

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

MARIA DIAZ (Deceased), *Applicant*

vs.

TAYLOR FARMS; AMERICAN ZURICH INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ17642824
Lodi District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award (F&A) issued on December 12, 2025, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that Jonathan Tevez was a total dependent of decedent, Maria Diaz, and therefore entitled to an award of a death benefit in the amount of \$250,000 pursuant to Labor Code¹ section 4702(a)(3).

Defendant contends that Mr. Tevez was not a total dependent, but rather, a partial dependent, and therefore entitled to a maximum of \$25,000 under section 4703. (Petition for Reconsideration (Petition), p. 4.)

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

We have considered the Petition, the Answer, and we have reviewed the record in this matter. Based upon our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate herein, we will deny defendant's Petition.

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

FACTS

On May 2, 2023, applicant, Maria Diaz, filed an Application for Adjudication of Claim (Application) alleging that while employed by defendant as a packer during the period from May 25, 2020 through May 25, 2021, she sustained an injury arising out of and in the course of employment (AOE/COE) to the bilateral shoulders, arms, hands, hips, and knees.

Applicant sought treatment and bilateral knee surgery was ultimately recommended due to severe bilateral knee osteoarthritis, which was found to be work related. (Applicant Exhibit 1, pp. 2-3.) Thereafter, applicant underwent a right total knee arthroplasty on August 29, 2022, and a left total knee arthroplasty on June 19, 2023. While undergoing the left total knee arthroplasty, applicant suffered complications and went into cardiac arrest, ultimately passing away later that day. (Applicant Exhibits 4-5.)

On July 31, 2023, applicant's biological son, Jonathan Tevez, filed an Application for a death claim, alleging that he was a total dependent of applicant.

David Chow, M.D. was then retained as the panel Qualified Medical Evaluator (PQME) and issued two reports, dated March 12, 2024, and December 20, 2024. In his March 12, 2024 report, Dr. Chow opined that the injuries to the bilateral knees and bilateral upper extremities were work related. (Exhibit 2, pp. 26-27.) He diagnosed applicant with severe bilateral knee pain (causing restricted activities of daily living (ADLs) and an inability to return to work) and severe bilateral knee medial compartment osteoarthritis, all of which led to a need for bilateral knee surgery. (*Id.* at p. 24.) In his supplemental report dated December 20, 2024, he confirmed that the bilateral knee arthroplasties were intended to treat and relieve applicant from the effects of the cumulative injury. (Applicant Exhibit 1, p. 3.)

On March 21, 2025, a Declaration of Readiness to Proceed was filed for a mandatory settlement conference. The matter proceeded to multiple hearings before being set for trial on July 22, 2025. Issues set for determination included injury AOE/COE; whether applicant's death was industrial; temporary disability; and date of injury under section 5412. (Minutes of Hearing and Summary of Evidence (MOH and SOE), July 22, 2025, pp. 2-3.)

On August 12, 2025, the WCJ issued a F&A wherein he held, in relevant part, that applicant, while employed as a packer for defendant through May 25, 2021, sustained injury AOE/COE to the bilateral knees and bilateral upper extremities (shoulders, elbows, wrists, and hands); that applicant passed away on June 19, 2023 due to respiratory failure from tension

pneumothorax, pneumoperitoneum, and intramural coronary artery disease as a result of complications related to a June 19, 2023 left total knee replacement surgery which applicant was undergoing to treat her work-related injury, thereby making the death industrial; that applicant was temporarily totally disabled from May 26, 2021 up until the date of her death, thereby entitling her, under section 4656(c)(2), to temporary total disability indemnity at a weekly rate of \$425.40 from May 26, 2021 through May 24, 2023 for a total of 104 weeks valued at \$44,241.60; and that the injury date under section 5412 for the purposes of determining whether Mr. Tevez was a presumed total dependent is April 6, 2023, which was the date applicant had both, knowledge of a worker's compensation claim and disability; and lastly, that Mr. Tevez was born [], making him 18 years and 10.5 months on the date of injury. The issues of dependency; temporary disability indemnity payment; corresponding attorney's fees; and the lien of DCHS Sacramento on behalf of Medi-Cal were ordered deferred.

On September 25, 2025, a Declaration of Readiness to Proceed was filed for a mandatory settlement conference on the issue of dependency.

On October 16, 2025, the parties entered into stipulations, approved by the WCJ, regarding equal distribution, between applicant's three children as heirs to the estate, of the temporary disability indemnity benefits awarded in the August 12, 2025 F&A.

On November 10, 2025, the parties proceeded to trial on the issues of dependency and attorney's fees. At trial, Mr. Tevez submitted as evidence, his 2023 W-2 and high school diploma, and defendant submitted as evidence, a transcript of Mr. Tevez's March 7, 2024 deposition.

On December 12, 2025, the WCJ found, in relevant part, that Mr. Tevez was a total dependent of applicant and therefore entitled to an award of a death benefit valued at \$250,000, pursuant to section 4702(a)(3).

It is from this F&A that defendant now seeks reconsideration.

DISCUSSION

I.

Preliminarily, 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 under the Events tab 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 December 24, 2025, and 60 days from the date of transmission is February 22, 2026, which is a Sunday. The next business day, that is 60 days from the date of transmission, is February 23, 2026, which is a Monday. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision was issued by or on February 23, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on December 24, 2025, and the case was transmitted to the Appeals Board on December 24, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude

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.

that service of the Report provided accurate notice of transmission under Labor Code section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on December 24, 2025.

II.

Turning now to the merits of the Petition, defendant contends that Mr. Tevez was not a total dependent, but rather, a partial dependent, and therefore entitled to a maximum of \$25,000 under section 4703. (Petition, p. 4.)

Pursuant to section 3503, a dependent is defined as one who is “in good faith a member of the family or household of the employee,” or a relative in the form of a “spouse, child, posthumous child, adopted child or stepchild, grandchild, father or mother, father-in-law or mother-in-law, grandfather or grandmother, brother or sister, uncle or aunt, brother-in-law or sister-in-law, or nephew or niece.” (Lab. Code, § 3503.) Further, in accordance with section 3502, “questions of entire or partial dependency and questions as to who are dependents and the extent of their dependency shall be determined in accordance with the facts as they exist at the time of the injury of the employee.” (Lab. Code, § 3502.) Additionally, where, as here, a dependency case involves a cumulative trauma injury resulting in death, the “time of the injury of the [deceased] employee” is the same as the date of the cumulative trauma injury determined pursuant to section 5412; that is, “[the] date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.” (*Department of Highway Patrol v. Workers’ Comp. Appeals Bd. (Sills)* (1995) 33 Cal.App.4th 1828, 1836 (60 Cal.Comp.Cases 308.)) In such cases, the date of injury may depend on the employee’s knowledge of the industrial nature of the injury causing death. (*Berkebile v. Workers’ Comp. Appeals Bd.* (1983) 144 Cal.App.3d 940, 945 (48 Cal.Comp.Cases 438.))

Here, the WCJ in his August 12, 2025 F&A found April 6, 2023 to be the section 5412 date of injury for the purposes of determining dependency. This date is not in dispute. At the time of the date of injury, applicant’s biological son, Jonathan Tevez, was living with applicant as a full-time high school student. (MOH and SOE, November 10, 2025, p. 3.) Prior to applicant’s death, Mr. Tevez began working at Burlington Coat Factory on a part-time basis, six hours a day, three days a week, earning \$15.50 per hour, which translated to \$279.00 per week before taxes.

(*Ibid.*) For the 2023 year, he earned in total \$2,997.87. (Applicant’s Exhibit 8.) Based upon these facts, defendant alleges that Mr. Tevez was only a partial dependent because he was working and able to contribute \$400.00 a month to the household, thereby covering rent for both himself and his mother for three months prior to her death. (Petition, p. 3.)

As underscored by the WCJ in his Report, however, although \$400 was sufficient to cover rent, this amount did not “includ[e] anything else[,] such as food, clothing, utilities, cell phone bills, transportation, insurance, medical care, school supplies, entertainment, etc. that would comprise Mr. Tevez’s standard of living on [April 6, 2023].” (Report, p. 4.) Thus, his contribution was but a “small fraction of the total support he relied [up]on [from] his mother[.]” (*Ibid.*)

Ultimately, “[d]efendant’s argument in its simplest terms is that a person who can afford to pay the rent cannot be considered a total dependent because they can obtain shelter. However, shelter is only one component of someone’s standard of living and depending upon the person, [it] may be a very small portion[.]” (*Ibid.*) Further, the assumption that Mr. Tevez would have continued his part-time employment indefinitely as an 18-year-old full-time high school student is speculative, particularly knowing that Mr. Tevez ultimately did not keep his job and was forced to move in with his sister in Texas. (*Id.* at p. 5.)

Accordingly, we conclude that Mr. Tevez was a total dependent and deny defendant’s Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the December 12, 2025 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 18, 2026

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

**JONATHAN TEVEZ
DUARTE, URSTOEGER & ROBLE, LLP
BAVA & ASSOCIATES, PC**

RL/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

&

NOTICE OF TRANSMISSION TO THE APPEALS BOARD

Date of Findings of Fact, Award and

Opinion on Decision: 12/10/2025 (served 12/12/2025)

Petitioner: DEFENDANT, AMERICAN ZURICH
INSURANCE COMPANY

Timeliness of Petition: TIMELY FILED ON 12/19/2025

Verification of Petition: VERIFIED

INTRODUCTION

This is a timely filed and verified Petition for Reconsideration by Defendant (Petitioner). The Findings of Fact and Award appealed is the finding that Jonathan Tevez was a total dependent pursuant to Labor Code §3502 and entitled to a death benefit of \$250,000.00. Defendant asserts that Jonathan Tevez was a partial dependent because he had just started paying \$400 a month (\$100 a week) in rent, which was the full amount Maria Diaz and Jonathan Tevez were responsible for contributing to the \$950 monthly rent for the house that they shared with Mr. Tevez's aunt, on the date of injury pursuant to Labor Code section 5412.

It is recommended that Reconsideration be denied.

FACTS

Maria Diaz (deceased) sustained an industrial injury by way of a cumulative trauma from 5/25/2020 through 5/25/2021 to the bilateral knees and bilateral upper extremities. Her death on 6/19/2023 was due to complications from her 6/19/2023 left knee replacement surgery needed to treat her industrial cumulative trauma, thereby making her death industrial. The date of injury under Labor Code section 5412 for purposes of determining whether Jonathan Tevez (deceased's son) is a dependent is 4/6/2023. On 4/6/2023, Jonathan Tevez was living with his mother and a full-time student in high school. (Minutes of Hearing and Summary of Evidence dated 11/10/2025, page 3 lines 6-9). He just had recently started working for Burlington Coat Factory in Manteca, CA as of March 22, 2023. (Minutes of Hearing and Summary of Evidence dated 11/10/2025, page 3 lines 15-16). He earned \$15.50 per hour and worked three 6 hour shifts per week. (Minutes of Hearing and Summary of Evidence dated 11/10/2025, page 3 lines 16-17). That translates into

\$279.00 per week before taxes. Mr. Tevez only made \$2,997.87 in 2023 while working at Burlington Coat Factory. (Applicant's Exhibit 8).

Maria Diaz (deceased) and Jonathan Tevez lived with his aunt in a house where they contributed \$400 per month to the rent. (Minutes of Hearing and Summary of Evidence dated 11/10/2025 pg. 3 lines 9-11) The \$400 per month was for his mom and him. (Minutes of Hearing and Summary of Evidence dated 11/10/2025 pg. 3 lines 9-11) Maria Diaz paid the rent for the two of them before April 2023. (Minutes of Hearing and Summary of Evidence dated 11/10/2025 pg. 3 lines 9, 18-21) After he got the job with Burlington Coat Factory, Mr. Tevez "started contributing to the payment of the rent. He does not know when he started helping pay the rent...He probably did help out with the rent from April 2023 to July 2023." (Minutes of Hearing and Summary of Evidence dated 11/10/2025 pg. 3 lines 18-21) His mom paid for the household bills including his cell phone, her car insurance, gas, groceries, and clothes. (Minutes of Hearing and Summary of Evidence dated 11/10/2025 pg. 3 lines 16-22 & 34). After his mom passed away, "He moved to Texas. He moved in with his sister." (Minutes of Hearing and Summary of Evidence dated 11/10/2025, page 4 lines 2-3).

DISCUSSION

Under Labor Code § 3502, when a potential dependent does not qualify as a presumed total dependent, "questions of entire or partial dependency and questions as to who are dependents and the extent of their dependency shall be determined in accordance with the facts as they exist at the time of the injury of the employee." Defendant concedes that Jonathan Tevez was a dependent of Maria Diaz (deceased) on 4/6/2023. However, Defendant contends that Mr. Tevez was only a partial dependent, not a total dependent, because he had just started a part-time job at Burlington Coat Factory and was able to start contributing \$400 a month to the household, which covered the rent for the two of them. He was able to contribute this amount for 3 months while his mother was alive. Thereafter, he paid the rent of \$400 for one more month (July 2023) before moving to Texas to move in with his sister.

"A total dependent relies on the now-deceased employee for substantially all of his or her support." *Chevron U.S.A., Inc. v. WCAB* (1999) 81 Cal. Rptr. 2d 521; 64 Cal. Comp. Cases 1, 11. "'Total,' however, does not require 100 percent dependency...Total dependency exists as a fact when the dependent has subsisted entirely upon the employee's earnings. It is not necessary that the dependent be physically or mentally incapable of self-support. Nor will his total dependency

status be affected by his small and inconsequential earnings in irregular employment, or a small income from another source, if such earnings or income did not substantially affect his dependency status toward the employee.” *Munoz v. WCAB* (1971) 19. Cal. App. 3d 144; 36 Cal. Comp. Cases 488. Mr. Tevez

Prior to starting his part-time job with Burlington Coat Factory on 3/22/2023, Mr. Tevez was 100% dependent on his mother. Sixteen days after starting his part-time employment, and while still being a full-time student in high school, Mr. Tevez “probably” was contributing \$100 per week toward the rent in April 2023. This would be sufficient to cover the rent of \$400 a month, but would not include anything else such as food, clothing, utilities, cell phone bills, transportation, insurance, medical care, school supplies, entertainment, etc. that would comprise Mr. Tevez’s standard of living on 4/6/2023. While Mr. Tevez was not 100% dependent on Maria Diaz on 4/6/2023, he relied on her for substantially all of his support. His small income from his part-time job was sufficient to cover their monthly rent, but that would be a small fraction of the total support he relied on his mother when you consider the cost of food, clothing, utilities, cell phone bills, transportation, insurance, medical care, school supplies, entertainment, etc.

Defendant appears to focus on the fact that Mr. Tevez paid the full amount of the monthly rent in April, May and June 2023 to argue he was not a total dependent. Defendant’s argument in its simplest terms is that a person who can afford to pay the rent cannot be considered a total dependent because they can obtain shelter. However, shelter is only one component of someone’s standard of living and depending on the person, may be a very small portion of the standard of living. Without the support of his mother, Mr. Tevez had to move to Texas and move in with his sister. In that way, this case is similar to *Von Gunten v. Champion Indus. Constrs.*, 2025 Cal. Wrk. Comp. P.D. LEXIS 64, where decedent’s fiancé, who lived with the decedent at decedent’s parent’s house, was found to be a total dependent despite earning \$353.63 per week. In that case it was immaterial that the fiancé lived at decedent’s parent’s house and the court noted that the fiancé moved back to North Carolina as evidence that she was dependent on the decedent for her standard of living even though the decedent received shelter from his parents for free. While Mr. Tevez was able to contribute \$400 a month to the household for 3 month, the fact is that he still relied on his mother for substantially all of his support on 4/6/2023 and had to move to Texas and in with his sister after his mother passed away. These facts make Mr. Tevez a total dependent.

This case is also similar to *City & County of San Francisco v. WCAB* (1983) 48 Cal. Comp. Cases 521, where a widow's earnings of \$2300 as a part-time secretary in the year before her husband's industrial death, did not preclude her from being found to be a total dependent when there was no evidence that showed the widow had any other earnings during their 35 years of marriage. The facts of this case are a little different because we are dealing with a cumulative trauma injury and so we look at dependency on the date of injury under Labor Code § 5412, not that date of a specific injury that resulted in death on the date of injury. However, the principles of *City & County of San Francisco v. WCAB* (1983) 48 Cal. Comp. Cases 521 can be applied to this case. Applicant had just started a part time job 16 days before the date of injury under Labor Code § 5412. Defendant is arguing that this extremely brief employment history requires a finding that Mr. Tevez had regular employment on 4/6/2023 and that this employment would have continued indefinitely. To assume an 18 year old full time high school student is going to be able to keep a part time job indefinitely is speculative. In fact, we know Mr. Tevez was not able to keep that job indefinitely and had to move in with his sister in Texas. We also know Mr. Tevez only earned \$2,997.87 in 2023. A person who only earned \$2,997.87 in a year would have to substantially rely on another person or person to subsist in any state, let alone California.

CONCLUSION

Mr. Tevez was an 18 year old full time high school student who had just started his first part time job working 18 hours a week on the date of injury pursuant to Labor Code § 5412. He contributed \$100 a week from his paychecks starting sometime in April 2023 to the rent that had been paid by his mother up until then. After his mother passed away, Mr. Tevez moved to Texas and moved in with his sister. He only earned a total of \$2,997.87 in all of 2023. Mr. Tevez' earnings were irregular and inconsequential to keeping him in the standard of living his mother had provided for him prior to him getting the part time job with Burlington Coat Factory on March 22, 2023. These facts make Mr. Tevez a total dependent under Labor Code § 3502.

RECOMMENDATION

Based on the foregoing, it is respectfully recommended that the Petition for Reconsideration be denied.

NOTICE OF TRANSMISSION:

Pursuant to Labor Code, Section 5909, the parties and the appeals board are hereby notified that this matter has been transmitted to the appeals board on date set out below.

Dated: DECEMBER 25, 2025

DAVID J CONVERSE
WORKERS' COMPENSATION JUDGE