WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ISMAEL BARRERA MIRON, *Applicant*

vs.

PARTNERS PERSONNEL; LIBERTY MUTUAL INSURANCE, administered by CORVEL CORPORATION, *Defendants*

Adjudication Number: ADJ20175876
Pomona District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A) issued on May 28, 2026, by the workers' compensation administrative law judge (WCJ). By the F&A, as relevant here, the WCJ found that applicant's average weekly wage at the time of injury was $970.00, and that, with no evidence of a bona fide offer of modified work duties, applicant was temporary totally disabled from August 19, 2025 through October 3, 2025 and from March 2, 2026 through April 16, 2026 at the weekly rate of $646.67.

Based on newly introduced evidence, defendant contends that applicant's wages should be found to be $735.57, with a corresponding temporary disability indemnity rate of $490.38. Defendant also contends that the WCJ erred by relying on the reports of panel qualified medical evaluator (PQME), Benjamin DuBois, M.D., and primary treating physician (PTP), Sean Gao, M.D., to extend temporary disability benefits.

Applicant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be granted and that the F&A be amended to reflect that the temporary total disability period is from August 19, 2025 through October 2, 2025 and from March 2, 2026 through April 15, 2026. Notwithstanding the aforementioned amendments, the WCJ recommended that the Petition be otherwise denied.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report and the Opinion on Decision of the WCJ with respect thereto. Based on our review of the record, for the reasons stated in the WCJ's Report and Opinion on Decision, as quoted below, and for the reasons discussed below, we will grant reconsideration, and as our Decision After Reconsideration, we will amend Findings of Fact #5 and Award paragraph (a), to reflect the correct dates of temporary total disability periods are from August 19, 2025 through October 2, 2025 and from March 2, 2026 through April 15, 2026. We will otherwise affirm the May 28, 2026 F&A.

FACTS

The WCJ's Opinion on Decision summarized the following facts:

> The Applicant, Ismael Barrera Miron, sustained a specific injury on September 24, 2024 to his neck and shoulders when a box fell on him while he was working as a Warehouse Associate for defendant Partners Personnel.
>
> The Applicant initially treated on or around September 26, 2024 with medical personnel, including but not limited to Dr. Reena Deveraj, at the Riverside Medical Clinic. During this initial evaluation, the Applicant had subjectively complained of pain in his neck, upper back, and shoulders. (Applicant's Exhibit 4, p. 6.) Dr. Deveraj diagnosed the Applicant with "Contusion of neck, right shoulder, and left shoulder." (*Id*., at p. 9). The Applicant continued to treat with Dr. Deveraj and other medical personnel through at least December 6, 2024. (*Id*., at pp. 7-8.) During this span, the Applicant consistently complained of pain in his neck and shoulders. (*Ibid*.) And part of the Applicant's treatment included physical therapy, which spanned from at least October 9, 2024 through March 17, 2025. (*Id*., at pp. 9-11.)
>
> Sometime in January of 2025, the Applicant started to treat with Orthopedic Surgeon Dr. Keolanui Chun.[1] Dr. Chun found the Applicant to be maximum medically improved on June 9, 2025. Within this June 9, 2025 Permanent and Stationary report, Dr. Chun's final diagnosis included "Thoracic contusion/strain." He found that the September 24, 2024 specific injury caused injury to the thoracic region.
>
> Prior to this MMI finding by Dr. Chun, the parties participated in the QME Panel process upon which Dr. Benjamin DuBois was selected to serve as the Orthopedic PQME. Dr. DuBois conducted his initial evaluation of the Applicant on April 30, 2025. Dr. DuBois diagnosed the Applicant with "Cervical spine sprain and strain,

[1] According to the history provided to PQME Dr. [] DuBois during the April 30, 2025 PQME evaluation, the Applicant appears to have started his treatment with Dr. Chun sometime in January of 2025. However, the parties only offered into the record Dr. Chun's MMI report dated June 9, 2025 and a supplemental report dated July 18, 2025. And Dr. DuBois' record review only confirms treatment with Dr. Chun on February 25, 2025.

rule out radiculopathy" and "bilateral shoulder sprain and strain, rule out internal derangement." (Applicant's Exhibit 4, p. 16.) At this point in time, Dr. DuBois deferred his opinions as to various medical issues, including the Applicant's disability status, pending completion and review of MRIs of the Applicant's cervical spine and bilateral shoulders.

Dr. Chun was provided the opportunity to review PQME Dr. DuBois' April 30, 2025 PQME Evaluation report. Upon review, Dr. Chun authored a July 18, 2025 Supplemental Report upon which he expressed disagreement to the mechanism of injury and the Applicant's subjective complaints. Dr. Chun suggests that the box had only hit the Applicant's upper back, and that the Applicant had only persistently complained of pain in the upper back. (Defendant's B, p. 2.)

It seems that PQME Dr. DuBois was not provided the opportunity to review Dr. Chun's June 9, 2025 MMI report or July 18, 2025 supplemental report, likely due to the timing of the doctors' respective evaluations and reporting. Dr. DuBois authored an August 19, 2025 Supplemental Report where he reviewed and incorporated the MRIs of the cervical spine and shoulders that he had requested. While Dr. DuBois felt that the MRIs demonstrated normal findings, he determined that the Applicant may still benefit from treatment, including physical therapy and cortisone injections if his symptoms persist.[2]

Based on the record provided, it appears that the Applicant's treatment halted after being found MMI by Dr. Chun until he started seeing Dr. Sean Gao and other medical personnel on or around January 5, 2026. (Applicant's Exhibit 1.) Medical personnel at Dr. Gao's office had initially opined that the Applicant could return to work without restrictions as of January 5, 2026. (*Id*., at p. 1.) However, Dr. Gao would ultimately place the Applicant on modified duties during the March 2, 2026 evaluation.[3] (Applicant's Exhibit 2, p. 4.) Based on the record provided, it does not appear that Partners Personnel has been able to accommodate the Applicant's work restrictions provided by Dr. Gao.

According to the stipulations by the parties, the Applicant was paid temporary disability from December 12, 2024 through July 9, 2025 at the weekly rate of $242.86.[4] Relying upon Dr. Chun's June 9, 2025 permanent and stationary report, the Defendant is seeking credit for temporary disability paid from June 9, 2025 through July 9, 2025. Meanwhile, the Applicant is seeking temporary disability indemnity from July 10, 2025 through the present and continuing.

---

[2] It is unclear how many sessions of physical therapy had been certified by utilization review. However, based on Dr. DuBois' record review, the Applicant had completed no less than 8 sessions spanning from October 9, 2024 through March 17, 2025.

[3] Emails exchanged between the Applicant and employment personnel with defendant Partners Personnel suggests that Dr. Gao may have placed the Applicant on modified work earlier than March 30, 2026. (Applicant's Exhibit 3.) However, any such corresponding reports inclusive of Dr. Gao's opinions work status were not offered into evidence.

[4] The parties did not distinguish whether the temporary disability indemnity paid from December 12, 2024 through July 9, 2025 were temporary total or partial indemnity.

> This matter proceeded to an Expedited Hearing on May 4, 2026, and was ultimately submitted on May 20, 2026.

(Opinion on Decision, p. 3, ¶ 1-p. 6, ¶ 1.)

The issues at trial were the amount of applicant's weekly earnings, temporary disability from July 10, 2025 through the present and ongoing, attorney's fees, and whether defendant is entitled to a credit for a claimed temporary disability overpayment from June 9, 2025, through July 9, 2025. (Minutes of Hearing and Summary of Evidence (MOH), May 4, 2026, p. 2, lines 13-21.)

At the hearing, applicant was the only witness called to testify. Applicant testified on his own behalf that his position with defendant was his first job, as he had just graduated from high school earlier in 2024, and he did not work during high school. (MOH, May 4, 2026, p. 5, lines 4-5.) Applicant testified his work schedule with defendant consisted of eight-hour shifts, Monday through Friday, at an hourly rate of $24.25. (MOH, May 4, 2026, p. 5, lines 6-7.) He also estimated that he worked two to three hours of overtime per week but denied having been paid an increased rate, such as an overtime rate. (MOH, May 4, 2026, p. 5, lines 7-8.) Applicant testified that, since last working for defendant, he has not earned any income from any source except the periods he received temporary disability benefits. (MOH, May 4, 2026, p. 5, lines 9-11.)

Following the expeditated trial, the WCJ issued the F&A that is the subject of the Petition for Reconsideration herein, finding in relevant part that applicant did not reach MMI on June 9, 2025, his average weekly rate at the time of injury was $970.00, and with no evidence of a bona fide offer of modified work duties, he was temporary totally disabled from August 19, 2025 through October 3, 2025 and from March 2, 2026 through April 16, 2026 at the weekly rate of $646.67. (F&A, May 28, 2026, p. 2, Findings 4 & 5.)

Thereafter, defendant sought reconsideration of the F&A.

DISCUSSION

I.

Up through July 1, 2024, petitions for reconsideration were subject to former Labor Code section[5] 5909, which 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.)

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former section 5909, which stated 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) (in effect from July 2, 2024 through June 30, 2026), 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 1, 2026 and 60 days from the date of transmission is Sunday, August 30, 2026. The next business day that is 60 days from the date of transmission is Monday, August 31, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[6] This decision is issued by or on Monday, August 31, 2026, so that we have timely acted on the petition as required by section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

---

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

[6] 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.

Section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026) 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) (in effect from July 2, 2024 through June 30, 2026) 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 1, 2026, and the case was transmitted to the Appeals Board on July 1, 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) (in effect from July 2, 2024 through June 30, 2026), because service of the Report in compliance with section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) provided them with actual notice as to the commencement of the 60-day period on July 1, 2026.

II.

To be substantial evidence, a medical opinion must be well-reasoned, based on an adequate history and examination, and it must disclose a solid underlying basis for the opinion. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc); see also *E.L. Yeager Construction v. Workers' Comp. Appeals Bd*. (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687].)

A medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, and not merely their conclusions. (*Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workmen's Comp. Appeals Bd*. (1970) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *Escobedo, supra*.)

Defendant first argues that the August 19, 2025 supplemental report of PQME Dr. DuBois and the March 2, 2026 and later reporting of PTP Dr. Gao cannot be reasonably relied upon to extend temporary disability benefits given the June 9, 2025 and July 18, 2025 reports of PTP of Dr. Chun. (Petition, p. 2, ¶ 1.) However, as duly noted by the WCJ, "[p]etitioner does not actually articulate any arguments relating to the same within its analysis/discussion section(s), that is, pages

4 through 9 of the Petition for Reconsideration." (Report, p. 3, ¶ 4.) Even considering the statement of facts recited by defendant in the Petition, we find no reason to disturb the WCJ's conclusion that the reports of Dr. DuBois and Dr. Gao are substantial medical evidence and more persuasive than the reporting of Dr. Chun. As set forth in the Opinion on Decision, the WCJ explained as follows:

> For an injury occurring on or after January 1, 2008, the aggregate temporary disability payments shall not extend for more than 104 compensable weeks within a period of five years from the date of injury. (*Lab. Code*, § 4656(c)(2).) The employee bears the burden of proving his or her entitlement to temporary disability benefits. *(Lab. Code*, § 5705.) Temporary disability is an impairment reasonably expected to be cured or improved with proper medical treatment. (*Signature Fruit Co. v. Workers' Comp. Appeals Bd. (Ochoa) (2006) 142 Cal.App.4th 790, 801.*) Whether an applicant is permanent and stationary or temporarily disabled is an issue that typically requires medical evidence. (*Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856.) A medical opinion must disclose the underlying basis for its conclusions in order to constitute substantial evidence. (*Zemke v. WCAB* (1968) 33 CCC 358, 361.)
>
> To support an award for temporary disability, the Applicant appears to be relying upon the opinions from PQME Dr. DuBois and PTP Dr. Gao. Dr. DuBois could not definitively opine upon the Applicant's disability status at the time of the April 30, 2025 evaluation. Dr. DuBois eventually opined in his August 19, 2025 supplemental report that the Applicant should have modified work restrictions of no lifting more than 20 pounds overhead.[7] Similarly, Dr. Gao on at least March 2, 2026 provided similar work restrictions of no lifting, pushing, or pulling over 20 pounds and limited overhead activity. And the Applicant asserts that his employer did not accommodate any of these work restrictions provided by either Dr. DuBois or Dr. Gao, thereby entitling him to temporary *total* disability during the relevant periods.
>
> In contrast, Defendant asserts that the Applicant's condition had already been deemed maximum medically improved by prior PTP Dr. Chun on June 9, 2025, and there is no evidence of some sort of change of circumstance in the Applicant's medical condition to be placed back on temporary disability, whether total or partial. However, this Court does not find Defendant's reliance of prior PTP Dr. Chun's report as it relates to the Applicant's disability status to be substantial evidence.
>
> First, it appears that Dr. Chun has a fundamental confusion as to the facts of the injury. The medical record consistently notes that a box had fallen onto the area of

[7] Of note, Dr. DuBois did not provide a specific timeframe for these work restrictions, specifically when these restrictions would have commenced. Use of the words "At this time" and "At present" within his discussions regarding medical treatment and disability status suggest that the work restrictions were applicable as of the date of the writing of the supplemental report, that is, August 19, 2025.

the Applicant's head, neck, upper back, and shoulders, and that the Applicant had consistently complained of pain within these areas (particularly the neck and shoulders). (Applicant's Exhibit 4, pp. 2, 6-7, 9-11; Defendant's Exhibit C, p. 2). Based on Dr. DuBois' record review, Dr. Chun himself had memorialized Applicant's subjective complaints of pain in neck and upper back/trapezius on at least February 25, 2025. (Applicant's Exhibit 4, p. 11.) And Dr. Chun further memorialized pain extending into the Applicant's shoulders in his June 9, 2025 permanent and stationary report. (Defendant's Exhibit A, p. 1.) Despite all of this, Dr. Chun confusingly only diagnoses the Applicant with a "Thoracic contusion/strain," which appears to be the only condition he finds permanent and stationary. (*Id*., at pp. 1-2.) Adding to the confusion, Dr. Chun insists in his July 18, 2025 Supplemental Report that the box had only hit the Applicant's upper back, and further suggests that the Applicant's subjective complaints were limited to the upper back.[8] (Defendant's Exhibit B, p. 2.) Dr. Chun further indicates within this July 18, 2025 supplemental report that the Applicant has had no complaints in regard to the shoulders.[9] (*Ibid*.) This is despite having memorialized Applicant's shoulders complaints just a month prior. And it is well-established that a doctor's report may be considered insubstantial if it is internally inconsistent. (See *Rubio v. General Atomics,* 2013 Cal. Wrk. Comp. P.D. LEXIS 449; *Gissinger v. County of Sacramento,* 2014 Cal. Wrk. Comp. P.D. LEXIS 263; *Colgrove v. Santa Rosa Press Democrat,* 2015 Cal. Wrk. Comp. P.D. LEXIS 250; *Machado v. WCAB* (2017) 82 CCC 914 [writ denied].)

Second, Dr. Chun merely concludes that the Applicant had reached a point of maximum medical improvement within his June 9, 2025 report without any underlying basis, reasoning, or explanation. Per California Code of Regulations section 10152, a disability is considered permanent when the employee has reached maximum medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment. Focusing on the definition of maximum medical improvement as provided per the California Code of Regulations, Dr. Chun's permanent and stationary finding lacks any discussion as to whether the Applicant's condition has stabilized and is unlikely to substantially change. Instead, Dr. Chun seems to suggest that the Applicant was magnifying his symptoms, buttressed by the fact that the Applicant apparently stopped attending physical therapy. However, these considerations alone discuss Applicant's work status within the context of California Code of Regulations section 10152, that is, whether the Applicant's condition is well-stabilized and unlikely to substantially change in the next year.

And of significance, review of the physical therapy notes as memorialized in PQME Dr. DuBois' record review suggests that the Applicant still has the capacity to improve. Since his initial PT evaluation on October 9, 2024, the Applicant had

[8] This supplemental report from Dr. Chun appears to have been generated after reviewing PQME Dr. DuBois' April 30, 2025 PQME evaluation report wherein Dr. Chun fundamentally disagreed with Dr. DuBois history of injury.
[9] Of significance, the parties had stipulated on the record at this September 24, 2024 incident resulting in injuries to the neck and shoulders.

exhibited some improvement with his pain symptoms. (Applicant's Exhibit 4, p. 10.) It was reported on October 23, 2024 that the Applicant had 25% improvement since starting physical therapy back on October 9, 2024, with his subjective pain reducing from a 7-8/10 level down to 7/10 and eventually 6/10. (*Id*., at p. 11.) Dr. Chun's MMI permanent and stationary finding would certainly be more convincing if the treatment trended toward Applicant's condition stabilizing or plateauing, e.g. weeks/months of physical therapy and/or other modalities without any documented improvement or change. But in just the 8 PT visits as memorialized in Dr. DuBois' record review, the Applicant has some documented improvement, suggesting that the Applicant's condition still had the capacity to change. And as noted above, it is not clear to the Court how many sessions of physical therapy had been certified by Utilization Review and whether additional PT sessions were certified and/or requested beyond the 8 completed.

Additionally, despite there being a lull in the Applicant's treatment in late 2025, the medical reporting suggests that the Applicant had some functional improvement between his April 30, 2025 evaluation with PQME Dr. DuBois and his February 4, 2026 evaluation through PTP Dr. Gao's office, particularly with the cervical spine. When comparing the respective physical examinations, the Applicant had increased range in many of the motion types within the cervical spine, particularly with flexion, extension, and left/right lateral bending. Thus, this Court cannot rely upon Dr. Chun's opinions to find that the Applicant's had already reached maximum medical improvement on June 9, 2025.

On the other hand, as it relates solely to the issue of temporary disability for this September 24, 2024 specific injury, the Court finds the opinions by Dr. Gao as to disability status to be substantial medical evidence. Given the Applicant's apparent functional limitations, particularly with recorded range of motion loss in the neck and shoulders, the Court finds Dr. Gao's work restrictions to be reasonable and well-intentioned.[10] And with there being no evidence offered by the Defendant show that a bona fide offer of modified work had been made, the Court must find the Applicant to be temporarily totally disabled from at least March 2, 2026, which is when Dr. Gao placed the Applicant on modified duties. Consistent with a primary treating physician's reporting duties under California Code of Regulations section 9785(f)(8), this Court finds that the Applicant was reasonably temporarily totally disabled for 45-days [. . .].

Looking further back, the Court also finds PQME Dr. DuBois' work status opinions within his August 19, 2025 supplemental to be substantial medical evidence. And with there being no evidence on the record of a bona fide job offer within the restrictions set forth by Dr. DuBois, the Court finds that the Applicant was

[10] The Court recognizes the argument that the Applicant may be magnifying his symptoms as suggested by prior PTP Dr. Chun. And while the normal MRIs results (which had not been reviewed by Dr. Chun) in the cervical spine and shoulders suggest that the injury may not be significant, objective findings including muscle guarding, ROM loss, and tenderness throughout the affected musculature found throughout physical examinations across his various providers and evaluations confirm that the Applicant is dealing with the effects of this injury.

> temporarily totally disabled on August 19, 2025. And similarly in line within California Code of Regulations section 9785(f)(8), this Court finds that the Applicant was reasonably temporarily totally disabled for 45-days [. . .].

(Opinion on Decision, pp. 8, ¶ 2-13, ¶ 2.)

III.

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 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].)

Temporary total disability occurs when an employee is unable to earn any income during the period of recovery. (*Herrera v. Workers' Comp. Appeals Bd.* (*Goleta Lemon Association*) (1969) 71 Cal.2d 254, 257.) Temporary partial disability occurs when an employee is able to earn some income during their recovery period but not their full wage. (*Ibid.*)

In order to compute temporary disability indemnity, a worker's earning capacity (or average weekly earnings) must first be determined under section 4453. Average weekly earnings are determined as of the "time of injury" (Lab. Code, § 4453, subd. (c)) and the date an injury first causes compensable disability (See generally *Van Voorhis v. Workmen's Comp. Appeals Bd.* (1974) 37 Cal.App.3d 81 [39 Cal.Comp.Cases 81].)

Section 4453(c), which governs the calculation of average weekly earnings, states in pertinent part:

> [T]he average weekly earnings . . . shall be arrived at as follows:
>
> (1) Where the employment is for 30 or more hours a week and for five or more working days a week, the average weekly earnings shall be the number of working days a week times the daily earnings at the time of the injury. . . .

(§ 4453(c).)

Here, defendant alleges the record does not support the specific rate of temporary disability found by the WCJ. We disagree. As provided by the WCJ in the Report:

> Petitioner first asserts that record supports a minimum TD disability rate. (Petition for Reconsideration, p. 2, lines 4-6.) The minimum TTD rate for a 2024 date of injury is $242.86.[11] However, the Petitioner would assert later with the petition that the appropriate TTD rate should actually be $490.38. (*Id*., at p. 7, lines 26-28; p. 8, lines 21-22.) Defendant seems to reach this particular weekly TTD rate based on the Applicant's *actual earnings* and not an estimate as to the Applicant's earning capacity as contemplated under Labor Code section 4453(c)(4). (*Id*., at p. 4, lines 13-17.) Petitioner impermissibly relies upon a newly filed wage statement that was not previously offered, identified, and admitted into evidence during the May 4, 2026 Expedited Hearing.
>
> Nonetheless, the Court agrees with the Petitioner in that the Applicant's *actual earnings* can and should be used to determine his average weekly wage. The Applicant had testified, *without rebuttal* by Defendant, that he was scheduled to work 8-hours shifts from Monday through Friday at the hourly rate of $24.25. Petitioner claims that the Applicant had agreed to intermittent employment by working for a temporary staffing agency, perhaps suggesting that the earnings were irregular or piecemeal. (*Id*., at p. 7, lines 14-16.) However, this assumes facts that are not in evidence as there is no indication anywhere showing that the Applicant agreed to intermittent employment. In fact, there is no evidence to suggests that Applicant's employment in fact started and stopped at regular intervals.
>
> Ultimately, the Applicant testified to working 8 hours shifts 5 days a week at the hourly rate of $24.25. Petitioner submitted into evidence an unauthenticated wage statement (Defendant's Exhibit G), which did not contain any identifying information that would have confirmed that said wages belonged to the Applicant. Thus, the undersigned could not give any significant weight to this wage statement. As aforementioned, Petitioner now improperly seeks to correct these evidentiary errors/omissions by offering a new wage statement within its Petition for Reconsideration. The Court cannot consider the same as being a violation of California Code of Regulations section 10945(c)(1). And without any rebuttal to Applicant's testimony, the Court found it appropriate to calculate Applicant's average weekly earnings under Labor Code section 4453(c)(1) given that Applicant testified to working at least 30 hours per week for 5 days per week.
>
> Pursuant to Labor Code section 4453(c)(1), the average weekly earnings shall be the number of working days a week times the daily earnings at the time of the injury. With daily earnings of $194.00 (hourly rate of $24.25 x 8 hours), and with 5 working days a week, the average weekly earnings is found to be $970.00.

[11] According to the issues as framed by the parties, the Defendant asserted, perhaps unknowingly, a weekly temporary disability rate of $167.88 per week, which is below the minimum rate for 2024.

(Report, p. 5, ¶ 1-p. 2, ¶ 2.)

Moreover, we agree that the WCJ correctly concluded that the purported wage statement admitted into evidence, Defendant's Exhibit G, does not rise to the level of substantial evidence that may be used to calculate applicant's actual earnings because there is no evidence linking that document to applicant. On its face, the document does not bear applicant's name or other contact information. Although there is a column for "Employee ID," there is no evidence indicating that such number is attributed to applicant. Conversely, we find the record supports the WCJ's reliance on applicant's unrebutted testimony regarding his weekly hours and earnings as substantial evidence to calculate applicant's average weekly earnings.

We have given the WCJ's implicit credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Although the WCJ does not expressly use the term "credibility," based on totality of the Opinion on Decision and the Report, it is clear that the WCJ found applicant's testimony credible. Notably, the WCJ emphasized that in calculating applicant's average weekly earnings, applicant's testimony regarding his weekly hours worked and hourly wages was unrebutted. (Opinion on Decision, p. 6, ¶ 3; Report, p. 5, ¶ 2-p. 6, ¶ 1.) Moreover, following our independent review of the record, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's implicit credibility determinations (*Id*.)

IV.

As acknowledged by the WCJ, the F&A contained clerical errors, which requires amending the F&A, Findings of Fact #5 and Award paragraph (a), to reflect the correct dates of temporary total disability periods are from August 19, 2025 through October 2, 2025 and from March 2, 2026 through April 15, 2026. (Report, p. 4, ¶ 2.) We agree. As explained by the WCJ, "[i]t was the [WCJ's] intention to allow for two separate 45-day periods of temporary disability; however, when counting the 45-days, the [WCJ] failed to include the end date in the calculations. To avoid any confusion, the [WCJ] recommends amending the Findings and Award to reflect that the Applicant was temporary totally disabled from August 19, 2025 through October 2, 2025 and from March 2, 2026 through April 15, 2026." (Report, p. 4, ¶ 2.) Therefore, we will grant reconsideration and amend the May 28, 2026 F&A pursuant to the WCJ's recommendation. In addition, we amend the

Award to remove the employer and add the insurer, as an award of compensation is properly made only against the insurer.

V.

Finally, we note that a petition for reconsideration must fairly state all of the material evidence relative to the point or points at issue. (Lab. Code, § 5902; Cal. Code Regs., tit. 8, § 10945(a).) The evidentiary statements in a petition for reconsideration must be supported by specific references to the record. (Cal. Code Regs., tit. 8, § 10945(b).) References to testimony must specify the date and time of the hearing and the page numbers in the Minutes where the testimony is found, if available. (Cal. Code Regs., tit. 8, § 10945(b)(1).) References to documentary evidence must specify the exhibit number, and relevant descriptive information including the author of the document, the document date, and page numbers. (Cal. Code Regs., tit. 8, § 10945(b)(2).) Here, as the WCJ pointed out in the Report, defendant attached to its Petition for Reconsideration a number of documents identified as exhibits to the Petition, most of which were not formally offered and received into evidence during the May 4, 2026 Expedited Hearing. (Report, p. 7, ¶ 1.) Yet, defendant does not assert that reconsideration should be granted on the grounds of newly discovered evidence that could not have been discovered or produced with reasonable diligence at the time of hearing. Defendant also attached documents to its Petition for Reconsideration that were already identified and admitted into the record. (Report, p. 7, ¶ 2.) These citations to documents not in evidence and inclusion of documents already identified and admitted into evidence are violations of WCAB Rule 10945. (Cal. Code Regs., tit. 8, § 10945(a), (b)(1), (b)(2), (b)(3).)

We therefore find it necessary to admonish defendants and their attorneys.

We admonish defendants Partners Personnel, their insurance carrier Liberty Mutual Insurance, administered by Corvell Corporation, and their attorney Elisa D'Egidio with Goldberg Segalla LLP, for failing to follow the applicable statutes and the Appeals Board's Rules of Practice and Procedure, including but not limited to WCAB Rule 10945. (Lab. Code, § 5902; Cal. Code Regs., tit. 8, § 10945.) Future compliance with the WCAB Rules is expected, and failure to do so will subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued on May 28, 2026 by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the May 28, 2026 Findings and Award is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

5. With no evidence of a bona fide offer of modified work duties, the Applicant was temporary totally disabled from August 19, 2025 through October 2, 2025 and from March 2, 2026 through April 15, 2026 at the weekly rate of $646.67.

* * *

AWARD

* * *

AWARD IS MADE in favor of applicant**, ISMAEL BARRERA MIRON,** and against defendant **LIBERTY MUTUAL INSURANCE, as follows:**

(a) Temporary disability of $4,157.16 for the period from August 19, 2025 through October 2, 2025 and $4,157.16 for the period from March 2, 2026 through April 15, 2026.

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 28, 2026

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

ISMAEL BARRERA MIRON
ROAN TUYAY LAW, APC
GOLDBERG SEGALLA, LLP

DC/*pm*

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