

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

RENE ALDACO JUAREZ, *Applicant*

vs.

**WAVECO, INC. dba VALLEY FARM TRANSPORT;
FEDERAL INSURANCE COMPANY administered by CHUBB GROUP OF
INSURANCE COMPANIES,¹ *Defendants***

**Adjudication Number: ADJ11410505
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant and defendant each seek reconsideration of the Findings and Award (F&A) issued on May 4, 2026 by a workers' compensation administrative law judge (WCJ).

Applicant contends that the WCJ erred by finding that applicant was a seasonal worker, that the average weekly wage was calculated incorrectly, and that the WCJ failed to follow substantial medical evidence finding injury to the upper gastrointestinal tract, reproductive system, diabetes, skin, and the spine. Defendant sought reconsideration to request that the Disability Evaluation Unit (DEU) issue a commutation to calculate the correct amount of attorney's fees owed on the award.

Defendant also filed an Answer to applicant's Petition.

On June 10, 2026, the WCJ issued an Order Vacating Findings and Award (Order).

¹ The Minutes of Hearing (MOH) indicate that Chubb Insurance is the insurance carrier for this employer which was then rolled into the Findings and Award (F&A). The Notice of Representation filed by defense counsel on August 9, 2021 lists Federal Insurance Company c/o Chubb Group of Insurance Companies as the proper party. The relationship between Chubb and Federal is unclear, but it appears that Federal is the correct carrier and Chubb is the administrator. Per *DiFusco v. Hands On Spa* (2025) 90 Cal.Comp.Cases 1007, defendants are responsible for clarifying coverage and should remedy the issue immediately.

On June 26, 2026, the WCJ issued a Report and Recommendation (Report) recommending that the applicant's Petition be granted, to amend the F&A to include additional body parts and otherwise be denied.

On August 4, 2026, the WCJ issued a supplemental Report requesting that the Petitions be granted and the matter returned to the trial level.

Based on our review of the record, and for the reasons stated below, we will grant reconsideration for the sole purpose of clarifying that the June 10, 2026 Order Vacating Findings and Award is affirmed.

I.

On August 4, 2026, the WCJ issued a supplemental Report, stating in pertinent part that:

This report is in response to the Defendant's Petition for Reconsideration dated 5/27/2026. It was not received until 6/3/2026.

The Applicant filed a Petition for Reconsideration from the Findings and Award dated 5/26/2026. It was not received until 6/19/2026. In response the undersigned issued a Report and Recommendation on Reconsideration dated 6/26/2026 requesting that the Board grant Applicant's Petition and issue an amended Findings and Award adding some additional body parts per the evidence.

The undersigned received Defendant's Petition for Reconsideration around 6/6/2026, and based thereon, the Findings and Award were vacated on 6/10/2026. It was not answered since the Award was vacated under Cal. Code of Regs. sec. 10961.

However, the WCJ issued the F&A on May 4, 2026. Applicant's Petition was filed on May 26, 2026. Defendant's Petition was filed on May 27, 2026. On June 10, 2026, the WCJ issued an Order Vacating the Findings and Award.

WCAB Rule 10961 (Cal. Code Regs., tit. 8, § 10961) provides that a case remains with the district office for up to 15 days after the timely filing of a petition for reconsideration and sets forth the following actions that a WCJ may take in response: (1) The WCJ may prepare a report and transfer the case to the Appeals Board to address the merits of the petition (Cal. Code Regs., tit. 8, § 10961(a); see Cal. Code Regs., tit. 8, § 10962); (2) The WCJ may rescind the entire order, decision or award and initiate proceedings within 30 days (Cal. Code Regs., tit. 8, § 10961(b)); or (3) The WCJ may rescind the order, decision or award and issue an amended order, decision or award, and a new petition for reconsideration must be filed in response to the amended order, decision or award (Cal. Code Regs., tit. 8, § 10961(c)). Consequently, if the order, decision or

award is rescinded pursuant to subdivision (b) or subdivision (c) within the 15-day period wherein the WCJ retains control, the original petition is deemed moot because the order, decision or award that is the subject of the petition no longer exists. Accordingly, under those circumstances, it is not necessary to prepare a report or transfer the case to the Appeals Board to consider the merits of the petition.

Here, the Order timely issued on June 10, 2026, which was 15 days from May 26, 2026, the first filing of a petition for reconsideration, rendering the Petitions moot. However, the WCJ then transferred the case to the Appeals Board. It is not entirely clear whether the WCJ intended that the Order be rescinded, and that we instead issue a decision based on the merits. We note that there is no dispute that applicant's Petition was filed on May 26, 2026, and defendant's Petition was filed on May 27, 2026. Yet, Case Events in the Electronic Adjudication Management System (EAMS) reflects that the two Petitions for Reconsideration were filed on May 27, 2026 and June 19, 2026. It may well be that an internal error occurred. Nonetheless, based on our review, we believe that the Order was proper, and we will affirm it.

II.

In the F&A, the WCJ found, in relevant part, that applicant sustained injury arising out of and in the course of employment to the lungs, brain, legs, hypertension, hearing loss, headache, and psyche; that applicant was a seasonal worker under Labor Code section 4453(c)(3)² working only during farm season of September 15 to November 10 each year; that pursuant to section 4453(c)(3) applicant's average weekly wage (AWW) is \$856.36 per week, warranting a rate of \$576.91 per week for temporary disability during the season and zero during the remaining non-season; that earning warrant a rate of \$160 per week for permanent disability; that injury caused temporary disability for the periods of September 15, 2018 to November 10, 2018, September 14, 2019 to November 10, 2019, September 15, 2021 to November 10, 2021 and September 15, 2022 to October 30, 2022 all payable at the rate of \$576.91 per week; that applicant became permanent and stationary on March 2, 2024; that the injury caused permanent and total disability of 100% payable at the rate of \$160.00 per week commencing November 4, 2018 for life payable during all periods where temporary disability is not paid; that applicant is entitled to COLA (cost of living adjustment) commencing January 1, 2019; that there is no valid apportionment; that EDD was only paid during periods where applicant is entitled to permanent disability at the rate of \$160.00 per

² All further statutory references will be to the Labor Code unless otherwise indicated.

week, so EDD is entitled to reimbursement at that rate for periods paid along with interest; that defendant is entitled to credit for indemnity payments reimbursed to EDD.

Because the WCJ vacated the F&A, it no longer exists and it is not legally enforceable, and the Petitions are rendered moot. However, we provide the following legal analysis by way of guidance to the WCJ for consideration when he renders a new decision.

Whether an employee is a seasonal employee or a regular full-time employee can affect the calculation of temporary disability indemnity. A seasonal employee's AWW is determined based on in-season earning capacity and off-season earning capacity. (See *Jimenez v. San Joaquin Valley Labor* (2002) 67 Cal.Comp.Cases 74, 79 (Appeals Board en banc); *Signature Fruit Co. v. Workers' Comp. Appeals Bd. (Ochoa)* (2006) 142 Cal.App.4th 790, 795, 803 [71 Cal.Comp.Cases 1004].) "Seasonal work" as defined by AD Rule 10116.9(q) means employment as a daily hire, a project hire, or an annual season hire. (Cal. Code Regs. tit. 8, §10116.9(q).) True seasonal employees are those "who work reasonably identifiable and defined seasons of reasonably identifiable and defined duration." (*Jimenez, supra*, at p. 79, fn 9.)

We considered whether a farm laborer was a regular worker or a seasonal worker at the time of injury in *Gamez v. Cal Enterprise Labor Solutions* (2020) 2020 Cal. Wrk. Comp. P.D. LEXIS 143 (Appeals Board panel decision), writ den. sub nom. *Meadowbrook Insurance Co. v. Workers' Comp. Appeals Bd. (Gamez)* (2020) 85 Cal.Comp.Cases 871.)³ As we indicated in *Gamez*, the determination of whether an injured worker is a seasonal worker or a regular worker is a fact driven inquiry, with evidence from before the time of injury being more probative than evidence from after the injury. Therein, we upheld the conclusion of the WCJ that the preponderance of the evidence supported a finding that the injured worker was a regular employee and did not support finding the injured worker was a seasonal worker. (*Gamez v. Cal Enterprise Labor Solutions, supra*, at *4.) Evidence cited by the WCJ in finding applicant was not a seasonal worker included applicant's testimony, which reflected the employer did not tell applicant that the work was seasonal, what type of work he would be doing for a certain job, or his job title. (*Id.*)

³ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to *Gamez* because it considered a similar issue.

Further, an onboarding document, “A Worker Information – Terms and Conditions of Employment,” was found to be a reasonable means to determine the nature of applicant’s employment because it was prepared before applicant’s injury. (*Id.*) Payroll earnings records showing potential earnings beyond the season were also found to be better evidence. (*Id.* at *7.) An accident report indicating applicant was a seasonal employee, which was prepared after the accident, was not found to be controlling. (*Id.* at *6.) All of these factors affect not only a finding of seasonal employment and AWW, but also periods of temporary disability.

While we do not address the merits of the Petitions here, we remind the parties that decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) Hence, upon return the WCJ can also consider whether further development of the record is appropriate before issuing a new decision.

Further, a permanent disability award is payable pursuant to section 4659(b) which states, “If the permanent disability is total, the indemnity based upon the average weekly earnings determined under section 4453 shall be paid during the remainder of life.” (Lab. Code, § 4659(b).) Section 4453(a)(10) states, in relevant part,

- (a) In computing average annual earnings for the purposes of temporary disability indemnity and permanent total disability indemnity only, the average weekly earnings shall be taken at:

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

(Lab. Code §4453(a)(10).)

Thus, with respect to a new decision, the WCJ may want to consider whether the rate of \$160.00 for permanent disability indemnity meets the statutory minimum for temporary total

disability, regardless of the characterization of applicant's employment, and that it takes into account applicant's actual average weekly wage.

Accordingly, we grant reconsideration to clarify that the June 10, 2026 Order Vacating Findings and Award is affirmed.

For the foregoing reasons,

IT IS ORDERED that reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Vacating Findings and Award issued by the WCJ on June 10, 2026 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 24, 2026

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

**RENE ALDACO JUAREZ
ANHALT LAW
HARRISON EICHENBERG
EMPLOYMENT DEVELOPMENT DEPARTMENT**

TF/md

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