



## 2004 en banc decisions

**Michael A. Willette**

December 16, 2004

[2004-EB-9](#) (pdf)

**vs.**

[2004-EB-9](#) (MS Word)

**AU Electric Corporation**

(WCAB No. SJO 245781,)

69 Cal. Comp. Cases \_\_\_\_

The Board dismissed the applicant's Petition for Reconsideration as not being filed from a "final" order. (See Board's en banc decision of October 5, 2004).

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**Myron Abney**

December 8, 2004

[2004-EB-8](#) (pdf)

**vs.**

[2004-EB-8](#) (MS Word)

**Aera Energy**

(WCAB No. GRO 024430)

69 Cal. Comp. Cases \_\_\_\_

The Board held that section 5814, as enacted by SB 899 and operative June 1, 2004, applies to unreasonable delays or refusals to pay compensation that occur prior to the operative date where the finding of unreasonable delay is made on or after June 1, 2004. The Board also concluded that section 5814(c), involving the conclusive presumption of the resolution of accrued penalty claims, applies as of the June 1, 2004 operative date of section 5814, and that the statute of limitations set forth in section 5814(g) applies to actions to recover penalties brought on or after the June 1, 2004 operative date.

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**Brice Sandhagen**

November 16, 2004

[2004-EB-7](#) (pdf)

**vs.**

[2004-EB-7](#) (MS Word)

**Cox & Cox Construction, Inc.**

(WCAB No. RDG 115958)

69 Cal. Comp. Cases 1452

1) The utilization review time deadlines of section 4610(g)(1) are mandatory and, if a defendant fails to meet these mandatory deadline, it is precluded from using the utilization review procedure fro the particular medical treatment dispute in question;

2) If a defendant undertakes an untimely utilization review procedure, any utilization review report obtained as to the particular treatment in dispute is not admissible in evidence, and any utilization review report obtained cannot be forwarded to an AME or QME if section 4062(a) procedures are timely pursued; and;

3) When a defendant does not meet the section 4610(g)(1) deadlines, it may use the procedure established by section 4062(a) to dispute the treating physician's treatment recommendation; however, the defendant (not the applicant) is then the "objecting party" and the defendant must meet the section 4062(a) deadlines, unless those deadlines are extended for good cause or by mutual agreement.

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**Michael A. Willette**

October 5, 2004

[2004-EB-6](#) (pdf)

**vs.**

[2004-EB-6](#) (MS Word)

**AU Electric Corporation; and State  
Compensation Insurance Fund**

(WCAB No. SJO 0245781)

69 Cal. Comp. Cases 1298

(1) If an employer's utilization review physician does not approve an employee's treating physician's treatment authorization request in full, then an unrepresented employee (if he or she desires to dispute the utilization review physician's determination) must timely object, and then a panel qualified medical examiner ("QME") must be obtained to resolve the disputed treatment issue(s);

(2) Once the panel QME's evaluation has been obtained, neither the treating physician nor the utilization review physician may issue any further reports addressing the post-utilization review treatment dispute;

(3) The panel QME should ordinarily be provided with and consider both the reports of the treating physician and the utilization review physician regarding the disputed issues;

(4) If a post-utilization review medical treatment dispute goes to trial after the panel QME issues his or her report, both the treating physician's and the utilization review physician's reports are admissible in evidence;

(5) When a WCJ or the Appeals Board issues a decision on a post-utilization review medical treatment dispute, the reports of the panel QME, the treating physician, and the utilization review physician will all be considered, but none of them is necessarily determinative.

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**Jenelle Scheftner**

**October 4, 2004**

[2004-EB-5](#) (pdf)

**vs.**

[2004-EB-5](#) (MS Word)

**Rio Linda School District**

(WCAB No. SAC 326274)

69 Cal. Comp. Cases 1281

The majority opinion of the Board held that submission orders and orders closing discovery, that issued prior to the enactment of SB 899 on April 19, 2004, are "existing" orders that cannot be reopened due to the prohibition set forth in Section 47. The majority opinion also held that absent existing orders as so defined the amendments, additions, or repeals of SB 899 apply prospectively on or after April 19, 2004, to all cases, regardless of the date of injury, unless otherwise specified in SB 899.

There were also a concurring and dissenting opinion and a dissenting opinion.

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**James L. Leinon**

**August 25, 2004**

[2004-EB-4](#) (pdf)

**vs.**

[2004-EB-4](#) (MS Word)

**Fishermen's Grotto**

(WCAB No. WCK 45264)

69 Cal. Comp. Cases 995

NOTE: The Board held that where injury, disability or indemnity rate is disputed, no section 4650(d) penalty arises if the disputed disability indemnity payments are made within 14 days of a final order, decision or award imposing liability for those benefits or within 14 days of a defendant's acceptance of liability for the injury and disability benefits. The Board also held that an order, decision or award becomes final for purposes of section 4650(d) when a defendant has exhausted all of its appellate rights or has not pursued them.

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**Jose L. Martinez**

**July 27, 2004**

[2004-EB-3](#) (pdf)

**vs.**

[2004-EB-3](#) (MS Word)

**Jack Neal & Sons, Inc.**

(WCAB No. SRO 107686)

69 Cal.Comp.Cases 775

NOTE: The board concluded that with respect to any award issued after 2003, CIGA may not be held liable for any section 5814 (or 5814.5) penalties based on an insolvent insurer's pre-liquidation unreasonable delay or refusal in paying benefits because such penalties are now excluded under Insurance Code section 1063.1(c)(8) as amended effective 1/1/04.

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**Jeannie Karaiskos**

**July 27, 2004**

[2004-EB-2](#) (pdf)

**vs.**

[2004-EB-2](#) (MS Word)

**Metagenics, Inc.**

(WCAB No. AHM 70712)

69 Cal.Comp.Cases 772

NOTE: The Board concluded, consistent with the Court of Appeal's decision, that CIGA is not required to pay the lien of EDD.

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**Daniel Milbauer**

**March 10, 2004**

[2004-EB-1](#) (pdf)

**vs.**

[2004-EB-1](#) (MS Word)

**Erez Boostan**

(WCAB No. LAO 722567)

69 Cal.Comp.Cases 246

NOTE: The board dismissed the UEF's second petition for reconsideration on the basis (1) that UEF was not aggrieved or newly aggrieved; (2) that the portion of the decision (i.e., procedures) from which UEF sought reconsideration was not "final" for reconsideration purposes; and (3) that the petition is successive on the issue of the employer's correct legal identity.