

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

**IRFAN KHAN, (Deceased),
NATALIA HAHN, widow; BRIANNA REIMAN, dependent;
BRANDON REIMAN, dependent, *Applicant***

vs.

**DELOITTE TAX; INSURANCE COMPANY OF
THE STATE OF PENNSYLVANIA, *Defendants***

**Adjudication Numbers: ADJ9537314; ADJ10462479
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto. We also accept applicant's request to file supplemental pleading pursuant to our authority. (Cal. Code Regs., tit. 8, § 10964.) Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, which are both adopted and incorporated herein, we will deny reconsideration.¹

¹ Commissioner Lowe, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist was appointed in her place.

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/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 27, 2023

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

**NATALIA HAHN
BRIANNA REIMAN
BRANDON REIMAN
LAW OFFICES OF RON NOLAN
BRADFORD & BARTHEL**

PAG/abs

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

**JOINT
REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

I. INTRODUCTION

This matter involves a petition for penalties under Cal. Lab. Code secs. 5814, 5814.5, 4650(d) and 5813.

On 12/13/2021 a Findings and Award was issued in favor of the deceased employee's dependents and their attorney. The claim is that the Defendant failed to timely pay interest on the award per Cal. Lab. Code sec. 5800.

The Petitioners are the Applicants who filed a timely and verified Petition for Reconsideration claiming that the undersigned failed to award penalties under Cal. Lab. Code sec. 4650(d) or sanctions under Cal Lab. Code sec. 5813.

The undersigned awarded Applicants a 25% penalty under Cal. Lab. Code sec. 5814 for failure to timely pay interest on the award of 12/13/2021.

The undersigned will recommend that the Petition be DENIED.

II. STATEMENT OF FACTS

As stated above a Findings and Award was made in favor of the decedent's dependents on 12/13/2021 after a trial determining aoe/coe and dependency. The Defendant filed a Petition for Reconsideration against the entirety of the benefits awarded. On 3/7/2022 the Appeals Board issued its Opinion and Order Denying Reconsideration.

On 3/16/2022 the Defendant paid the Award to the two dependents in the amount of \$145,000.00 each less attorneys' fees. The attorney was paid \$43,500 at that time.

No interest was paid on these award payments.

Interest on the awards pursuant to Cal. Lab. Code sec. 5800 was paid by the Defendant on 6/13/2023. The Petitioner herein does not question the amount of the interest. Petitioner claimed the interest payments were late.

On 8/23/2023 the undersigned issued a Supplemental Findings and Award *in favor of Petitioners* awarding a 25% penalty under sec. 5814 for unreasonable failure to pay interest on a final award. The undersigned concluded that there was no excuse or explanation why such a benefit should have been delayed for nearly 1 ½ years.

The findings of fact also denied any benefits under sec. 5813 and 4650(d). The specific calculation of the penalty was left for the parties to determine.

The undersigned found that the Applicants' attorney was entitled to a fee under Sec. 5814.5 also in an amount to be determined by the parties.

Petitioner now claims that Cal. Lab. Code sec. 4650(d) entitles Applicant to a higher award, and Cal. Lab. Code sec. 5813 sanctions should have been awarded.

III. DISCUSSION

The Petitioners prevailed in this case. The Applicants were awarded a 25% penalty for failure to pay the interest on the award. The Award was 25% of the delayed interest payment.

Cal. Lab code sec. 5814 states:

“When the compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the payment unreasonably delayed or refused shall be increased up to 25% or up to ten thousand dollars (\$10,000), whichever is less. ...”

The undersigned opined in his Opinion on Decision that the Defendant had to put their mind directly on the payments of a very large award. It is also understood that the payment of awards of this magnitude normally require not only the consent of a claims examiner but also a claims supervisor and even a claims manager before such large checks are issued. However in this case the Defendant (fully knowing the award had to be paid) simply issued three checks (two to the dependents and one to the attorney) without including any interest due under sec. 5800.

Based upon these facts, the undersigned awarded the full 25% penalty on the interest that was delayed.

Cal. Lab Code sec. 5814

The Petitioner somehow concludes that the penalty is due on the entire payment of the award.

The Petitioner certainly has not understood the changes to Cal. Lab Code sec. 5814 by way of SB 899 effective in 2004. The penalty is only awarded against “the amount of the payment unreasonably delayed.” There is no legal basis for Petitioner’s claim that the penalty applies to the entirety of the award since the award itself was timely paid on 3/16/2022. The penalty only applies to the interest since that is the part of the award unreasonably delayed.

Cal. Lab. Code sec. 5813

This code section would award sanctions “as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.”

There was simply no evidence presented that would support such a finding herein.

Cal. Lab. Code sec. 4650(d)

This code section applies an automatic 10% penalty for any benefit including temporary disability that is not timely made.

Cal. Lab. Code sec. 4702(b) states that dependency benefits are paid “in the same manner and amounts as temporary disability indemnity would have to be made to the employee....”

Since dependency benefits (or death benefits) are the same as temporary disability benefits, it is held that Cal. Lab. Code sec. 4650(d) would also apply to the payment of any dependency benefit that is not paid within 14 days of the issuance of a final order. *Leinon v. Fisherman’s Grotto* (2004) 69 CCC 995 *en banc*.

A non-payment of interest is considered to be part of an award, and it is not a separate compensation benefit. *Farris v. Industrial Wire Products* (2000) 65 CCC 824 *en banc*. Consequently a non-payment of interest that is due without legal doubt is subject to sec. 4650(d).

Cal. Lab. Code sec. 5814(d) states:

“The payment of any increased award pursuant to subdivision (a) shall be reduced by an amount paid under subdivision (d) of Section 4650 on the same unreasonably delayed or refused benefit payment.”

Consequently it is a moot question as to whether or not a 10% penalty is payable under section 4650(d) when a 25% penalty is assessed on the same unreasonably delayed benefit under Sec. 5814. Per sec. 5814(d) the 4650(d) penalty is subsumed within the 5814 penalty.

Hence the undersigned made a finding of a 25% penalty under sec. 5814 rendering the issue raised by Petitioner to be moot. Since no payment was made under sec. 4650(d), the Applicants receive the full 25% penalty without reduction. This is precisely what was awarded.

Cal. Lab. Code sec. 5814.5

The Petition suggests that the undersigned ought to have awarded a specific amount for a fee. There was no data put into evidence as to what a reasonable fee would be.

Hence the undersigned believes it was correct to simply award a fee in an unknown amount leaving it to the parties to determine the fee.

Conclusion

The undersigned awarded the maximum penalty for failure to pay interest on an award under sec. 5814. The award included attorneys’ fees under sec. 5814.5. The award is 25% of the entire interest that was delayed. Petitioner’s claims make little sense in light of this finding of fact.

There was no evidence of dilatory tactics warranting any sanctions under sec. 5813.

IV. RECOMMENDATION ON PETITION FOR RECONSIDERATION

Based upon the above stated facts and law it is respectfully recommended that the Petition for Reconsideration be DENIED.

DATE: 8/31/2023

Dean Stringfellow
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

This matter comes on for hearing on the issues of penalty (Cal. Lab. Code sec. 5814) and attorneys' fees therefrom (Cal. Lab. Code sec. 5814.5) as well as sanctions under Cal. Lab. Code sec. 5813 and penalty under Cal. Lab. Code sec. 4650.

The issues all emanate from the payments of interest on the award that was issued on 12/13/2021.

Penalty under Cal. Lab. Code sec. 5814

The award was issued on 12/13/2021. Reconsideration was denied on 3/7/2022. Hence interest on the award of 12/13/2021 was due from the date of that award per Cal. Lab. Code sec. 5800.

The award is dated 12/13/2021, and according to Ex. H the interest was paid on 6/13/2023. The award itself was paid on 3/16/2022. The Applicant does not contest the calculation of the interest, but makes her claim for penalty based on the late payment.

There is no evidence presented that excuses the payment of interest on the award 15 months after the Opinion and Order Denying Reconsideration was issued. Interest was paid on 6/13/2023. Since there is no evidence to justify this significant delay, the undersigned will award a 25% penalty under sec. 5814. The Defendant obviously put their mind to the payment of the award on or about 3/16/2022 and did not pay interest.

Subsection (b) allowing a 10% self-imposed penalty does not apply since no such penalty was paid.

Attorneys' Fees under Cal. Lab. Code sec. 5814.5

The Applicant's attorney was required to litigate the issue of penalty. Since it is found that there was an unreasonable delay in the provision of interest on the award, the Applicant's attorney is entitled to fees based upon sec. 5814.5 in an amount to be deferred pending a filing of an accounting and/or in an amount to be determined by the parties.

Sanctions under Cal. Lab. Code sec. 5813

There is no evidence presented that would demonstrate any bad-faith action or tactics that were frivolous or intended to cause unnecessary delay in this matter. At best it can only be determined that the delay in this matter was an oversight. There is no evidence to support a finding of sanctions.

Cal. Lab. Code sec. 4650

No 10% penalty was paid by the Defendant under this section. The award was paid on 3/16/2022 after Reconsideration was denied on 3/7/2022. Hence the actual indemnity under the award was timely paid. It is only the interest that was not paid, and sec. 4650 does not apply to interest under Sec. 5800.

DATE: 8/23/2023

Dean Stringfellow
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE