

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

ROY LADD, *Applicant*

vs.

**CITY OF MONTEBELLO, Permissibly Self-Insured; administered by HAZELRIGG
CLAIMS MANAGEMENT SERVICES, (NOW ADMINISTERED BY TRISTAR),
*Defendants***

**Adjudication Number: ADJ4651980 (POM 0286812)
Pomona 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.

The appeals board has broad equitable powers with respect to matters within its jurisdiction. (*Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal. App. 4th 1376, 1382 [28 Cal. Rptr. 2d 30].) Thus, equitable doctrines such as laches are applicable in workers' compensation proceedings. (*Truck Ins. Exchange v. Workers' Comp. Appeals Bd. (Kwok)* (2016) 2 Cal. App. 5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd. (Lutz)* (2013) 218 Cal. App. 4th 258, 268 [159 Cal. Rptr. 3d 779]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.App.3d 57, 68, fn. 11 [50 Cal.Comp.Cases 411]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Valencia)* (1976) 41 Cal.Comp.Cases 730, writ denied.) Laches is a question of fact to be determined by the trier of fact. (*Kwok, supra*, 2 Cal. App. 5th at p. 402.) "The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (*Conti v. Board of Civil Service Commissioners* (1969) 1 Cal. App. 3d 351, 359, 360, see also *Johnson v. City of Loma Linda* (2000) 24 Cal. 4th 61, 77.) Once an

unreasonable delay has been found, there must also be evidence of prejudice to the defendant caused by that unreasonable delay. (*Ragan v. City of Hawthorne* (1989) 212 Cal. App. 3d 1361, 1367.) Prejudice is never presumed; rather it must be affirmatively demonstrated by the party asserting the defense in order to sustain its burden of proof. (*Piscioneri v. City of Ontario* (2002) 95 Cal. App. 4th 1037, 1050.) Thus, laches will apply only upon a showing of prejudice. (See, e.g., *New York Yankees v. Workers' Comp. Appeals Bd. (Montefusco)* (2001) 66 Cal.Comp.Cases 291, 2949 (writ den.); *McDonald's Corp. v. Workers' Comp. Appeals Bd. (George)* (2006) 71 Cal.Comp.Cases 674 (writ den.); *Wright v. Workers' Comp. Appeals Bd.* (2005) 70 Cal.Comp.Cases 95 (writ den.); *New Century Chamber Orchestra v. Workers' Comp. Appeals Bd. (Simonds)* (2003) 69 Cal.Comp.Cases 421, 424 (writ den.)) Here, defendant demonstrated that applicant's failure to raise the issue of whether he received the checks for payment at an earlier time was unreasonable, and that it would suffer prejudice if it were forced to re-issue the payments. Thus, we will not disturb the WCJ's determination that applicant was not entitled to further payments and was not entitled to penalties, sanctions, and attorney's fees.

Accordingly, we deny the petition for reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 10, 2022

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

ROY LADD
FLOYD SKEREN MANUKIAN LANGEVIN, LLP

AS/pc

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 ON
PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

1. Applicant's Occupation: firefighter
Applicant is Age: 62
Date of Injury: 7/23/04
Parts of Body Injured: low back

2. Identity of Petitioner: pro per applicant
Timeliness: timely
Verification: Petition is verified.

3. Date of Issuance of Order: July 28, 2022

4. Petitioner's Contentions: "The evidence was not presented in this case. I feel that the defendant did not prove beyond a reasonable doubt that there were checks sent to Roy Ladd. I personally phoned Trista, Workmens' [sic] Comp. And they gave me the register and told me the amount of the award. This was the first time Roy knew of the award. The Law firm of Straussner & Sherman and the Lawyer named Ben Helquist did not produce documents in the trial dated June 28, 2022 [sic]"

STATEMENT OF CASE

The applicant dismissed his attorney of record and filed a Petition for Reconsideration in *propria persona* of the court's finding that defendant's issued payment with regard to the Stipulations with Request for Award that was signed on September 20, 2005. No penalties, attorney's fees or sanctions were awarded with regard to penalty petitions that were dated November 8, 2021, and March 1, 2022.

**II
FACTS**

The unrepresented applicant signed Stipulations with Request for Award (Stipulations) on August 22, 2005. (Board Ex. X Board Legacy File pg. 2 Stipulations with Request for Award, PDF pg. 2 of 49) On or about September 7, 2005, the defendant's administrator at the time, Colen & Lee mailed the Stipulations with Request for Award to the Pomona District office for approval (Board Ex. X, Letter of Colen Lee dated 9/7/05, PDF pg. 49) The Board received the document on September 9, 2005. (Board Ex. "X" pg. 1 Stipulations with Request for Award, Received stamp 9/9/05, pg. 1 of PDF file) The Honorable Judge Michael Martinez approved the Stipulations and signed the Award on

September 20, 2005. The court designated Colen & Lee to serve a copy of the Award.

On February 24, 2020, the applicant hired an attorney to represent him with regard to alleged delays regarding medical treatment issues.

On October 6, 2021, the applicant completed a State Records Request for a copy of the archived legacy file. The court received the file and scanned it into the electronic board file on October 11, 2021.

On October 22, 2021, applicant's attorney filed a Declaration of Readiness that stated, "Applicant disputes that he was ever paid PD or that he ever signed a Stipulation/Award while in pro per."

At the hearing of January 12, 2022, the court advised applicant's counsel of the approved stipulations in the board file. Parties entered into an agreement that defendant would exercise reasonable efforts to obtain the names of the administrators for the period of 2005-2009 and images of checks if available. Defendant provided the names of the administrators. However, the checks' images were no longer available as defendant destroyed the images ten years after issuance. (MOH/SOE pg. 9:19-23.5). Defendant provided a benefit printout, which showed payments had issued consistent with the award. (Def. Ex. A)

At trial, for the first time the applicant alluded to fraud. The applicant testified the signature on the Stipulations was not his that he had no idea who had signed the Stipulations, and that it did not look like his signature. He also testified that his signature had been "possibly" forged. (MOH/SOE pg.6:10.5-14, pg.7:9-10) The Board file contained applicant's signature on a form acknowledging aftercare instructions, which matched the signature on the Stipulations with Request for Award. (Board Exhibit X, Board File PDF pg. 35 out of 49, "WorkCare Aftercare Sheet" dated 7/26/04)

The court found that the defendant had issued payment consistent with the award and that applicant's significant delay in bringing forth a claim of non-payment prejudiced the defendant. Applicant dismissed his attorney and filed a Petition for Reconsideration with documents attached claiming that his attorney should have presented them at trial.

III

Before turning toward discussion of the case, the court notes that the applicant has not shown that the attached documents to the Petition for Reconsideration are new evidence which applicant could not with reasonable diligence have discovered and produced at trial as required under Labor Code Section 5903(d). In addition, the Petition for Reconsideration has attached

documents (Stipulations with Request for Award) that are already a part of the record in violation of Rule CCR 10945(c)(1).

DISCUSSION

It is difficult for the court to determine how applicant's submitted documents support reconsideration, as they do not appear relevant or are duplicative to what was already received into evidence. Therefore, the court can only state the basis for its decision. First, applicant alleged that the subpoena of the WCAB file "failed to yield a copy of the award." (App. Penalty Petition 11/18/21, Statement of Facts pg.1:20.5-21.5) However, that statement was not correct as the scanned legacy file contained a Copy of the Signed Stipulations with Request for Award (Stipulations) as well as the Award signed by Judge Michael Martinez on September 20, 2005.¹

Subsequently, for the first time at trial, the applicant alluded to fraud. The applicant testified the signature on the Stipulations was not his, he had no idea who had signed the Stipulations, and that it did not look like his signature. He also testified that his signature had been "possibly" forged. (MOH/SOE pg.6:10.5-14, pg.7:9-10) However, applicant never raised this issue on the pre-trial conference statement nor did applicant allege fraud in the penalty petitions. As this court indicated in its opinion, the applicant is barred from raising fraud. Even if not barred, the court did not find him credible and elusive as "possibly" was an equivocal statement. Furthermore, the Board file contradicted the applicant's claim of forgery, as the signature on the Stipulations appeared to match the signature on a form acknowledging aftercare instructions. (Board Exhibit X, Board File PDF pg. 35 out of 49, "WorkCare Aftercare Sheet" dated 7/26/04)

In addition, it was not lost on the court that during this portion of his cross examination testimony that whispering was going on in the background by the person holding the phone for the applicant. (6/29/22 MOH/SOE pg. 6:16-18, Amended MOH/SOE pg.1:18.5-20.5, served 7/20/22) This conduct gave the appearance of impropriety enough to call into question the credibility of the applicant with regard to any claim of fraud, lack of knowledge of a settlement and lack of receipt of checks as it gave the appearance that someone was coaching him on what to say. However, despite that testimony given at trial, the applicant now acknowledges that it is his signature on the Stipulations. (Petition for Recon, Addendum Entitled "Findings of Fact" paragraph #2) Therefore, there is a settlement with the applicant's signature. The discrepancy between the trial testimony and the Petition's statement only underscores the contradictory nature of applicant's allegation.

¹ Applicant requested a copy of the Stipulations with Request for Award (Stips) and Award on October 6, 2021, by a Public Records Request. The board file along with the Stips and Award was uploaded into the electronic (EAMS) board file on October 11, 2021 prior to the applicant's filing of the Petition for Penalties. (Public Records Request EAMS DOC IDs 7443063, 7474787, "Received date" in filenet)

In addition, the Petition for Reconsideration brings forth another discrepancy. The applicant testified at trial that he did not know he had a settlement (MOH/SOE pg.6:10.5-11) and that he learned of the award in 2020. (MOH/SOE Pg. 7:16.5-18) However, in the petition for reconsideration, he indicates that he was aware of the settlement in 2007. (Recon Addendum entitled Findings of Fact paragraph #4) Accordingly, applicant had knowledge of the settlement since at least 13 years prior to the hiring of applicant's attorney in 2020. Therefore, he had sufficient time to allege non-payment of the settlement since at least 2007.

After having established a signed settlement and knowledge of the settlement since at least 2007, the next issue was whether defendant had issued payments to the applicant. The defendant's printout showed that the defendant issued permanent partial disability payments by way of checks. The defendant issued checks between 12/31/04 to 5/27/09 in the total amount of \$45,950.00 consistent with the total amount due on the award to the applicant. (Def. Ex. "A" EAMS DOC ID75684110) Therefore, the defendant's evidence established that checks issued to the applicant.

Next, applicant claimed he never received those checks. (MOH/SOE pg. 6:4.5-7) Ordinarily, the defendant would be able to produce copies or images of the checks that bear the signature of the person that cashed the checks as evidence of receipt. However, the defense witness credibly testified that since it had been over 10 years since the checks issued in this case, that they were not able to pull them up from the City. The claims administrator's data had been cleared and the City of Montebello destroyed checks after 10 years from the issuance date. (MOH/SOE pg. 9:19-23.5) Therefore, the defendant's witness testimony established that while they still have the printout of payments made, they no longer have copies of the checks due to the amount of time that has passed. The applicant's significant delay in alleging non-payment has caused prejudice to the defendant in that the evidence they normally would have produced was purged and destroyed. The standard in this case is not "beyond a reasonable doubt" as alleged by the applicant but by a preponderance of the evidence standard. Therefore, the court finds that the printout was sufficient to show that defendant more likely than not issued the checks to applicant and that it was more likely than not that the applicant received them given the significant delay in applicant claiming non-payment and prejudice suffered by the defendant.

Applicant's testimony was equivocal and continues to be so even post trial. The court did not find the applicant credible that he did not know about a settlement until 2020 and that he did not receive the checks. This finding was correct as the Petition for Reconsideration shows that applicant was aware in 2007. The court did not find him credible that he was not curious about the status of his case during a 14-year period. (MOH pg.7:203.5) Even assuming *arguendo* that the court found him credible that he did not receive payment, the

applicant has waited too long to bring forth a claim of non-payment to the point that such delay has resulted in prejudice by destruction of evidence.

PENALTIES/SANCTIONS

Applicant did not meet the burden of proof at trial for showing penalties and sanctions. Applicant has attached to his Petition for Reconsideration copies of utilization review determinations. It is not clear how this would support any claim for penalties and sanctions. First, applicant has not shown that these documents are new evidence which applicant could not with reasonable diligence have discovered and produced at trial as required under Labor Code Section 5903(d). In addition, it is not clear how these documents are relevant as there has been no showing that these utilization reviews were untimely for the court to have had any jurisdiction on these utilization reviews.

IV RECOMMENDATION

It is respectfully requested that the petition be dismissed for failure to state grounds for reconsideration. In the alternative, it is respectfully requested that the petition be denied.

DATE: August 17, 2022

Monika Reyes

WORKERS' COMPENSATION JUDGE