

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

JOSE PARRA, *Applicant*

vs.

**FELIX MANUFACTURING, INC.; FIREMAN'S FUND INSURANCE COMPANY;
ALLIANZ INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ4406140 (LAO 0757168); ADJ3079851 (LAO 0757065);
ADJ4664450 (LAO 0757166); ADJ3316783 (LAO 0757165); ADJ400663 (LAO 0757067)
Los Angeles District Office**

**OPINION AND ORDERS GRANTING RECONSIDERATION
ON BOARD MOTION, RESCINDING OPINION AND ORDER,
AND DECISION AFTER RECONSIDERATION**

It has come to the Appeals Board's attention that its Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (Decision) issued on June 29, 2023 contains a clerical error in that it included an order granting reconsideration when a previous order granting reconsideration was issued on August 30, 2022. On our own motion,¹ we will grant reconsideration of our June 29, 2023 Decision, and as our Decision After Reconsideration, we will rescind our June 29, 2023 Decision and substitute a new decision correcting this clerical error. We otherwise make no substantive changes to our June 29, 2023 Opinion.

Applicant's attorneys, Shandler & Associates,² filed a timely, verified Petition for Reconsideration challenging the Findings and Order and Opinion on Decision (F&O) issued by

¹ Labor Code section 5911 permits the Appeals Board, on its own motion, to grant reconsideration of one of its own decisions if reconsideration is granted within the same time specified or reconsideration of a decision issued by a WCJ, i.e., 60 days (see Lab. Code, §§ 5900(b), 5315).

² Shandler & Associates, applicant's attorneys, may be referred to herein as "Shandler."

the workers' compensation administrative law judge (WCJ) on June 6, 2022.³ Therein, the WCJ found that, in 2018, defendant paid applicant's attorneys \$2,687.50 in Labor Code section 5710⁴ fees for two depositions taken on March 2, 1999 and October 14, 1999, and that applicant's attorneys were barred by the doctrine of laches from obtaining any penalties, interest, sanctions, and/or attorney's fees under sections 5813, 5800, 5814, or 5814.5 for the alleged late payment of the section 5710 fees. The WCJ also found that defendant was to be reimbursed by applicant's attorneys for payments made in excess of \$2,687.50.

Applicant's attorneys contend in relevant part that defendant failed to meet its burden on the equitable defense of laches and that they are entitled to penalties, attorneys' fees, and interest for defendant's failure to timely pay the section 5710 fees.

We received an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, defendant's Answer and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, as our decision after reconsideration, we will rescind the F&O and issue new findings of fact to include: a finding that applicant's attorneys are entitled to section 5710 fees and are entitled to interest on the fees; applicant is entitled to the self-imposed penalty issued by defendant; no section 5814 penalty will be awarded; no section 5814.5 attorney's fees will be ordered; no section 5813 sanctions will be ordered; and defendant did not demonstrate the defense of laches. Awards will be made in accordance with the findings of fact.

FACTS

On February 1, 2001, the parties entered into a Compromise and Release Agreement (C&R) and obtained an Order Approving Compromise and Release (OACR) from the WCJ the same day. Pursuant to the C&R placed into evidence, defendant agreed to pay applicant \$30,000, less an approved attorney fee of \$4,500. (Joint Exh. A, Paragraph No. 6, p. 1.) Paragraph 7 of the

³ Commissioner Sweeney, who was on the panel that issued the order granting reconsideration, no longer serves on the Appeals Board. Another panel member was assigned to take her place.

⁴ All further statutory references are to the Labor Code, unless otherwise noted.

C&R states, “Defendants to pay LC 5710 fees in amount of \$⁵ \$2687.50.” (Joint Exh. A, Paragraph No. 7, p. 2.)

Within two weeks after the OACR was issued, defendant paid the settlement amount, as well as the \$4,500 in approved attorney’s fees. On February 14, 2001, defendant closed applicant’s claims file. (Minutes of Hearing and Summary of Evidence (MOH/SOE), June 21, 2021, p. 3.)

Seventeen years later, on February 23, 2018, applicant’s attorneys filed a Petition for Penalties, seeking penalties, interest, sanctions, and attorney’s fees pursuant to sections 5813, 5800, 5814, and 5814.5 for defendant’s willful failure to pay the section 5710 fees in accordance with the OACR. (Petition for Penalties, February 23, 2018, p. 1.)

By two checks dated March 20, 2018, defendant paid Shandler & Associates a “Deposition Fee” in the amount of \$2,687.50, plus a self-imposed 10 percent “Penalty on Deposition fee” in the amount of \$268.75. (Joint Exhs. C & D.)

On March 23, 2018, defendant filed a Response to the Petition for Penalties, arguing, among other things, that Shandler inserted the section 5710 fee agreement into the C&R without defense counsel’s knowledge. (Response, March 23, 2018, p. 2.) Defendant also argued that the claims were barred by the doctrine of laches.

After a multiday trial, the WCJ issued the F&O, finding that applicant’s attorneys’ claims for penalties, interest, and sanctions were barred by the doctrine of laches. The WCJ also ordered that defendant was to be reimbursed for any payment(s) made in excess of the \$2,687.50 already paid in March 2018.

DISCUSSION

In the Petition for Reconsideration, applicant’s attorneys contend that the section 5710 fees sought in this case were incurred as a result of two depositions taken by defendant on March 2, 1999 and October 14, 1999, and that they are entitled to penalties, interest, sanctions, and attorney’s fees as a result of defendant’s failure to pay the section 5710 fees in accordance with the terms of the OACR.

Preliminarily, we observe that the Appeals Board has continuing jurisdiction over all its orders, decisions, and awards made and entered and may rescind, alter, or amend any order, decision, or award, for good cause. (Lab. Code, § 5803; *Barnes v. Workers’ Comp. Appeals Bd.*

⁵ An illegible amount was crossed out.

(2000) 23 Cal.4th 679, 687 [65 Cal.Comp.Cases 780] (*Barnes*); *Hodge v. Workers' Comp. Appeals Bd.* (1981) 123 Cal.App.3d 501, 509 [46 Cal.Comp.Cases 1034].) Section 5804 provides that “No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury.” An approved workers’ compensation compromise and release rests ‘upon a higher plane than a private contractual release; it is a judgment, with “the same force and effect as an award made after a full hearing.”’” (*Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1169 [50 Cal.Comp.Cases 311] (*Smith*), quoting *Johnson v. Workmen's Comp. App. Bd.* (1970) 2 Cal.3d 964, 973 [35 Cal.Comp.Cases 362].) Consequently, after the five-year period has expired, the OACR constitutes a final judgement with the full effect of res judicata. (*Smith, supra*, 168 Cal.App.3d at p. 1169.) Moreover, in contrast to the limitations imposed by the statute on the Appeals Board to *set aside* an entire award, the Appeals Board continues to have jurisdiction after five years to *enforce* its awards. (*Barnes, supra*, 23 Cal.4th at p. 687.)

Here, applicant’s attorneys seek to enforce the agreement, and we agree that the Appeals Board retains jurisdiction to do so. Applicant’s attorneys were entitled to payment of the 5710 fees, and the fees were properly paid to them by defendant. To the extent that defendant could have raised the issue of laches prior to payment of the 5710 fees, as explained below, we agree with applicant’s attorneys that defendant has not met its burden on the equitable defense of laches.⁶

We now turn to the issues of penalties, sanctions, and interest.

1. *Section 5814 Penalties*

Section 5814, enacted in April 2004 as part of Senate Bill No. 899 (2003-2004 Reg. Sess.), states, in part:

- (a) When payment of 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 percent or up to ten thousand dollars (\$10,000), whichever is less. In any proceeding under this section, the appeals board shall use its discretion to accomplish a fair balance and substantial justice between the parties.

⁶ In its answer, defendant also argues that applicant’s attorneys’ claims are barred by the four-year statute of limitations for actions on a written contract under Code of Civil Procedure section 337. (Answer, p. 3.) In the decision, the WCJ did not address this claim, assumingly because he agreed with defendant that the claims were barred by laches. However, upon review, we conclude that defendant’s claim lacks merit. As we explained in *Hardesty v. McCord & Holdren, Inc.* (1976) 41 Cal.Comp.Cases 111, 113, “Proceedings before the Workers’ Compensation Appeals Board are governed by the specific provisions of the Labor Code and of the Board’s Rules of Practice and Procedure adopted pursuant to the authority conferred by § 5307 of the Labor Code, not by the Code of Civil Procedure.” (See also Lab. Code, § 5708.)

* * *

- (g) Notwithstanding any other provision of law, no action may be brought to recover penalties that may be awarded under this section more than two years from the date the payment of compensation was due.
- (h) This section shall apply to all injuries, without regard to whether the injury occurs before, on, or after the operative date of this section.

Subdivision (i) of this version, which we will refer to hereinafter as the “new” version of the statute, states: “This section shall become operative on June 1, 2004.” (Stats. 2004, ch. 34, § 43.)

Applicant’s attorneys contend that, while the new version of section 5814 is retroactive for all injuries, it is “not retroactive for *payments* due prior to the effective date of this code section,” i.e., June 1, 2004. (Petition, p. 16, emphasis in original.) That is, since the section 5710 payments were due when the OACR was issued in 2001, i.e., before June 1, 2004, applicant’s attorneys seek to apply the 2001 version of the statute, which did not contain the same two-year statute of limitations on penalty actions. The 2001 version of section 5814 stated,

When payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the full amount of the order, decision or award shall be increased by 10 percent. The question of delay and the reasonableness of the cause therefor shall be determined by the appeals board in accordance with the facts. Such delay or refusal shall constitute good cause under Section 5803 to rescind, alter or amend the order, decision or award for the purpose of making the increase provided for herein.

It is well settled that new section 5814 applies to *all* penalty actions pending as of June 1, 2004, except for those cases that are finally concluded and subject to the Appeals Board’s continuing jurisdiction under sections 5410, 5803, and 5804. (*Abney v. Aera Energy* (2004) 69 Cal.Comp.Cases 1552, 1558 (Appeals Board en banc); *Green v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 1426 [70 Cal.Comp.Cases 294]; *McCarthy v. Workers’ Comp. Appeals Bd.* (2006) 135 Cal.App.4th 1230 [71 Cal.Comp.Cases 16]; *Sierra Pacific Industries v. Workers’ Comp. Appeals Bd.* (2006) 140 Cal.App.4th 1498 [71 Cal.Comp.Cases 714].)

As explained above, the Appeals Board retains jurisdiction for enforcement of an existing award, but that does not mean as applicant’s attorneys suggest, that the Appeals Board has jurisdiction under section 5803 to then award penalties for failure to timely pay the award. The C&R did not settle any issues of penalties, and no award was made for penalties. Consequently,

the two-year statute of limitations on penalties actions set forth in new section 5814, subsection (g) applies to this case. By applicant's attorneys' own calculations, the two-year statute of limitations elapsed in this case on March 3, 2003. (Petition, p. 16.) Because applicant's attorneys did not file the Petition for Penalties until February 23, 2018, the Petition was clearly untimely, and their request for an increased award under section 5814 is barred.

We note, however, that defendant did, in fact, voluntarily render payment to applicant's attorneys in the amount of \$286.75. Assuming that defendant self-imposed a penalty pursuant to section 5814(b), penalty payments under this provision are for a "potential" violation and are made at a defendant's own risk. The benefit to a defendant is that the payment is in lieu of a penalty payment under subdivision (a), but there is nothing in section 5814 that provides for re-payment in the event that the penalty was not owed, and as discussed further below, the defense of laches does not entitle defendant to re-payment. Since the amount has already been paid, and more significantly, since this amount belongs to applicant, and not to applicant's attorneys (*Vogh v. Workers' Comp. Appeals Bd.* (1968) 264 Cal.App.2d 724 [33 Cal.Comp.Cases 491] (*Vogh*); see also Lab. Code, § 4902), as discussed below, defendant's remedy against applicant is to seek a credit under section 4909. Additionally, we note that applicant's attorneys must remit the penalty of \$286.75 to applicant.

2. Section 5814.5 Attorney's Fees

Section 5814.5 states:

When the payment of compensation has been unreasonably delayed or refused subsequent to the issuance of an award by an employer that has secured the payment of compensation pursuant to Section 3700, the appeals board shall, *in addition to increasing the order, decision, or award pursuant to Section 5814*, award reasonable attorneys' fees incurred in enforcing the payment of compensation awarded.

(Emphasis added.) (Lab. Code, § 5814.5.)

Pursuant to the language of the statute, section 5814.5 attorney's fees are predicated on an increase in the award based on section 5814, and as stated above, applicant's request for penalties under section 5814 is time-barred. (Lab. Code, § 5814(g).) Therefore, applicant's attorneys are not entitled to section 5814.5 attorney's fees.

3. *Section 5813 Sanctions*

In the Petition, applicant's attorneys make a brief reference to section 5813 sanctions, arguing that defendant engaged in bad faith or delay tactics by failing to timely pay the section 5710 fees without intervention by, or an order from, the WCJ or the Appeals Board. (Petition, p. 25.)

Under section 5813(a), we have the discretion to order sanctions for "bad-faith actions or tactics which are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813(a).) These include "actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit." (Cal. Code Regs., tit. 8, § 10421.)

Applicant's attorneys argue that defendant's conduct in this case is similar to the conduct sanctioned in *EMC Ins. Co. v. Workers' Comp. Appeals Bd.* (1999) 65 Cal.Comp.Cases 75 (writ denied) (*West-Faria*), such that section 5813 sanctions are warranted. We disagree.

In *West-Faria*, the WCJ ordered section 5813 sanctions against defendant for refusing to pay section 5710 fees, where its sole objection to the fees was that it was not obligated to pay absent an order from the Appeals Board. The WCJ also found it significant that applicant made multiple attempts to collect the section 5710 fees prior to the penalties action, making defendant's failure to pay even more unreasonable.

Here, unlike the applicant in *West-Faria*, there is absolutely no evidence that applicant's attorneys made any effort to collect the section 5710 fees from defendant prior to filing the Petition for Penalties seventeen years after the OACR was issued. Additionally, rather than object to payment of the section 5710 fees upon notice of Shandler's penalties action, or demand an order from the Appeals Board, defendant in this case paid the requested fees, as well as a self-imposed 10 percent penalty.

Consequently, we do not agree that defendant's conduct rose to the level of sanctionable conduct under section 5813.

4. *Section 5800 Interest*

Section 5800 interest is payable on "awards...for the payment of compensation." The "interest shall run from the date of the making and filing of an award, as to amounts which by the terms of the award are payable forthwith." However, "[a]s to amounts which under the terms of

the award subsequently become due..., such interest shall run from the date when each such amount becomes due and payable.” As discussed in *Koszdin v. Workers’ Comp. Appeals Bd.* (2010) 186 Cal.App.4th 480, 496 [75 Cal.Comp.Cases 711], section 5800 “is mandatory in nature. It compels the payment of accrued interest on all WCAB compensation awards and gives no discretion to the WCAB not to award interest.” (*Ibid.*) Interest on the award is part of the benefit owed to applicant and must be paid together with the award. (Lab. Code, § 5800; *Myers v. Workmen’s Comp. Appeals Bd.* (1971) 20 Cal.App.3d 120 [36 Cal.Comp.Cases 568].)

The parties do not dispute that the section 5710 deposition attorney’s fees incurred in this case are “compensation” for the purposes of section 5800. As a result, interest is mandatory. (Lab. Code, §§ 3207, 5800.) Therefore, interest on the \$2,687.50 in section 5710 fees is payable to applicant’s attorneys from the date of issuance of the OACR on February 1, 2001 to the date of payment on March 20, 2018.

We note that with respect to interest on defendant’s self-imposed penalty of \$268.75, this payment was not an “award” of compensation by the WCJ or the Appeals Board; instead, it was issued voluntarily by defendant, despite having no legal obligation to do so. As a result, interest did not accrue on this payment.

5. *Recovery Pursuant to Caselaw*

Applicant’s attorneys next argue that the WCJ erroneously ignored their alternate theory of recovery under *Otis v. City of Los Angeles* (1980) 45 Cal.Comp.Cases 1132 (Appeals Board en banc) (*Otis*) and *Mitchell v. GEICO* (1995) 60 Cal.Comp.Cases 205 (Appeals Board en banc) (*Mitchell*). They argue that these cases are “controlling procedure for LC5710 fees” that, upon consideration, would have provided a basis for recovery of penalties and interest. (Petition, p. 19.) This claim lacks merit.

In *Otis*, the Appeals Board determined that, under former section 4601.5, unless defendants objected to the reasonableness of a medical-legal provider’s bills within 60 days of receipt, those objections were waived. (*Otis, supra*, 45 Cal.Comp.Cases at p. 1141.) *Otis* also determined that, under the statute, medical-legal providers could obtain penalties and interest on any unpaid bills.

In *Mitchell*, the Appeals Board determined that it was a violation of due process to allow section 5710(b)(4) fees without providing an opportunity for objection. The Appeals Board also determined that the proper procedures for allowing or disallowing section 5710 fees were

“analogous” to the procedures for obtaining medical-legal costs set forth in *Otis*. Applicant’s attorneys claim that, as a result,

The *Otis* case holds that if an objection to LC5710 fees is not made within the statutory period prescribed to object to medical-legal billing and reasonable payment made, then penalties and interest will accrue on the reasonable amount yet unpaid from the time of the initial billing until paid.

(Petition, p. 20.)

Applicant’s attorneys contend that because defendant failed to object to the reasonableness of the section 5710 fees within 60 days of the issuance of the OACR, under *Otis*, any such objections were waived, and penalties and interest began to accrue from the date of the OACR until the date of payment. (Petition, pp. 19-20.) We observe that *Otis* was disavowed by an en banc panel in *Colamónico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc) because section 4601.5 was replaced by the procedures set forth in sections 4620, 4621, and 4622. (See Cal. Code Regs., tit. 8, § 10325; *City of Long Beach v. Workers’ Comp. Appeals Bd.* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109].) The issue of whether sections 4620, 4621, and 4622 apply to or are analogous to applicant’s attorneys’ claim for fees under section 5710(b)(4) was not raised at trial, and we do not consider it here.

6. *The Doctrine of Laches*

The equitable doctrine of laches may apply in workers’ compensation proceedings. (See, e.g., *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Board* (1985) 39 Cal.3d 57 [50 Cal.Comp.Cases 411]; *Truck Ins. Exchange v. Workers’ Comp. Appeals Bd.* (2016) 2 Cal.App.5th 394 [81 Cal.Comp.Cases 685] (*Kwok*)). “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.) In addition, defendants must come to the determination with clean hands, and not be found to have participated in the delay. (See *Kwok, supra*.)

In this instance, the sole basis for the WCJ’s decision to reject applicant’s attorneys’ claims under sections 5813, 5800, 5814, and 5814.5 was that defendant successfully demonstrated the elements of laches. Upon review, we disagree with the WCJ’s determination.

With respect to delay, the WCJ found that the seventeen-year delay in requesting payment of the 5710 fees and bringing the Petition for Penalties was unreasonably long, and we do not

disagree. Based on the record before us, including defendant's remission of the 5710 fees within three weeks of the request on March 20, 2018, defendant has not demonstrated that applicant's attorneys' tardy request prejudiced defendant. More significantly, defendant had to demonstrate, among other things, that it came to the table with clean hands. Given that it was defendant's counsel who took the depositions that generated the section 5710 fees at issue, defendant's claim of *complete* and utter surprise over the fee request is doubtful enough to convince us that this was not the case, particularly where there is evidence that defendant first objected to the deposition fees before signing the C&R and then agreed to the specific amount in the C&R. (MOH/SOE, June 21, 2021, p. 2 ["There are notes indicating there were notes per 5710 fees, and there was an objection prior to the C&R."].) Additionally, since defendant was required to pay the fees and did not, it is clear that the delay in payment was also due to defendant's action, or in this case, inaction. As a result, we conclude that defendant's laches defense fails, and the WCJ's finding to the contrary will be rescinded.

Even if the WCJ had been correct in finding laches, the orders stemming from his conclusion were erroneous. Specifically, the WCJ found:

Defense did not and does not owe any penalty and/or interest related to the 5710 fees based on the Doctrine of Laches as the Applicant Attorney is estopped from making such claim. Defendant is to be reimbursed for any payment(s) made to Applicant Attorney in excess of \$2,687.50.

(F&O, p. 4.)

First, as discussed above, the WCJ was required to award interest on the section 5710 fees pursuant to section 5800. Additionally, although defendant does not owe penalties in this case, this determination is rooted in the statutes discussed above, rather than the doctrine of laches.

We also disagree with the WCJ's decision that defendant must be reimbursed for any payment(s) in excess of the \$2,687.50 in section 5710 fees. The record shows that the only other payment made by defendant was the self-imposed penalty under section 5814(b) in the amount of \$268.75, which, as discussed above, belongs to applicant, rather than her attorneys. (See Section 1, *supra*; *Vogh, supra*, 264 Cal.App.2d 724.) While reimbursing defendant for an amount voluntarily paid may have seemed "equitable," we do not find it in keeping with the defense of laches. We have looked, but cannot locate, any authority that would persuade us that the defense of laches may be used to order a party to act affirmatively, i.e., to order applicant to reimburse defendant for money that it paid in the absence of any legal obligation to do so. Our discretion to

allow defendants to obtain credit for overpayment of compensation is primarily found in section 4909,⁷ rather than the doctrine of laches. (*Maples v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 827 [45 Cal.Comp.Cases 1106].) Therefore, this portion of the WCJ's decision will be rescinded.

In conclusion, applicant's attorneys' claim for an increased award under section 5814 is barred by the statute of limitations. Because attorney's fees under section 5814.5 are predicated upon a section 5814 award, section 5814.5 fees are not permissible. Section 5813 sanctions will not be ordered because we have determined that defendant's conduct did not justify them.

Applicant's attorneys are to receive section 5800 interest on the \$2,687.50 in section 5710 fees, to be calculated from the date of issuance of the OACR to the date of payment, with jurisdiction reserved to the WCJ. Finally, applicant's attorneys must render payment of the \$286.75 in section 5814(b) fees to applicant.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the Decision issued by the Appeals Board on June 29, 2023 is **GRANTED** on the Appeals Board's own motion.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Decision issued by the Appeals Board on June 29, 2023 is **RESCINDED** and the following is **SUBSTITUTED** in its place:

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order and Opinion on Decision issued by the WCJ on June 6, 2022 is **RESCINDED** in its entirety and the following is **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Jose Parra, while employed on May 14, 1998, July 19, 1994, March 1997, July 20, 1995, and during the periods of time between April 1994 to July 9, 1998, as a nailer, at Compton, California, by Felix Manufacturing, sustained injury arising out of and in the course of employment to various body parts.

⁷ Section 4909 states: "Any payment, allowance, or benefit received by the injured employee during the period of his incapacity, or by his dependents in the event of his death, which by the terms of this division was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be an admission of liability for compensation on the part of the employer, but any such payment, allowance, or benefit may be taken into account by the appeals board in fixing the amount of the compensation to be paid. The acceptance of any such payment, allowance, or benefit shall not operate as a waiver of any right or claim which the employee or his dependents has against the employer."

2. There were two depositions taken in regards to this matter: March 2, 1999 and October 14, 1999.
3. An Order Approving Compromise and Release (OACR) was issued on February 1, 2001.
4. By two checks dated March 20, 2018, defendant paid Shandler & Associates a “Deposition Fee” in the amount of \$2,687.50, plus a self-imposed 10 percent “Penalty on Deposition fee” in the amount of \$268.75.
5. Interest is assessed under Labor Code section 5800 on the \$2,687.50 in section 5710 fees from the date of issuance of the OACR on February 1, 2001 to the date of payment on March 20, 2018.
6. The \$268.75 in self-imposed penalties paid by defendant to Shandler on March 20, 2018 is owed to applicant, Jose Parra.
7. The doctrine of laches does not bar Shandler’s claims under Labor Code sections 5813, 5800, 5814, or 5814.5.
8. Shandler’s request for penalties under Labor Code section 5814 is barred by the statute of limitations set forth in section 5814(g).
9. Applicant is not entitled to an increase in the amount of the award pursuant to Labor Code section 5814, and thus, is not entitled to attorney’s fees under Labor Code section 5814.5.
10. Defendant’s conduct did not rise to the level of conduct sanctionable under Labor Code section 5813.

AWARD

AWARD IS MADE in favor of **SHANDLER & ASSOCIATES**, against **FELIX MANUFACTURING, INC., FIREMAN’S FUND INSURANCE COMPANY**, and **ALLIANZ INSURANCE COMPANY** as follows:

Interest under Labor Code section 5800 on the \$2,687.50 in section 5710 fees from the date of issuance of the OACR on February 1, 2001 to the date of payment on March 20, 2018, to be adjusted by the parties, with jurisdiction reserved to the WCJ in the event of a dispute.

ORDER

IT IS ORDERED that applicant's attorneys shall issue payment forthwith of \$268.75 to applicant Jose Parra.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 13, 2023

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

**JOSE PARRA
SHANDLER & ASSOCIATES
BENTHALE, McKIBBIN & McKNIGHT**

AH/cs

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