

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **KATHRYN GREEN-RHOADS,**

5 *Applicant,*

6 **vs.**

7 **GRAN TEASLEY, dba TEDDY BEAR**
8 **CARPET CARE; NATIONAL AMERICAN**
9 **INSURANCE COMPANY,**

10 *Defendant(s).*

Case No. RDG 0060772

**OPINION AND DECISION
AFTER RECONSIDERATION**

11 On March 4, 1997, the Workers' Compensation Appeals Board (Board) granted
12 lien claimant's (petitioner) Petition for Reconsideration. Reconsideration was granted for
13 further study of the facts and the applicable law in order to give the Board a complete
14 understanding of the record and to enable it to make a just and reasoned decision. The
15 Board has now completed its review, and for the reasons set forth below, will rescind the
16 workers' compensation referee's (WCR) Order assessing Labor Code section 5813
17 sanctions. The Board finds that Labor Code section 5813 is applicable only to
18 Applications for Adjudication of Claim (applications) which are filed on or after January
19 1, 1994 for injuries occurring on or after January 1, 1994. Therefore sanctions may not be
20 assessed in the present matter where the injury occurred prior to January 1, 1994.

21 Petitioner sought reconsideration of the Findings and Order issued December 9,
22 1996, in which the WCR assessed sanctions in the sum of \$1,729.50 against petitioner for
23 its "willful failure" to appear at a noticed hearing on January 19, 1996 (sic, the hearing
24 was actually held on January 18, 1996). Petitioner contended that the Board's authority
25 to assess sanctions applies only to cases in which an application is filed on or after
26 January 1, 1994, and "[t]he application in this matter was filed in 1992, well before

1 section 5813 became effective.” Petitioner further contended that it “has acted with
2 reasonable justification” and the imposition of sanctions is “unjust.”

3 Applicant alleged industrial injury to the spine, neck and head in May of 1992.
4 No application was filed with the Board. The Board’s file was opened by pre-application
5 pleadings filed on April 18, 1994. The pre-application pleadings included a DWC-1 form
6 (Employee’s Claim for Workers’ Compensation Benefits), dated February 10, 1994. The
7 claim form does not indicate when the employer first learned of applicant’s alleged
8 injury.

9 On August 29, 1995, the parties settled applicant’s claim by way of Compromise
10 and Release agreement (C&R) in the sum of \$2,500.00, with a Thomas¹ finding.
11 Paragraph No. 7 of the C&R contained the following language regarding petitioner’s lien
12 claim:

13 “Lien of Cox Chiropractic to be paid, adjusted or adjudicated
14 by defendants. WCAB jurisdiction requested. Defendant
15 insurer to hold applicant harmless.”

16 The Order Approving Compromise and Release (OAC&R) issued on September
17 21, 1995.

18 It was in connection with proceedings involving petitioner's lien claim and
19 specifically petitioner's failure to appear at a rescheduled hearing, that the issue and
20 imposition of sanctions occurred. While those facts are somewhat lengthy, and aside
21 from the merits, the initial issue is whether Labor Code section 5813 sanctions may be
22 imposed where the application was filed after January 1, 1994, but involves a pre-January
23 1, 1994 injury.

24 Labor Code section 5813 provides:

25 ¹ *Thomas* refers to *Thomas v. Sports Chalet, Inc.*, (1977) 42 Cal.Comp.Cases 625 (En Banc Decision). In
26 *Thomas*, the Board found that the parties may compromise and release present or future rehabilitation
rights if there are in the case serious, legitimate, and good faith issues (i.e., genuine doubt or question as to
the validity of the claim) that, if resolved against the worker, would result in denial of all benefits.

1 “(a) The workers' compensation referee or appeals board may
2 order a party, the party's attorney, or both, to pay any
3 reasonable expenses, including attorney's fees and costs,
4 incurred by another party as a result of bad-faith actions or
5 tactics that are frivolous or solely intended to cause
6 unnecessary delay. In addition, a workers' compensation
7 referee or the appeals board, in its sole discretion, may order
8 additional sanctions not to exceed two thousand five hundred
9 dollars (\$2,500) to be transmitted to the General Fund.

7 “(b) The determination of sanctions shall be made after
8 written application by the party seeking sanctions or upon the
9 appeal board's own motion.

9 “(c) This section shall apply to all applications for
10 adjudication that are filed on or after January 1, 1994. Leg.H.
11 1993 ch. 121, effective July 16, 1993, ch. 1242.”²

11 As reflected above, on July 16, 1993 the Legislature added Section 5813 to the
12 Labor Code and provided the Board with authority to award sanctions. Subdivision (c)
13 of Section 5813 provides that the section shall apply to all applications for adjudication of
14 claim that are filed on or after January 1, 1994. The 1993 amendment was part of a
15 comprehensive legislative package, including changes to the Insurance Code, designed to
16 reform the workers' compensation system and to reduce its costs. This package was

17 ² Labor Code section 5813 parallels Code of Civil Procedures section 128.5. This section provides, in
18 part:

18 “(a) Every trial court may order a party, the party's attorney, or both to
19 pay any reasonable expenses, including attorney's fees, incurred by
20 another party as a result of bad-faith actions or tactics that are frivolous or
21 solely intended to cause unnecessary delay. . . .

21 * * *

22 “(b) For purposes of this section:

23 * * *

23 “(2) Frivolous means (A) totally and completely without merit or (B) for
24 the sole purpose of harassing an opposing party.”

1 generally enacted as urgency legislation to take effect July 16, 1993. (Stats. 93, ch. 121,
2 sec. 80.) The legislation says, however, “[e]xcept for those provisions amending, adding,
3 or repealing sections of the Insurance Code, the provisions of this act apply only to
4 injuries occurring on or after January 1, 1994.” (Stats. 93, ch. 121, sec. 77.) The Board,
5 therefore, concludes that the Legislature intended that Labor Code section 5813 sanctions
6 apply only in cases of injuries occurring on or after January 1, 1994. (See, *Paradise v.*
7 *State Comp. Ins. Fund* (1997) 25 Cal. Workers’ Comp. Rpt. 50; *Ward v. State of*
California/California Youth authority (1996) 24 Cal. Workers’ Comp. Rpt. 176.)³

8 For these reasons, the Board finds that the WCR did not have authority to grant
9 defendant’s petition and award sanctions for petitioner’s alleged misconduct pursuant to
10 Labor Code section 5813. Accordingly, the Board will rescind the Findings and Order
11 (Sanctions) of December 9, 1996. The Board will substitute in place thereof an order
12 denying not only defendant's petition for sanctions pursuant to Labor Code section 5813,
13 but also denying petitioner's petition for sanctions. This latter petition was in effect
14 denied by the WCR in the December 1996 decision and this order will, in effect, affirm
15 that denial.

16 For the foregoing reasons,

17 **IT IS ORDERED** that as the Board’s Decision After Reconsideration, the Findings
18 and Order (Sanctions) issued December 9, 1996, be, and the same hereby is,
19 **RESCINDED**, and the following Order is **SUBSTITUTED** therefor:

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23 ///

24 **ORDER**

25 _____
26 ³ This result is consistent with the result reached in *Santa Maria High School District v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 649 (writ denied) and will clarify any inconsistent language contained in *Diogiovanni v. Von's Co.* (1995) 23 Cal. Workers' Comp. Rpt. 110.

