



**New Case Brief**  
**Prepared by Redding Office**  
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**April 17, 2008**

**Foster v. WCAB**  
**Court of Appeal Third Appellate District - Certified for Publication**

This case was argued by Mullen & Filippi (Karen T. Dutton—San Francisco office).

Applicant, Donald Foster, sustained injury to his right shoulder on February 23, 2005 and thereafter returned to work on a light-duty assignment. On April 13, 2005, applicant sustained a second injury involving his right shoulder, right elbow and neck. Temporary disability indemnity was initiated effective April 14, 2005 with the first payment issuing on April 26, 2005. It was determined that both injuries contributed to applicant's temporary disability status. An Agreed Medical Evaluator determined that applicant's right shoulder and right elbow reached maximum medical improvement by September 2006. That same examiner determined that applicant's neck condition had not reached maximum medical improvement. Zurich American Insurance Company stopped paying applicant temporary disability indemnity after April 14, 2007, based upon Labor Code §4656(c)(1), which limits the payment of temporary disability indemnity for a single injury causing temporary disability to 104 compensable weeks within a period of two years from the date of the commencement of the temporary disability indemnity payments.

The Workers' Compensation Judge found applicant entitled to two periods of temporary disability indemnity; one for the first injury through September 25, 2006 (right shoulder and right elbow) and one for the second injury beginning of September 26, 2006 (neck). The Workers' Compensation Judge found applicant entitled to consecutive periods of temporary disability indemnity.

The WCAB granted reconsideration and reversed the decision of the Workers' Compensation Judge noting that "the two periods of entitlement to temporary disability indemnity do run concurrently if applicant is temporarily disabled from the two injuries at the same time. To the extent that those periods of temporary disability occur contemporaneously, the 104-week/2-year period is running for both injuries." As the initial payment of temporary disability indemnity was not issued until April 26, 2005, the Workers' Compensation Appeals Board extended applicant's temporary disability indemnity to April 26, 2007.

In upholding the Workers' Compensation Appeals Board decision, the Court of Appeal stated that, "Where independent injuries result in concurrent periods of temporary disability, the 104-week/2-year limitation likewise runs concurrently."