were on the ranch year around, and with respect to his work with the drip lines, it would depend on irrigating (*Minutes of Expedited Hearing page 5, lines 8-9*).

The fact that Luis Ramirez stayed on, presumably to continue working at the job he was hired to work (that killing gophers and squirrels, as well as fixing irrigation hoses at the pistachio groves because of coyotes biting the hoses and ripping them) beyond 2/4/2025 is additional evidence that this type of work was not seasonal work, but full-time work.

The grower only needing one more employee at the time does not make the other employees' work seasonal. The testimony of Cesar Lozano (not signed) was that he "stopped them also because the work had slowed down and the Farmer told me to lay them off since he was going to use people from his farm that have been working with him for many years, **whereas the people I have working with me are temporary.**" (*Exhibit B, emphasis added, EAMS DOC ID # 79145793, 58716044*). There was no reason, and no evidence provided, that Applicant did not reasonably expect continued employment and that he was a "temporary" worker.

While the Applicant testified at trial that he did not review the onboarding document (*Minutes of Expedited Hearing page 3, line 24*), and Ms. Pinon admitted that she did not know if the Applicant could read and does not know for sure if somebody read the documents to him (*Minutes of Expedited Hearing page 5, lines 6-7*), even if he did, the onboarding document does not list the type of work the Applicant (and the other workers) say they were hired to do: killing gophers and squirrels, as well as fixing irrigation hoses at the pistachio groves because of coyotes biting the hoses and ripping them.

The onboarding document (WH516) noted "Crops and kinds of activities: Fruit harvesting and cultivation. Row crop planting, cultivation and harvesting" (*Exhibit A, EAMS DOC ID # 49145762*). Interestingly, the portion translated into Spanish simply says "Cultivos y tipos de actividades: Frutas; Verduras..." and does not translate the rest of the English portion." (*Exhibit A, EAMS DOC ID # 49145762*). It is this document that the Defendant relies on the explanation that the Period of Employment was seasonal (crop and weather dependent). While Defendant

argues that the onboarding document was written in both English and Spanish with the Spanish immediately underneath or next to the English for each numbered section, it is clear from reviewing this document that the entire document was not translated into Spanish. Furthermore, the Court does not have the rest of the onboarding document (in its entirety) to assess.

The statement of Cesar Lozano, while hearsay, was admitted with appropriate weight of the evidence given. Neither Cesar Lozano, nor the other workers: Luis Ramirez, Guadalupe Barrientos, or Juvenal Tovar, were present to testify. Present to testify were Applicant Vicente Ramirez and employer's representative Joanna Pinon. The Applicant testified that he relied on the statements made by Juvenal Tovar that the job was a year-round job (*Minutes of Expedited Hearing page 3, line 14-15*), and he believed that the work was year-round because gophers don't go away (*Minutes of Expedited Hearing page 3, line 22-23*). While the Applicant testified that Juvenal Tovar was not his supervisor, he noted that he did not review the onboarding document (Defendant did not produce a witness who read the document directly to the Applicant or any documentary evidence that the document was actually read to the Applicant) (*Minutes of Expedited Hearing page 3, line 24*), and Juvenal Tovar had been his contact at Family Ranch (*Minutes of Expedited Hearing page 4, lines 2-4*).

The Court also heard testimony from Joanna Pinon. While Ms. Pinon noted that all of the workers were given an onboarding packet, the document was not written in Spanish, and that "she was not sure in this case who the person was that talked to the Applicant." (*Minutes of Expedited Hearing page 4, line 14-15*). While Ms. Pinon noted that no farm laborers were full time employees, Luis Ramirez was selected (for reasons not stated) to stay beyond 2/4/2025 (*Exhibit FF, EAMS DOC ID # 79145742*). The Applicant believes had he not been injured, he would have stayed beyond 2/4/2025 because "gophers don't go away" (*Minutes of Expedited Hearing page 3, line 21-23*). The Court find this to be a credible assertion.

Defendant relies on the workers being seasonal because only one of the workers (Luis Ramirez) worked beyond 2/4/2025. In support of this, wage statements of the workers were provided. However, only one round of wages was provided for each worker. While the wage statements do not show wages for any of the workers after 2/4/2025, Joanna Pinon testified that "In the reports, the end date did not necessarily mean that they did not continue working for the company. The end date was the last date that was up to date when the reports were run." (*Minutes of Expedited Hearing pages 4-5*). As such, the reports themselves do not prove that these workers

were seasonal workers. Finally, Ms. Pinion testified that gophers were on the ranch year around, and with respect to his work with the drip lines, it would depend on irrigating (*Minutes of Expedited Hearing page 5, lines 8-9*).

Defendant failed to prove that the Applicant was hired as a seasonal employee and that the Applicant had a reasonable expectation of continued employment. The testimony of both Ms. Pinon and the Applicant was that gophers were on the ranch year-round, and that gophers don't go away. The Defendant failed to prove that the Applicant was read the onboarding document, which did not describe the work that the Applicant was hired to do but instead explained the work to be "Fruit harvesting and cultivation." (*Exhibit A, EAMS DOC ID # 79145762*). At least one of the workers (Luis Ramirez) continued to work after 2/4/2025, proving that this was, in fact, not seasonal work. The statement from Cesar Lozano, instead, suggests that the workers were "temporary". However, there was no evidence that a temporary status was ever communicated to the Applicant or any of the other workers. The Court finds that the Applicant's testimony was credible.

AVERAGE WEEKLY WAGE AND TD RATE

Defendant next argues that the evidence does not justify the findings of fact regarding applicant's average weekly wage and the TD rate. Defendant's entire argument is predicated on the Applicant being a seasonal worker and not a full-time worker. However, as the Court believes that the Defendant failed to prove that the Applicant was hired as a seasonal employee and that the Applicant had a reasonable expectation of continued employment, the Applicant's average weekly wage was \$658.00 per week, establishing a TD rate of \$438.67 per week at an ongoing basis (*Exhibit CC, EAMS DOC ID # 79145709*).

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

CAMERON HUEY

Workers' Compensation Judge

Date: 7/16/2025