

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

MUHAMMAD RAHIMI, *Applicant*

vs.

**UNIVERSAL INTERMODAL SERVICES, INC.;
CHEROKEE INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ20750878
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award (F&A) issued April 24, 2026, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed by defendant as a driver on March 13, 2025, applicant sustained injury arising out of and in the course of employment (AOE/COE) to his lower back and claims injury to his shoulders and knees; that defendant previously paid temporary total disability from March 13, 2025 through October 10, 2025 and temporary partial disability from November 9, 2025 to November 20, 2025; and that the injury caused a period of temporary total disability from October 11, 2025 through October 28, 2025 and from November 21, 2025 to the present and continuing.

Defendant contends that the F&A is not supported by substantial evidence because defendant has discovered new evidence regarding applicant's subsequent employment and earnings.

We 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 (Petition), the Answer, and the contents of the Report. Based on our review of the record and as discussed below, we will deny reconsideration.¹

BACKGROUND

Applicant sustained injury to his lower back while working for defendant as a truck driver on March 13, 2025, and claims to have sustained injury to his shoulders and knees. (4/4/25 Application, at p. 9.)

The matter proceeded to trial on February 23, 2026. The parties stipulated, in relevant part, that applicant injured his lower back AOE/COE, while employed by defendant on March 13, 2025 and that he claims to have sustained injury AOE/COE to his shoulders and knees; that at the time of injury applicant's earnings were \$1,386.58 per week, warranting indemnity rates of \$934.39 for temporary disability and \$290 for permanent disability; that defendant has paid temporary total disability from March 13, 2025 through October 10, 2025 and temporary partial disability from November 9, 2025 to November 20, 2025; that defendant has furnished all medical treatment and that no attorney's fees have been paid. (2/23/26 Minutes of Hearing, at p. 2.) The issues listed for trial were: Temporary disability - Employee claiming October 11, 2025 through October 28, 2025 and from November 22, 2025 to the present and continuing; and attorney's fees. (*Ibid.*) Exhibits were admitted; applicant was the only witness. (*Id.* at pp. 2-8.)

Applicant testified that he was injured at work on March 13, 2025. He described the medical treatment he received. He explained that he did modified work for a period of time in 2025; he did not work at all from October 10 through 28, 2025; he returned to modified work October 29 through November 20; and he "did not receive any benefits or payments from November 21, 2025 and onward to the present time and continuing." (*Id.* at pp. 4-7; Applicant's Exhs. 1-4.)

In its Petition, defendant alleges that on March 24, 2026, applicant emailed defendant to advise that he had been approved to be paid as a caretaker for his son.

¹ In the same Petition, defendant also petitions in the alternative to terminate temporary disability benefits pursuant to WCAB Rule 10540. (Cal. Code Regs., tit. 8, § 10540.) As discussed herein, the petition to terminate must be addressed by the WCJ in the first instance, and it was improper for defendant to seek such relief from the Appeals Board. In addition, defendant attached applicant's March 24, 2026 email to defendant. Since that email is not in evidence, we do not address it.

The F&A, issued April 24, 2026, included the findings described above and an award in favor of applicant of “[t]emporary total disability from October 11, 2025 through October 28, 2025 and from November 22, 2025 to the present and continuing at the weekly benefit rate of \$943.39” and attorney fees. In the Opinion on Decision, the WCJ described the factual and legal basis for the award. (Opinion, at pp. 3-10.) The WCJ wrote:

When an employer is asserting that they are not liable for payment of temporary disability because modified work was provided, the employer must show that the modified work is available and offered to the employee and is located within a reasonable commuting distance from the injured worker’s residence. It is the employer’s burden to establish that they did offer such modified work.

(*Id.* at p. 7, citing Lab. Code § 5658.1.)

After considering all of the evidence, the WCJ concluded that applicant is entitled to temporary total disability from October 11, 2025 through October 28, 2025; and from November 21, 2025 and up until the present and continuing. (*Id.* at pp. 7-8.) She wrote that this finding was based on evidence that the modified job duties offered to applicant on October 11, 2025 were unavailable to him because the employment location “was too far for him to drive with his medical condition” and that his subsequent modified job at Hope Thrift Store was terminated, effective November 21, 2025.² (*Id.* at p. 8.)

DISCUSSION

I.

Former Labor Code section 5909³ 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.

² We observe that the medical evidence cited by the WCJ indicates that applicant was released to modified work, if such work was available. (Opinion, at p. 9; Applicant’s Exh. 5, at p. 8.) Thus, the characterization of the time period from November 21, 2025 to the present may more appropriately be described as temporary partial disability, with the employer no longer offering alternative work, rather than as temporary total disability. (See Lab. Code §§ 4653, 4654, 4655, 4658.1; *Huston v. Workers’ Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 868.) Nevertheless, applicant would be entitled to temporary total disability payments, if his partial disability resulted in a total loss of wages, due to no alternative work being made available to him. (*Huston, supra*, at p. 868; *General Foundry Service v. Workers’ Comp. Appeals Board (Jackson)* (1986) 42 Cal.3d 331, 339, fn. 5 [51 Cal.Comp.Cases 375].)

³ All section references are to the Labor Code, unless otherwise indicated.

(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 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 June 1, 2026, and 60 days from the date of transmission is July 31, 2026. This decision is issued by or on July 31, 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 1, 2026, and the case was transmitted to the Appeals Board on June 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) 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 1, 2026.

II.

Preliminarily, we note that under most circumstances, attaching an exhibit to a Petition for Reconsideration is prohibited. (Cal. Code Regs., tit. 8, § 10945(c)(1)-(2) [“A document that is not part of the adjudication file shall not be attached to or filed with a petition for reconsideration or answer...”].) WCAB Rule 10945, subdivision (c)(2), contains an exception to this Rule, when “a

ground for the petition for reconsideration is newly discovered evidence.” (Cal. Code Regs., tit. 8, § 10945(c)(2).) Here, however, we do not accept and consider defendant’s attachment as it should be considered by the WCJ in the first instance.

Defendant contends that the F&A is not supported by substantial evidence because the finding that applicant has not worked or received income since November 21, 2025 is contradicted by applicant’s March 24, 2026 email. (Petition, at pp. 4-5.) Defendant seeks reversal of the F&A, based on the contention that applicant’s “subsequent employment and earnings are a material fact that will affect the applicant’s temporary partial disability indemnity rate.” (*Id.* at p. 5.) *But each of the listed grounds in the Petition involve applicant’s March 24, 2026 email, which is not in evidence now, and could not have been in evidence at trial because it did not exist.* The “evidence” that defendant argues is relevant is not evidence that goes to whether the F&A was wrongly decided because it is evidence that was created subsequent to the trial. When defendant became aware that the circumstances may have changed, defendant’s remedy was to seek relief from the WCJ in the first instance by way of a petition to terminate benefits, not from the Appeals Board.

The WCJ has the “full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case...” (Cal. Code Regs., tit. 8, § 10330.) Moreover, WCAB Rule 10540, subdivisions (c), (d), and (e), clarify that the hearing on a petition to terminate liability for continuing temporary disability must take place before a WCJ. Subdivision (c) requires that an applicant’s written objection to the petition must be accompanied by a declaration of readiness to proceed to an expedited hearing— which may only be filed at the district office level—while subdivision (d) explains that upon the filing of a timely objection, when the employee is not working and not receiving disability indemnity, the matter must be set for an expedited hearing. (Cal. Code Regs., tit. 8, § 10540(c), (d).) Subdivision (e) clarifies that the hearing on the petition is heard by the WCJ, who is also responsible for issuing any subsequent orders. (Cal. Code Regs., tit. 8, § 10540(e).)

In addition, due process principles require that any petition to terminate benefits must be considered by a WCJ in the first instance to ensure proper notice of hearing, including an expedited hearing when permitted, and a full and fair opportunity for the parties to be heard. (Lab. Code, § 5504; Cal. Code Regs., tit. 8, §§ 10610, 10615(a), 10625, 10742, 10750, 10782, 10787.) All parties to a workers’ compensation proceeding retain the fundamental right to due process and a fair

hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd. (Rucker)* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) The "essence of due process is simply notice and the opportunity to be heard." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd. (Gangwish)* (2001) 89 Cal.App.4th 1284, 1295; *Rucker, supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58; *Katzin v. Workers' Comp. Appeals Bd. (Katzin)* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish, supra*, at p. 1295, citing *Rucker, supra*, at pp. 157-158.)

Here, defendant sought to circumvent these due process requirements by asking us to terminate applicant's temporary disability benefits, when no hearing had taken place and applicant had no opportunity to be heard or to put on additional evidence in response to defendant's request. We decline to do so. The issues raised by defendant, including defendant's claim of an entitlement to an offset for outside earnings, were not raised at trial. Before the Appeals Board may act on defendant's request, the issues must be listed as issues at trial, all parties must be provided with notice and an opportunity to put on evidence, and the WCJ must consider and rule on these issues. Thus, upon return, defendant should file an amended petition to terminate benefits that complies with WCAB Rules. (Cal. Code Regs., tit. 8, §§ 10500(b)(8), 10540.) The WCJ can then consider the petition to terminate benefits, create a record, and issue a decision.

In addition, we remind defendant that if the issue is whether it overpaid temporary disability indemnity, defendant's remedy is to seek relief from the WCJ in the first instance by way of a petition for credit. (See Lab. Code, § 4909.)

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued by the WCJ on April 24, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 30, 2026

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

**MUHAMMAD RAHIMI
PACIFIC WORKERS'
COLEMAN CHAVEZ & ASSOCIATES LLP**

MB/ara

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