

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

NOLBERTO ARMAS, *Applicant*

vs.

ALTA GENETICS USA INC.;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants*

**Adjudication Number: ADJ15636039
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

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 stated in the WCJ's Report, which we adopt and incorporate, we will deny reconsideration.

Preliminarily, we note that former Labor Code¹ 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

¹ All further statutory references are to the Labor Code, unless otherwise noted.

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 1, 2025 and 60 days from the date of transmission is January 30, 2026. This decision is issued by or on January 30, 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 December 1, 2025, and the case was transmitted to the Appeals Board on December 1, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by 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 December 1, 2025.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 30, 2026

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

**NOLBERTO ARMAS
LAW OFFICES OF JUAN VERA
LAURA CHAPMAN & ASSOCIATES**

PAG/mt

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

**REPORT AND RECOMMENDATION
ON PETITION FOR
RECONSIDERATION AND
NOTICE OF TRANSMISSION TO WCAB**

Lawrence Keller, Workers' Compensation Judge, hereby submits his report and recommendation on the Petition for Reconsideration filed herein.

I. INTRODUCTION

The applicant seeks reconsideration of my October 21, 2025 Findings of Fact that the applicant was not entitled to additional temporary disability indemnity. The applicant's Petition for Reconsideration was timely filed on November 17, 2025 (the 11/17/2025 Petition) and was verified. No Answer to the 11/17/2025 Petition was filed.

The applicant Nolberto Armas, while employed on October 4, 2020, as an artificial insemination tech, Occupational Group Number 491, in California, by Alta Genetics USA, Inc., sustained injury arising out of and in the course of employment to his right foot, right ankle, and lumbar spine, and claims to have sustained injury arising out of and in the course of employment to his left leg, right knee, and in the form of GERD, psych, and sleep injuries. At the time of injury, the employer was insured by Travelers Property Casualty Company of America. At the time of injury, the employee's earnings were \$1,120.23 per week, warranting indemnity rates of \$746.82 for total disability and \$290.00 for permanent partial disability.

The dispute in this matter was primarily a legal one, with the applicant asserting he is entitled to the maximum of, "... 104 compensable weeks of temporary disability exposure at \$746.82/week is \$77,669.28, \$44,062.39 of aggregate disability payments has been issued by Defendant, and five years from the DOI is 10/04/2025." (Applicant's Trial Brief, filed 8/8/2025, p. 2, lines 8-9; see also 11/17/2025 Petition, p. 3, lines 4-9.) The applicant agreed that temporary partial disability payments would apply to the aggregate amount of temporary disability indemnity paid. (8/13/2025 Minutes of Hearing and Summary of Evidence (MOH/SOE), p. 2, lines 41-43.) Defendant asserted that they have paid 104 compensable weeks including weeks paid as temporary partial disability and temporary total disability, and thus the applicant has reached the 104-week cap. (8/13/2025 MOH/SOE, p. 2, lines 45-47.)

II. OCTOBER 21, 2025 FINDINGS OF FACT

Following a review of the evidence I determined that the applicant had received 104 compensable weeks of temporary disability indemnity, consisting of temporary partial and temporary total disability. (10/21/2025 Findings of Fact, p. 2.) Based on that Finding, I found that the applicant was not entitled to any further temporary disability indemnity. (*Ibid.*)

III. CONTENTIONS ON RECONSIDERATION

Applicant contends I acted without or in excess of my powers in issuing my October 21, 2025 Findings of Fact. (11/17/2025 Petition, p. 1, line 22 – p. 2, line 4.) The applicant argues that I relied on, "... incorrect legal theory, case law, and statutory authority..." (*Id.* at p. 2, lines 5-8.) Applicant asserts that, "Applicant's TD rate is \$746.82 and 104 compensable weeks of temporary disability would result in \$77,669.28. Defendant has paid a total of \$44,062.39 so there remains \$33,606.89 in additional exposure." (*Id.* at p. 3, lines 4-6.) The applicant disputes my opinion that a week of temporary partial disability counts as a compensable week for purposes of the 104-week cap on temporary disability

indemnity of Labor Code section 4656(c)(2). (*Id.* at p. 3, lines 10-11.) In addition to disputing my interpretation of Labor Code section 4656(c)(2), the applicant argues that I erred by relying on the non-binding panel decision in *Villalobos v. Bright Horizons Family Solutions*, 2014 Cal. Wrk. Comp. P.D. LEXIS 42. (11/17/2025 Petition, p. 4, lines 3-13.)

IV. EVIDENCE

DOCUMENTARY EXHIBITS.

All exhibits were reviewed and the relevant exhibits were summarized in the October 21, 2025 Opinion of Decision:

Defendant's Exhibit A: Benefit printout, undated.

Defendant's Exhibit B: Temporary disability termination notice dated May 21, 2025.

On May 21, 2025, defendant sent a letter to the applicant that temporary disability benefits were being terminated because 104 weeks of benefits had been paid. (Defendant's Exhibit B, p. 1.) The benefit printout indicates that temporary total disability indemnity was paid at the rate of \$746.82 per week for the period from March 1, 2021 through October 6, 2021 (31 weeks, 3 days), from November 17, 2021 through February 2, 2022 (11 weeks, 1 day), and January 27, 2025 through May 28, 2025 (17 weeks, 3 days). (Defendant's Exhibit A.) Temporary partial disability was paid at various rates for the periods from October 6, 2021 through November 17, 2021 (6 weeks, 1 day), and February 2, 2022 through October 26, 2022 (38 weeks, 1 day). (*Ibid.*) This represents a total of 104 weeks, and 2 days when adding the weeks that either temporary partial or temporary total disability indemnity was paid.

V. DISCUSSION

The applicant's assertions in the 11/17/2025 Petition are identical to the arguments at the time of trial. This is essentially a dispute as to the interpretation of Labor Code section 4656(c)(2). Specifically, it is a dispute over what constitutes a compensable week for purposes of the 104-week cap in Labor Code section 4656(c)(2). In considering the issues again, I am not persuaded by the applicant's argument that he is entitled to temporary disability equivalent to 104 times his temporary total disability rate, even if that amount is paid out over more than 104 weeks because some indemnity is paid as temporary partial disability. I will again present my interpretation of Labor Code section 4656(c)(2), largely taken from my October 21, 2025 Opinion on Decision.

Temporary disability may be either total or partial. (Labor Code §§ 4653 and 4654.) Limits on temporary disability indemnity for the date of injury at issue are laid out in Labor Code section 4656(c)(2). For purposes of this discussion, it is worthwhile to look at the bulk of Labor Code section 4656, which states in relevant part:

“(a) Aggregate disability payments for a single injury occurring prior to January 1, 1979, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.

(b) Aggregate disability payments for a single injury occurring on or after January 1, 1979, and prior to April 19, 2004, causing temporary partial disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.

(c)

- (1) Aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment.
- (2) Aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury.
- (3) Notwithstanding paragraphs (1) and (2), for an employee who suffers from the following injuries or conditions, aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury....”

It is noted that “aggregate disability payments” in subsections (a) and (c) have limits related to “temporary disability” without any modifier for total or partial. In contrast, Labor Code section 4656, subsection (b) limits the aggregate disability payments only to those causing “temporary partial disability.” The limits in Labor Code section 4656, subsections a, b, and c all set limits based on “compensable weeks.” Applicant argues that a compensable week is only a week paid at the full temporary total disability rate, and therefore the applicant is entitled to the equivalent of 104 times the total disability rate. (11/17/2025 Petition, p. 3, lines 4-9; Applicant’s Trial Brief, filed 8/8/2025, pp. 2-3.) The applicant is arguing that he is entitled to temporary disability equivalent to 104 times his total disability rate for a total of \$77,669.28 regardless of the number of weeks (within five years) it takes to reach that total. (*Ibid.*)

I cannot agree with the applicant’s interpretation that a compensable week is defined as a week of temporary total disability. Instead, I find that the Labor Code requires an interpretation that a compensable week, for Labor Code § 4656(c)(2) purposes, is a week of temporary disability indemnity paid at either the temporary partial or temporary total disability indemnity rate. It is first noted that the legislature was free to expressly restrict a “compensable week” to a week of temporary total disability, but did not do so. In contrast, they did expressly definition of a “compensable week” of Labor Code § 4656(b), for injuries between January 1, 1979, and April 18, 2004, to those weeks where temporary partial disability was paid.

Rather than specifying that the 104 compensable week limit of Labor Code section 4656(c)(2) referred only to temporary total disability, the legislature instead referred to the broader category of “temporary disability” when describing the disability triggering a disability payment that is counted toward the aggregate disability payments. (Labor Code § 4656(c)(2).) The legislature chose to omit limiting that to either partial or total disability. The legislature also defined that temporary disability may be either partial or total. (Labor Code § 4655.) The lack of language specifying partial or total in discussing temporary disability in Labor Code § 4656(c)(2) shows that the legislature intended to include both temporary total and temporary partial as constituting “temporary disability” in Labor Code section 4656(c)(2).

Similarly, nowhere does the Labor Code limit or define a “compensable week” to include only a week in which the total disability rate is paid. There is nothing in the Labor Code which indicates that a week of temporary partial disability is not a “compensable week.” The term “compensable week” is not defined in the Labor Code. Plain meaning would have the definition of a “compensable week” include a week where temporary partial disability is paid. Compensation

includes every benefit payable under Division 4 of the Labor Code and thus includes temporary partial disability payments. (Labor Code §§ 3207; 4653.) Since compensable is a reference to compensation, and absent further definition, it is clear a “compensable week” in the context of temporary disability includes a week in which either temporary total or temporary partial disability is paid. My decision is not based on case law, but rather on a plain reading of Labor Code section 4656(c)(2).

However, case law supports this interpretation. In the non-binding, but persuasive panel decision of *Villalobos v. Bright Horizons Family Solutions*, 2014 Cal. Wrk. Comp. P.D. LEXIS 42, the workers’ compensation judge (WCJ) found that an applicant, who had been paid 44 weeks of temporary partial disability and 60 weeks of temporary partial disability, was entitled to an additional 60 weeks of temporary total disability because temporary partial disability did not count to the 104-week cap. (*Id.* at pp. 4-5.) The Appeals Board granted reconsideration, rescinded the WCJ’s decision, and issued a new Finding of Fact that no further temporary disability was owing. (*Id.* at p. 5.) The Appeals Board concluded that, “The 104 week limit imposed by section 4656(c)(2) applies to payments of both temporary total disability indemnity and temporary partial disability indemnity.” (*Id.* at pp. 5-6.) The decision went on to discuss the legislative intent of Labor Code section 4656(c)(2):

“By its plain and express terms, section 4656(c)(2) establishes a limit of 104 compensable weeks within a period of five years for "aggregate disability payments" for a single injury causing "temporary disability." Unlike other statutes addressing temporary disability (see Lab. Code §§ 4653, 4654, 4655, 4657), section 4656(c)(2) does not distinguish between temporary total disability and temporary partial disability; it applies equally to both.

This interpretation is supported by the history of section 4656, as described in *Foster v. Workers' Comp. Appeals Bd.* (2008) 161 Cal. App. 4th 1505, 1512 [75 Cal. Rptr. 3d 272]:

"Prior to 1979, aggregate disability payments for a single injury causing temporary disability were limited to 240 compensable weeks within a period of five years 'from the date of the injury.' In 1978 the Legislature amended section 4656 to remove the limitations period for temporary total disability payments for a single injury occurring on or after January 1, 1979, while continuing the 240-week/five-year limitation for temporary partial disability payments. . . . Then in 2004, as part of the sweeping overhaul of the workers' compensation laws effected by Senate Bill No. 899 (2003–2004 Reg. Sess.), the former provisions of section 4656 were designated as subdivisions (a) and (b) while subdivision (c)(1) was added to impose an even more restrictive 104-week/2-year limitation on temporary disability indemnity payments applicable to both partial and total temporary disability for a single injury occurring on or after April 19, 2004 [citations omitted, emphasis added]." (*Villalobos, supra*, at pp. 9-11.)

The Appeals Board in *Villalobos* further discussed support for the interpretation that the 104-week cap applies to payments of the aggregate of weeks of payments of temporary partial and/or temporary total disability. (*Villalobos, supra*, at pp. 11-12.) The decision found that with

defendant having paid 60 weeks of temporary partial disability and 44 weeks of temporary total disability, the 104-week cap of Labor Code section 4656(c)(2) had been met and no further temporary disability indemnity was owing. (*Id.* at pp. 12-13.)

The applicant argued in his trial brief that *Villalobos*, *supra*, is distinguishable and inapplicable. (8/8/2025 Trial Brief, p. 3, lines 12-17.) The applicant again argued in the 11/17/2025 Petition that the case is inapplicable:

“That case was ultimately not decided on the merits because the parties had agreed to all 104 compensable weeks having been paid - a marked distinction from this case where the parties did not agree to that fact. In turn, Applicant agrees with the WCJ's decision in the *Villalobos* case indicating that TD was due when it had not met the maximum allowable 104 compensable weeks at the TTD rate. Therefore, Judge Keller's decision is not founded on sound legal authority.” (11/17/2025 Petition, p. 4, lines 7-14.)

It does appear that the case was decided on its merits, and I cannot agree with the applicant's interpretation of the opinion in *Villalobos*, *supra*. In *Villalobos*, the parties had stipulated that 60 weeks of temporary partial disability and 44 weeks of temporary total disability had been paid. (*Villalobos*, *supra*, at pp. 4-5.) It was the core of the Appeals Board's decision in *Villalobos*, *supra*, that the temporary partial disability payments counted towards the 104-week cap. (*Id.* at pp. 10-11.) Additionally, contrary to applicant's assertion, the Appeals Board did opine that temporary partial disability does count toward the cap of 104 compensable weeks. (*Id.* at pp. 5-6 [“The 104-week limit imposed by section 4656(c)(2) applies to payments of both temporary total disability indemnity and temporary partial disability indemnity.”].w) The 104-week cap applies to “compensable weeks”. Labor Code section 4656(c)(2). Therefore, when the *Villalobos* decision is stating that a week of temporary partial disability counts towards the 104-week cap, the Appeals Board is clearly stating that a week of temporary partial disability counts as a compensable week.

An earlier non-binding panel decision in *Harris-Boyd v. Northwest Airlines, Inc.*, 2010 Cal. Wrk. Comp. P.D. LEXIS 89 considered a similar question in relation to Labor Code section 4656(c)(1) (for injuries on or after April 19, 2004 and before January 1, 2008). The opinion in *Harris-Boyd* held that temporary disability indemnity in Labor Code section 4656(c) applied “... to all types of temporary disability indemnity paid by a defendant...” (*Harris-Boyd*, *supra*, at p. 10.)

Had the legislature intended the cap on temporary disability to be 104 times the total disability rate, to be paid within five years, which appears to be applicant's interpretation, they could have written Labor Code section 4656(c)(2) to reflect that desire. Instead, they capped temporary disability based on compensable weeks. To hold that a “compensable week” does not include a week of temporary partial disability would go against a reading of the plain language of the Labor Code.

I continue to be persuaded by the relevant Labor Code sections, as well as the reasoning in *Villalobos*, *supra*, that a week of temporary partial disability paid counts as a compensable week toward the 104-week cap of Labor Code section 4656(c)(2). Since the defendant has paid, between temporary partial and temporary total disability indemnity, a total of 104 compensable weeks, the cap on temporary disability indemnity of Labor Code section 4656(c)(2) has been reached in this

case. Accordingly, I continue to find that no further temporary disability indemnity is owing in this matter.

VI. RECOMMENDATION

For the foregoing reasons, I recommend that the applicant's Petition for Reconsideration, filed November 17, 2025, be DENIED. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

DATE: December 1, 2025

LAWRENCE A. KELLER
WORKERS' COMPENSATION JUDGE