

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

DIANE HACHADOORIAN, *Applicant*

vs.

**SURGICAL CARE AFFILIATES; UNITED STATES FIRE INSURANCE COMPANY,
administered by CRUM & FORSTER, *Defendants***

**Adjudication Number: ADJ3136651 (ANA0411144)
Santa Ana 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.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 24, 2021

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

**DIANE HACHADOORIAN
LEVITON, DIAZ & GINOCCHIO, INC.
CRUM & FORSTER**

PAG/bea

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

**REPORT AND RECOMMENDATION OF WORKERS'
COMPENSATION JUDGE ON PETITION FOR
RECONSIDERATION**

I.

INTRODUCTION

1.
APPLICANT'S OCCUPATION: Registered Nurse
AGE AT INJURY: 49
BODY PARTS ALLEGED: Nervous System and Head
2.
PETITIONER: Defendants
PETITION FILED TIMELY: Yes, filed on July 27, 2021
PETITION VERIFIED: Yes
ANSWER FILED: Yes, filed on August 4, 2021
3.
FINDINGS AND ORDER DATE: July 7, 2021
PORTIONS APPEALED: Petitioner appeals award of \$500 additional compensation to the applicant for delayed payment of applicant attorney's fees pursuant to Order Approving Compromise and Release.
4.
PETITIONER'S CONTENTIONS: The evidence does not justify the findings of fact, and the findings of fact do not support the Order, decision, or award.

II.

FACTS

- 1) On February 20, 2020, the WCJ signed an Order approving Compromise and Release of applicant's future medical care for \$22,248.00, less \$3,337.00 payable to the applicant attorney for attorney fees. On February 21, 2020, the applicant's attorney served the Order approving Compromise and Release on the Defendants (MOH/SOE May 3, 2021, Stipulations).
- 2) Approximately 60 days later, the Applicant's Attorney filed a verified Petition for Penalties Labor Code Section 5814 on April 21, 2020, alleging that Defendant unreasonably delayed payment of the attorney's fee. As of April 21, 2020, the

applicant's attorney had still received no payment for the attorney fees per the February 20, 2020 Order.

- 3) Defendant filed an objection to the petition for penalties on April 24, 2020.
- 4) Per the date stamped envelope from the applicant attorney's office, the applicant's attorney received the check for applicant attorney fees on May 18, 2020, or approximately 87 days after the service of the Order approving Compromise and Release (Applicant's Exhibit 2). The draft from Crum & Forster indicates that the check date was May 8, 2020.
- 5) At a trial held on May 3, 2021, Defendant offered in evidence a document purported to be a printout of an earlier check for the attorney fees dated March 5, 2020 (Defendant's Exhibit A),
- 6) Although Defendant contends they first issued and mailed the applicant's attorney's check on March 5, 2020, the applicant's attorney bookkeeper testified at trial that the applicant attorney's office did not receive the attorney fees check until May 18, 2020, per the date stamped envelope (MOH/SOE, May 3, 2021, 4: 22 – 23). Defendant did not offer any authentication of the purported March 5, 2020 printout/check, nor any rebuttal or testimonial evidence regarding the third party administrator Crum and Forster's usual and customary business practice in processing compensation checks.

III.

DISCUSSION

UNREASONABLE DELAY OR REFUSAL OF PAYMENT

Under Labor Code § 5814, when payment of compensation is unreasonably delayed or refused, the payment amount delayed shall be increased up to 25 percent, or up to \$10,000. Defendant did not pay the attorney fees under the Order Approving Compromise and Release settlement dated February 20, 2020, until May 2020. Usually, 20 days plus five days for mailing is a reasonable amount of time to pay an Order or Award. Here the delay was nearly 90 days, which was unreasonable. The WCJ, therefore, ordered Defendant to pay the applicant \$500.00 additional compensation under Labor Code § 5814.

The pivotal factual dispute involves whether Defendant issued an earlier

check to the applicant attorney's office on March 5, 2020. If Defendant issued the earlier payment, then it acted reasonably and promptly. If it did not, then the lengthy delay in paying the attorney fees was unreasonable.

The printout that purportedly is a check for the applicant attorney's fee dated March 5, 2020, does not establish that Defendant generated an actual payment to the applicant's attorney or that Defendant put the check in the U.S. mail. Petitioner is entitled to rely on the US Postal System for mailing correspondence, but in this case, Defendant offered no evidence that it put the check for the applicant attorney's fee in the mail on March 5, 2020. Defendant provided no testimonial evidence from claims adjusters or supervisors regarding the purported March payment, nor did it offer proof about the third-party administrator's "normal course of business" issuing compensation checks.

COMPUTER PRINTOUT INSUFFICIENT EVIDENCE OF PAYMENT

The WCJ offered the following analysis regarding why the computer printout, under the facts of this case, was insufficient to show a payment to the applicant's attorney on March 5, 2020.

"A computer benefit printout may be all that is necessary to show the benefits paid by the employer/carrier. However, sometimes issues arise, such as occurred here, where a computer benefits printout *per Ipsum* will not suffice to prove the payment of a benefit. For example, suppose an injured worker denies receiving a particular permanent disability advance check or checks. In that case, the defense may be required to either produce a copy of the canceled check or have the claims person testify regarding the particulars surrounding the payment. The claims person could testify about the employer/carrier's standard business practices regarding payment of compensation. In the case at bar, because the applicant's attorney denied having received attorney fee payment in March 2020, Defendant must produce more evidence than the computer printout to establish when it paid.

"Exhibit A appears to be a computer printout of a check allegedly issued to the applicant's attorney on March 5, 2020. It is not itself a copy of the actual payment. To wit, when comparing it to a copy of the check issued on May 8, 2020 (Applicant's Exh. 1), there are some critical differences:

"First, the actual check [dated May 8, 2020] contains a security bar on the upper part of the check stating, *VERIFY COMPLETE LIST OF SECURITY FEATURES LISTED ON BACK OF CHECK*. The computer printout image [dated March 5, 2020] contains no such security bar or language. Second, the top of the actual check [dated May 8, 2020] has the check "processor" as Maria Chavez. The "processor" on the computer printout [of March 5, 2020] is Leslie Gosse. The WCJ finds that the defense could have had Leslie Gosse testify about how and when the alleged [March 5, 2020] payment in question was prepared and whether it was mailed out. Unfortunately, there was no such corroborating testimony, which would have been crucial for the defense. Third, the Internal Reference Number on the actual check is "Re-Is." There is no Internal Reference Number on the computer printout. The stub attached to the image of the actual payment under the applicant's name states, "A.A. Fees," whereas the language in the computer printout says, "OAC&R dated 2/20/2020."

"The WCJ does not know how every employer/carrier in the industry processes its checks for compensation. Thus, Defendant might have offered testimony to authenticate the [March 5, 2020] computer printout and payment of attorney fees. There was no testimony to establish Defendant's regular business practices in processing compensation checks. Defendant's Exhibit A is not the actual copy of a mailed check since it lacks the security marks and other features on the May 2020 check. The WCJ thus assigned less weight to Exhibit A, the computer printout.

"The matter of Lonnie Roberts v. Capital Plumbing ADJ248306/ADJ870873 cited by the Defendant, while instructive, is a panel decision with distinguishable facts. In the Lonnie Roberts case, the issue concerned the reimbursement to CIGA. The Appeals Board noted the benefit printout showed that CIGA made payments, but as to the reimbursement amount, the Appeals Board left it up to the parties to determine. The appeals board noted that the WCJ did not issue an award to CIGA but left it up to the parties to adjust the amount owed to CIGA "in an amount to be determined by the parties as proper."

"In the matter at hand, the issue concerns a dispute about the timing of the applicant's attorney fee check. The applicant's attorney called Olga Luna, who testified credibly about the delay in receiving the attorney fee payment. Ms. Luna is the applicant's attorney bookkeeper, and she handles the checks and makes the deposits. ... She testified the office did not receive a payment for the attorney fees in March 2020 and that the attorney fees check was not received until May 18, 2020 (Minutes of Hearing/ Summary of Evidence, May 3, 2021). Applicant's Exhibits 1 and 2, which contain a copy of the May 8, 2020 check, support Ms. Luna's testimony and the envelope stamped on May 18, 2020. Based on the totality of the evidence, the WCJ finds that the substantial evidence supports a finding that the Defendant did not issue and mail payment of the applicant's attorney fee until May 2020."

In sum, since Defendant failed to prove that it issued the attorney fee payment until May 8, 2020, Defendant unreasonably delayed the payment of attorney fees. Defendant does not challenge the amount of the additional compensation awarded, \$500.00.

IV.

RECOMMENDATION

Because of the preceding, it is respectfully requested that the Petition for Reconsideration filed by and on behalf of Defendant, United States Fire Insurance Company, administered by Crum & Forster, be denied.

DATE: August 11, 2021

Richard Brennen
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE