

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

**PAMELA ISELIN, *Applicant***

**vs.**

**ALCOHOLICS ANONYMOUS – 23RD DISTRICT;  
AMTRUST NORTH AMERICA, *Defendants***

**Adjudication Number: ADJ11130804  
Santa Barbara 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 Opinion on Decision and 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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**DECEMBER 27, 2022**

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

**PAMELA ISELIN  
GHITTERMAN, GHITTERMAN & FELD  
NGUYEN & GRIBBLE  
DAVID DEMSHKI**

**AS/cs**

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

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

**I.**

**INTRODUCTION**

1. Applicant's Occupation: Manager  
Age of Applicant: 56  
Date(s) of Injury: January 1, 2012, through February 12, 2017  
Parts of Body Injured: Low back.  
Manner in Which Injury Occurred: Continuous trauma - Not in dispute
2. Identity of Petitioner: Applicant  
Timeliness: The petition is timely  
Verification: The petition is verified  
Services: The petition was served on all parties
3. Date of Issuance of Order: October 26, 2022
4. Petitioner's Contention: The WCJ erred in not finding a L.C. § 5813 Violation.

**II.**

**FACTS**

Applicant claimed an industrial injury which was denied, and the matter proceeded to trial on April 4, 2019.

At all times herein, applicant was represented by Ghitterman, Ghitterman and Feld with specifically, Russell H. Ghitterman, Esq making all appearances at trials. Defense was represented by Nguyen & Gribble with David Demshki, Esq making all appearances on their behalf expect for the last penalty trial.

At the time of the first trial numerous issues were raised including injury AOE/COE, earnings, temporary disability, and the affirmative defense of statute of limitations.

Trial continued on April 16, 2019, with both sides presenting a number of witnesses on both days and the matter was submitted for decision on April 16, 2019.

An opinion on decision issued finding inter alia injury AOE/COE, earnings, temporary disability and that the claim was not barred by the statute of limitations.

The matter next proceeded to trial on October 15, 2019, on entitlement to permanent disability advances (PDAs), penalties, need to file a petition to terminate temporary disability and the characterization of monies received as to whether they were PDAs.

The trial continued on December 10, 2019, wherein the stipulations were further detailed with specificity and the issues were also clarified.

An opinion on decision issued and was served on December 27, 2019.

A Compromise & Release (C&R) was filed with an OACR being issued on June 16, 2021.

The matter next proceeded to trial on August 18, 2022, premised upon applicant's penalty petition dated May 30, 2019, and an amended penalty petition dated May 5, 2022.

Following an opinion on decision finding no L.C. § 5313 violation warranting imposition of sanctions against David Demshki, Esq. or Nguyen & Gribble, applicant filed this petition for reconsideration.

### **III.**

#### **DISCUSSION**

It should be noted that the Opinion on Decision clearly states the basis for each issue decided. All medical reporting, transcript and documentary evidence relied upon is clearly identified. However, to the extent that the Opinion on Decision may seem skeletal, pursuant to Smales v. WCAB (1980) 45 CCC 1026, this Report and Recommendation cures those defects.

The WCJ is well aware applicant was seeking sanctions against Mr. Demshki for statements made to the Court, to counsel and to his client. The WCJ was a percipient witness to many of these interactions.

While the case law cited by applicant would support the imposition of sanctions against an attorney for impugning the honor and reputation of witnesses, it just did not rise to the lever where the WCJ felt the imposing of sanctions was necessary and appropriate.

I agree that attorneys should avoid hostile, demeaning and humiliating words and not make ad hominin attacks on opposing counsel, however, again, I did not find this rose to the level of warranting the imposition of sanctions.

The WCJ also reviewed the transcript of the proceedings and while I did find many of Mr. Demshki's words and tactics distasteful and inappropriate, they just did not rise to the level of warranting sanctions.

L.C. § 5813 provides,

“The workers’ compensation referee or appeals board may order a party, the party’s attorney, or both, to pay any reasonable expenses, including attorney’s fees and costs, incurred by another party as a result of bad-faith actions or tactics that are done solely intended to cause unnecessary delay.”

In the case at bar, Mr. Demshki’s conduct, and statements were not the result of bad faith actions. Again, while the conduct was inappropriate, rude and offensive, it was not done as a bad faith tactic. There was evidence to be pointed to that would support some of his allegations.

#### **IV.**

#### **RECOMMENDATION**

For the reasons stated, it is respectfully recommended that Applicant’s Petition for Reconsideration be denied based on the arguments and merits addressed herein.

November 7, 2022

**Scott Seiden**  
PRESIDING WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

## **OPINION ON DECISION**

### **STIPULATIONS**

The stipulations of the parties as set forth in the Minutes of hearing are accepted as fact.

### **L.C. § 5813 SANCTIONS**

This case has had a long history of litigation. It proceeded to trial on April 4, 2019, and then again on April 16, 2019, on the issue of AOE/COE among other issues. A Findings and Award was issued on or about June 18, 2019, finding inter alia, injury on an industrial basis.

It next proceeded to trial on 10/15/2019 on applicant's entitlement to permanent disability advances (PDAs) and the characterization of previous payments.

On December 10, 2019, another trial was held on numerous issues including a penalty petition for a delay in the payment of permanent disability advances (which was deferred), and a dispute as to the characterization of payments previously made, rescission of an agreement, when PDAs should commence and whether an order was required to terminate TD to terminate TD.

The parties resolved the case by way of Compromise & Release (C&R) with an order approving issued on June 16, 2021. The C&R expressly reserved and deferred the penalty petition dated May 30, 2019, with specific reference to both David Demshki, Esq. and the law firm of Nguyen & Dribble.

As stated above, applicant filed a penalty petition dated May 30, 2019, and an amended penalty petition on May 5, 2022. The matter proceeded to trial on the issue of L.C. § 5813 penalties pursuant to the penalty petitions.

Defense counsel David Demshki, Esq. was employed by the defense firm Nguyen & Gribble throughout the pendency of this claim. However, at the time of trial, he was no longer employed by Nguyen & Dribble and was joined in an individual capacity for potential imposition of penalties and sanctions.

Following the amendment of the penalty petition, Mr. Demshki was individually joined and was allowed to fully participate in the proceedings.

No evidence was provided that any inappropriate conduct was sanctioned, approved or in any way condoned by Nguyen & Dribble. I find nothing in the present proceedings to find any culpability on the part of Nguyen & Dribble.

The undersigned judge is very familiar with applicant's counsel and defense counsel and their demeanor when zealously advocating for or on behalf of a client. However, in this situation, I do

not find the conduct of David Demshki, Esq. rises to the level of being frivolous or solely intended to cause unnecessary delay. Instead, it seems the attorneys have animus and their personalities conflicted on this case.

It is not where I want the bar to be set as the appropriate level or type of conduct for all attorneys, I have not found David Demshki's conduct in the case presently before me to be so unacceptable as to sua sponte impose sanctions against him.

I do not find the conduct to warrant the imposition of sanctions based on applicant's penalty petition pursuant to L.C. § 5813.

**ATTORNEY FEES**

There is no res upon from which to award attorney fees.

**EX-PARTE COMMUNICATION**

While there were ex-parte communications between other counsel for Nguyen & Dribble and Russell Ghitterman and myself before David Demshki, Esq. was joined, none took place subsequently.

It was unavoidable since David Demshki, Esq. was not a named or joined party nor employed with Nguyen & Dribble. Further it was that ex-parte communication that made the WCJ continue the matter so he could be afforded his due process. No particular remedy was sought but it would be denied.

**UNCLEAN HANDS**

This issue is rendered irrelevant and moot by the finding of no L.C. § 5813 violation.

**LACHES**

This issue is rendered irrelevant and moot by the finding of no L.C. § 5813 violation.

**FAILURE TO STATE A CAUSE OF ACTION**

This issue is rendered irrelevant and moot by the finding of no L.C. § 5813 violation.

**UNLAWFUL DISCRIMINATION**

This issue is rendered irrelevant and moot by the finding of no L.C. § 5813 violation.

DATE: \_\_\_\_ October 24, 2022 \_\_\_\_

**Scott Seiden**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE