WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CHARLES BOOKHAMMER, ***Applicant***

vs.

SYSCO CORPORATION; AMERICAN ZURICH INSURANCE COMPANY, administered by CORVEL, ***Defendants***

Adjudication Number: ADJ16000363
Oakland District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the April 22, 2026 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a food delivery driver on March 11, 2022, sustained industrial injury to his back, left knee, neck, right knee, right shoulder, thoracic spine, right hip, and left hip. The WCJ found that applicant's injuries resulted in permanent and total disability and that applicant's earnings warranted the maximum statutory temporary total disability (TTD) rate as of the date of injury. The WCJ awarded both temporary and permanent total disability (PTD) at the rates applicable as of defendant's last payment of TTD indemnity.

Defendant contends that the TTD and PTD rates should be fixed as of the date of injury.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration and amend the Findings of Fact to reflect that applicant's earnings warranted a weekly temporary disability rate corresponding to the 2022 statutory maximum. We will also amend the award to reflect that applicant's PTD rate is payable at an initial rate corresponding to maximum rates available for TTD in 2022, and that TTD benefits are payable at the rates available as of the date payment is made by defendant.

FACTS

Applicant sustained admitted injury to his back, left knee, neck, right knee, right shoulder, thoracic spine, right hip, and left hip while employed as a food delivery driver by defendant Sysco Corporation on March 11, 2022. Defendant admits the injury but disputes the nature and extent of the resulting disability.

The parties have selected Qualified Medical Evaluator (QME) Andrew Burt, M.D. whose medical-legal reports and deposition testimony are in evidence.

On February 5, 2026, the parties proceeded to trial and stipulated, in relevant part, that defendant had paid TTD indemnity in broken periods between April 21, 2022 and April 15, 2024. (Minutes of Hearing and Summary of Evidence, dated February 5, 2026, at p. 2:10.) The parties framed for decision, in relevant part, applicant's earnings and corresponding weekly TTD and permanent disability (PD) rates. The parties also placed in issue applicant's PD levels. The WCJ heard applicant's testimony, and ordered the matter submitted for decision the same day.

On April 22, 2026, the WCJ issued the F&A, determining in relevant part that applicant's average weekly earnings were sufficient to sustain a weekly TTD rate of $1,619.15, and that applicant was TTD from April 21, 2022 to February 21, 2024. The WCJ further determined that applicant's injuries resulted in permanent and total disability, and that such disability was payable at an initial weekly rate of $1,619.15. (F&A, Findings of Fact No. 4 & 5; Award No. A.) The WCJ's Opinion on Decision explained that applicant's average weekly earnings were sufficient to warrant the statutory maximum TTD rates. (Opinion on Decision, at p. 18.)

Defendant's Petition asserts that the maximum TTD rate available in 2022 was $1,539.71, rather than $1,619.15, and requests that we amend both the award of TTD and PTD to reflect the 2022 rate. (Petition, at pp. 3-4.)

Applicant's Answer agrees that the applicable maximum TTD rate in available in 2022 was $1,539.71 per week but also observes that pursuant to Labor Code[1] section 4661.5, TTD paid more

[1] All further references are to the Labor Code unless otherwise noted.

than two years after the injury is payable at the rates in effect at the time payment is made. Accordingly, applicant avers the retroactive TTD award should be made at TTD rates available in 2026. (Answer, at p. 4:3.)

The WCJ's Report observes that defendant's final payment of TTD was made in 2024. Consequently, the award reflects the statutory maximum TTD rates in effect at the time. (Report, at p. 4.)

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 <u>Event Description</u> is the phrase "Sent to Recon" and under <u>Additional Information</u> is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on June 2, 2026, and 60 days from the date of transmission is Saturday, August 1, 2026. The next business day that is 60 days from the date of transmission is Monday, August 3, 2026. (See Cal. Code Regs., tit. 8,

§ 10600(b).)[2] This decision is issued by or on August 3, 2026, 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.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on June 2, 2026, and the case was transmitted to the Appeals Board on June 2, 2026. 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 June 2, 2026.

II.

The WCJ has determined that applicant's March 11, 2022 injury resulted in a period of TTD followed by PTD. The WCJ also determined that applicant's earnings were sufficient to warrant the maximum available TTD rates available as of the time of injury. Defendant does not contest these findings but observes that the awarded TTD and PD benefits reflect a weekly rate of $1,619.15 which corresponds to the maximum available rates in 2024, rather than the weekly rate of $1,539.71 available for injuries in 2022. (Petition, at pp. 2-3.)

Applicant agrees that the baseline TTD and PTD rates should correspond to the 2022 maximum TTD rates (Answer, at p. 4:15), but also observes that TTD paid more than two years from the date of injury must be paid at the rates in effect at the time payment is made. (Answer, at p. 3:14.)

---

[2] 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.

The WCJ observes that the last payment of TTD made by defendant was in 2024, and that pursuant to section 4661.5, the award reflects the maximum statutory rates in effect in 2024. (Report, at p. 4.)

We agree with the WCJ that section 4661.5 is applicable to the accrued and unpaid TTD benefits in this matter. However, we distinguish between the statutory rates that would otherwise be applicable to both the awarded TTD and PTD benefits based on applicant's date of injury, and the rates required by section 4661.5 that are applicable only to TTD benefits paid more than two years from the date of injury.

Section 4659(b) states:

> (b) If the permanent disability is total, the indemnity based upon the average weekly earnings determined under Section 4453 shall be paid during the remainder of life.

(Lab. Code, § 4659(b).)

Section 4453(a)(10) sets the maximum average weekly wage rate for a 2022 date of injury as follows:

> (a) In computing average annual earnings for the purposes of temporary disability indemnity and permanent total disability indemnity only, the average weekly earnings shall be taken at:
>
> …
>
> (10) Not less than one hundred eighty-nine dollars ($189), nor more than one thousand two hundred sixty dollars ($1,260), for injuries occurring on or after January 1, 2005. For injuries occurring on or after January 1, 2006, average weekly earnings shall be taken at not less than one hundred eighty-nine dollars ($189), nor more than one thousand two hundred sixty dollars ($1,260) or 1.5 times the state average weekly wage, whichever is greater. Commencing on January 1, 2007, and each January 1 thereafter, the limits specified in this paragraph shall be increased by an amount equal to the percentage increase in the state average weekly wage as compared to the prior year. For purposes of this paragraph, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance as reported by the United States Department of Labor for California for the 12 months ending March 31 of the calendar year preceding the year in which the injury occurred.

(Lab. Code, § 4453(a)(10).)

Section 4453(d) provides, in relevant part:

> [E]xcept as provided in Section 4661.5, disability indemnity benefits shall be calculated according to the limits in this section in effect on the date of injury and shall remain in effect for the duration of any disability resulting from the injury.

(Lab. Code, § 4453(d).)

Finally, section 4661.5 states:

> Notwithstanding any other provision of this division, when any temporary total disability indemnity payment is made two years or more from the date of injury, the amount of this payment shall be computed in accordance with the temporary disability indemnity average weekly earnings amount specified in Section 4453 in effect on the date each temporary total disability payment is made unless computing the payment on this basis produces a lower payment because of a reduction in the minimum average weekly earnings applicable under Section 4453.

(Lab. Code, § 4661.5.)

There is no dispute that applicant's average weekly earnings were sufficient to warrant the maximum TTD rate available at the time of applicant's March, 11, 2022 injury of $1,539.71 per week.[3] (Findings of Fact No. 4.) Neither is there a challenge to the WCJ's determination that applicant's disability is permanent and total.

Pursuant to section 4659(b), the PTD rate is the weekly rate set by section 4453(a)(10), which in turn fixes the TTD rate based on the date of the injury. (Lab. Code., § 4453(a)(10).) Thus, the PTD rate under section 4659(b) is fixed as of the date of injury. While section 4661.5 does allow for payment of TTD more than two years after the date of injury at the TTD rates applicable as of the date of payment, *the statute applies only to TTD benefits, and not to PTD benefits*. (See, e.g., *Jansen v. Folgergraphics* (May 31, 2017, ADJ4058648 (OAK 0302755) [2017 Cal. Wrk. Comp. P.D. LEXIS 241] ["Section 4661.5 expressly states that it applies only to temporary total disability benefits … Although in most cases, the permanent total disability rate and the temporary total disability rate are based on the same calculation, the terms permanent total disability and temporary total disability are not interchangeable."].)

[3] https://www.dir.ca.gov/DIRNews/2021/2021-109.html

The WCJ has further determined that applicant was TTD from April 21, 2022 to February 21, 2024. (Finding of Fact No. 5.) We agree with the WCJ that section 4661.5 is generally applicable, insofar as defendant has not paid TTD during the entirety of the awarded TTD period, and because TTD was paid at a different rate than the applicable TTD rates available in 2022 of $1,539.71. (Finding of Fact No. 3.)

Section 4661.5 provides that any temporary total disability paid more than two years from the date of injury must be paid at the rates available under section 4453 as of the date the payment is made. Thus, to the extent that additional TTD indemnity is owed to applicant herein, because it has been more than two years from the March 11, 2022 date of injury, any payment of TTD per the WCJ's award must be made at the rates currently allowed under section 4453. (See *Hofmeister v. Workers' Comp. Appeals Bd.* (1984) 156 Cal.App.3d 848 [49 Cal.Comp.Cases 438]; *Kaiser Foundation Hospital v. Workers' Comp. Appeals Bd.* (*Mercer*) (65 Cal.Comp.Cases 567) [2000 Cal. Wrk. Comp. LEXIS 6299] (writ den.); *Guindon v. Robertson's Ready Mix* (November 18, 2016, ADJ7628834) [2016 Cal. Wrk. Comp. P.D. LEXIS 615].)

Bearing in mind these statutory prescriptions, we observe that the TTD and PD rates identified in Findings of Fact No. 4 reflect the maximum TTD rates available in 2024. However, pursuant to sections 4659(b) and 4453(a)(10), the TTD and PTD rates are fixed as of the date of injury. Because the maximum TTD rate available as of 2022 was $1,539.71 per week, we will grant defendant's petition to amend Finding of Fact No. 4 to reflect the 2022 rates as applicable to the award of both temporary and permanent total disability. We will further amend Award no. "a" to reflect the initial weekly permanent total disability rate of $1,539.71 per week.

We also observe that the Award no. "b" reflects TTD benefits payable at $1,619.15 per week, which was the statutory maximum available in 2024.[4] However, section 4661.5 provides that when TTD indemnity is paid more than two years from the date of injury, it must be paid at the rates available under section 4553 as of the time the payment is made. Accordingly, we will amend Award No. "b" to reflect that TTD indemnity is awarded from April 21, 2022 to February 21, 2024, at the weekly TTD rate specified by section 4453 *as of the date the payment is made*, less credit for sums previously paid, in an amount to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

[4] https://www.dir.ca.gov/DIRNews/2023/2023-84.html

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of April 22, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of April 22, 2026 is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

4. As the time of injury, applicant's average weekly earnings were $2,700.68 per week, warranting weekly indemnity rates of $1,539.71 for temporary total disability and $1,539.71 for permanent total disability.

AWARD

* * *

a. Permanent and Total Disability of 100 percent, payable at the initial weekly rate of $1,539.71 beginning February 22, 2024, subject to statutory increase as provided in Labor Code section 4659, less reasonable attorney fees of 15 percent, and less credit for sums already paid.

b. Temporary Total Disability from April 21, 2022 to February 21, 2024, at the weekly rate specified by section 4453 as of the date the payment is made, less attorney's fees of 15 percent of accrued but unpaid sums, less credit for sums previously paid, in an amount to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 29, 2026

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

CHARLES BOOKHAMMER
BOXER & GERSON
GILSON DAUB

SAR/abs

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