

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

HOWARD CASTRO, *Applicant*

vs.

**PEOPLEASE, L.L.C./PRIME TIME COLD STORAGE;
NATIONAL INTERSTATE INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ10155367
Marina del Rey District Office**

**OPINION AND ORDER
DENYING APPLICANT'S PETITION FOR RECONSIDERATION AND
GRANTING DEFENDANT'S PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Applicant and defendant each seek reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on August 21, 2025, wherein the WCJ found in pertinent part that defendant's attorney's correspondence dated October 30, 2024 did not violate Labor Code section¹ 5813; defendant did not delay a qualified medical evaluator (QME)'s exam in ophthalmology in violation of section 5814; that there is no violation of section 5813 or section 5814 and that no attorney fees are to be awarded per section 5813 and/or section 5814.5; and that no costs or sanctions will be allowed against the applicant's attorney as a result of seeking a supplemental QME report from Dr. Weingarten and/or a supplemental additional panel in ophthalmology.

Applicant contends that the WCJ erred by not imposing sanctions against defendant under section 5813. Applicant also contends that the WCJ also erred by not awarding penalties under section 5814 and attorneys' fees to applicant's counsel pursuant to section 5814.5.

Defendant contends that it is entitled to an award of costs and sanctions against applicant's attorney as a result of applicant's bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

We received an Answer from defendant.²

¹ All statutory references are to the Labor Code unless otherwise stated.

² Defendant filed the Petition for Reconsideration and the Answer as a single pleading.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that applicant's Petition be denied. Defendant's Petition was filed after the WCJ issued the Report and we did not receive a second Report with respect to defendant's Petition.

We have considered the allegations in the Petitions and the Answer, and the contents of the Report with respect thereto. Based on our review of the record and as discussed below, we will deny applicant's Petition for Reconsideration, grant defendant's Petition for Reconsideration, affirm the F&O, except that we will defer the issue of costs and sanctions against applicant's attorney (Finding 4), and return the matter to the WCJ to issue a new finding.

BACKGROUND

As discussed in the WCJ's August 21, 2025 Opinion on Decision (Opinion):

APPLICABLE FACTS FOR 5813 AND 5814 ISSUES:

What appears below are the applicable facts based on matters or items which the parties have stipulated to or matters requested that the WCJ take judicial notice of. The applicant suffered a specific injury on 9-4-2015 as a result of his employment with the defendant. The accepted injured body parts initially included the lumbar spine, left ankle, left foot, left knee, right knee, gastroesophageal reflux disease and diabetes. Later, sleep was included as an injured body part. The correct date of injury is 9-4-2015, although there is a typographical error on the Minutes of Hearing dated 6-30-2025 on page 2 lines 16 through 19, which mistakenly said the specific injury date was 9/4/2021, when the correct injury date is actually 9/4/2015.

On 01-30-2020 the parties entered into a 44% permanent disability value Stipulations with Request for Award ("Stip Award") in this case. Please see the EAMS ID number 72124126 and the Award page under EAMS number 7212427. Also, please see the Minutes of Hearing dated 6-30-2025, page two line 22. A timely Petition to Re-Open (PTRO) was filed on 8/31/2020; see EAMS number 33616184.

A subsequent Stip Award was approved on 9-9-24 for 47% permanent disability which resolved the Petition to Re-Open, and this Stipulated Award also included sleep as a work-related injured body part for the first time. Please see the Stipulation of 9-9-24 in EAMS number 78403309 and the Award of 9-9-2024 in EAMS number 78403339.

On the same date that the second Stip Award was executed on 9-9-2024, the parties entered into a separate stipulation about a medical consult exam. The parties agreed on 9-9-24 that the defendant would authorize the eye specialist named Doctor Bedruden Kurwa to perform a one-time eye evaluation of the

applicant to see if the applicant had a need for medical treatment for an alleged compensable consequence injury to his eyes, possibly caused by applicant's work-related diabetes. Please see the Stipulation/Order dated 9-9-2024 and set out in EAMS number 78403159. Eight days later on 9-17-2024, defendant's adjuster named Jill Sterling sent a letter to Dr. Kurwa where the defendant carrier documented that it was authorizing an ophthalmology exam with Doctor Kurwa. A copy of this letter went to the applicant's attorney. See Defendant's Exhibit AA, dated 9-17-2024, EAMS number 57111314.

Beyond the agreement to use Doctor Kurwa for an eye evaluation, applicant's attorney indicated on 9-9-2024 that he thought there was a need for an ophthalmology panel qualified medical examination, and applicant's attorney requested defense attorney to agree to an ophthalmology panel qualified medical examination. Please see Applicant's Exhibit 31, EAMS number 58689326. The next day, on 9-10-2024, in a letter to the defense attorney, applicant's attorney suggested there was a need for a supplemental report from the internal panel qualified medical examiner Dr. Weingarten. Please see Applicant's Exhibit 32, EAMS number 58689329, and applicant attorney sent to the defense attorney a proposed letter where applicant's attorney would ask Doctor Weingarten if Doctor Weingarten himself could address the alleged eye problem or "should the applicant be referred to an ophthalmologist or other type of evaluating physician." See Applicant's Exhibit 33, EAMS ID 58689328. About six weeks later, defense attorney sent to Doctor Weingarten a letter dated 10/30/2024 telling Doctor Weingarten that "this case resolved for a Stipulated Award on September 9, 2024." The letter also said that "defendants object to any additional cost, expenses, fees or charges related to further evaluation or reports associated with this matter." Please see Applicant's Exhibit 34, EAMS ID 58689329.

On 12/20/2024 applicant attorney filed a Declaration of Readiness and on 12/26/2024 defense attorney filed a comprehensive Objection to the Declaration of Readiness. Please see EAMS number 55584980. In the Objection to the Declaration of Readiness, the defense attorney argued that the Stipulated Award of 9/9/2024 "left future medical care open for applicant's lumbar spine, left ankle, left foot, left knee, right knee, gastroesophageal reflux disease, diabetes and sleep," and suggested that there was no need for further reporting by the internal panel qualified medical evaluator (meaning Doctor Weingarten). The defense attorney argued that the medical treatment issues in this case were "subject to utilization review, pursuant to Labor Code section 4610 et seq." Applicant attorney filed a trial brief on 3/24/2025 which is set out in EAMS number 57092977, and it argued for an additional panel in the field of ophthalmology.

Defense attorney filed a trial brief on 3/31/2025 reflected by EAMS number 57131529. Negotiations were ongoing at this time. The defense attorney sent to applicant's attorney an e-mail dated 3/24/2025, set out in Defense Exhibit BB

(EAMS number 57111314). This email said that the defendant would agree to authorize a PQME in ophthalmology to determine if applicant had an industrially based compensable consequence injury to applicant's eye, if applicant's attorney would agree to resolve his petition for attorney's fees.

Defense attorney sent a letter to applicant attorney dated 3/26/2025 in Defense Exhibit CC, EAMS number 571113415. This was a cover letter with a five-point stipulation proposed to resolve the ophthalmology PQME dispute and the dispute over attorney's fees connected to LC5813 and LC5814.5.

Applicant attorney sent an e-mail/letter to defense attorney dated 3/25/2025 as set out in Defense Exhibit DD, EAMS number 57111316. This email/letter set out applicant's attorney's position for his willingness to resolve the issues between the parties.

There was an email response by applicant's attorney to the defense attorney's proposed five-point stipulation. It was set out in Defense Exhibit EE, dated 04-02-2025 (EAMS number 79432417), and it included cross-outs and further agreements which applicant attorney was proposing. It is evidence of the ongoing negotiation process.

On 4/23/2025, the WCJ signed an order allowing an additional panel in ophthalmology; please see EAMS number 79119664. On 6/27/2025 applicant attorney filed a petition for penalties for an alleged violation of Labor Code 5813 and a violation of Labor Code 5814.

The first day of trial for these issues was on 6/30/2025, which set out the Stipulations and Issues. The second date of trial for these issues occurred on August 4, 2025, when evidence was introduced. There was no testimony. The submission date was set as August 20, 2025, at 5:00 PM to allow for post-trial briefs and an amendment to the petition for attorney's fees under LC 5814.5.

(Opinion, pp. 3-5.)

On June 30, 2025, the issues framed for trial were as follows:

1. Does defendant attorney's correspondence dated October 30, 2024 violate Labor Code Section 5813?
2. Did defendant delay a qualified medical evaluator's exam in ophthalmology in violation of Labor Code Section 5814?
3. Attorney fees claimed per Labor Code Section 5813 and 5814.5.
4. Costs and sanctions against applicant attorney for applicant attorney seeking a supplemental qualified medical evaluator's report from Dr. Weingarten and

an additional panel in ophthalmology after five years beyond the date of injury and post resolution of the new and further claim.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), June 30, 2025 trial, p. 3.)

At further proceedings on August 4, 2025, the parties submitted their evidence. No witnesses were called to testify. Defendant's evidence consisted of:

DEFENDANT'S AA: Authorization letter from carrier, by Jill Sterling, dated 9-11-2024.

DEFENDANT'S BB: E-mail to applicant attorney from defendant attorney dated 3-24-2025.

DEFENDANT'S CC: Letter to applicant attorney from defendant attorney dated 3-26-2025.

DEFENDANT'S DD: E-mail to defendant attorney from applicant attorney dated 3-25-2025.

DEFENDANT'S EE: Fax to defendant attorney from applicant attorney dated 4-2-2025.

(MOH/SOE, August 4, 2025 trial, pp. 3-4.)

On August 18, 2025, defendant submitted a post-trial brief, raising the issue of sanctions and costs against applicant's attorney for frivolous conduct and causing delay.

DISCUSSION

I.

Preliminarily, we note that former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on August 27, 2025, and 60 days from the date of transmission is Sunday, October 26, 2025. The next business day that is 60 days from the date of transmission is Monday, October 27, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Monday, October 27, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on August 27, 2025, and the case was transmitted to the Appeals Board on August 27, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 27, 2025.

II.

In the event an employer is found to have unreasonably delayed or refused medical treatment, the injured worker may seek penalties under section 5814 and attorney’s fees “incurred in enforcing the payment of compensation awarded” under section 5814.5. (Lab. Code, § 5814.5.) As we stated in our en banc opinion in *Ramirez v. Drive Financial Services* (2008) 73

³ WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Cal.Comp.Cases 1324, 1331 (Appeals Bd. en banc), “[S]ection 5814(a) ... provides that a penalty is payable only ‘[w]hen payment of compensation has been *unreasonably* delayed or refused.’ (Emphasis added.) Relevant here, we note that a delay or a refusal to pay is generally not ‘unreasonable’ if the defendant had ‘genuine doubt from a medical or legal standpoint as to [its] liability.’ (*Kerley v. Workers’ Comp. Appeals Bd.* (1971) 4 Cal.3d 223, 230 [36 Cal.Comp.Cases 152].)”

Per the Opinion:

In our instant case in Howard Castro, the alleged compensable consequence eye injury claim was made in September of 2024 and it came nine years after the date of the industrial injury in 2015. Some consideration for genuine doubt appears reasonable when there is no medical evidence addressing an eye injury in the instant Howard Castro case.

(Opinion, pp. 8-9.)

The WCJ continues as follows:

[I]n our case at bar in Howard Castro, the authorization letter to Doctor Kurwa for a medical consult (set out in Defendant’s Exhibit AA), came out only eight days after the Stipulation/Order of 9/9 2024. Please see EAMS number 78403159. By 3/24/2025, defendant had not only agreed to the medical consult with Doctor Kurwa, but also to an ophthalmology panel qualified medical evaluation. Please see Defendant’s Exhibit BB set out in EAMS number 57111314. Defense attorney sent a proposed stipulation and a cover letter to the applicant’s attorney on 3/26/2025. Please see Defendant Exhibit CC, with EAMS number 57111315. Thus, from the time of the dispute of September 9, 2025 to March 26, 2025, was a period of about half a year, which set up the framework for ending the medical dispute based on defendant’s genuine doubt. The WCJ feels that this approximate half year is not an unreasonable delay considering the circumstances.

(Opinion, p. 9.)

Per the Report:

On September 9, 2024, applicant’s attorney agreed to a medical consult eye examination with Doctor Kurwa on the exact day that the second Stipulated Award was signed. Presumably, the Doctor Kurwa examination would most likely occur in about a month’s time and then there would be an additional month or so before the report of Doctor Kurwa would issue. This would represent about a two-month delay, and it would take the parties into

approximately mid-November of 2024. Some delay in this case was a strong likelihood no matter how the parties were to proceed.

At trial, no one introduced evidence of an objection to a medical determination. Instead, the parties agreed on September 9, 2024 to have an ophthalmologist named Doctor Kurwa examine applicant at Dr. Kurwa's earliest convenience. Labor Code 5814 does not allow penalties for all delays, it only allows penalties for unreasonable delays.

(Report, pp. 2, 3-4.)

In *Ramirez*, the Appeals Board emphasized that section 5814 affords the WCJ discretion in determining the penalty to be assessed, with a primary goal of encouraging prompt payment of benefits and ameliorating the effect of delays on the injured worker. In *Ramirez*, we listed several factors to be considered in assessing a section 5814 penalty. They include: (1) evidence of the amount of the payment delayed; (2) evidence of the length of the delay; (3) evidence of whether the delay was inadvertent and promptly corrected; (4) evidence of whether there was a history of delayed payments or whether the delay was a solitary instance of human error; (5) evidence of whether there was any statutory, regulatory, or other requirement (e.g., an order or a stipulation of the parties) providing that payment was to be made within a specified number of days; (6) evidence of whether the delay was due to the realities of the business of processing claims for benefits or the legitimate needs of administering workers' compensation insurance; (7) evidence of whether there was institutional neglect by the defendant, such as whether the defendant provided a sufficient number of adjusters to handle the workload, provided sufficient training to its staff, or otherwise configured its office or business practices in a way that made errors unlikely or improbable; (8) evidence of whether the employee contributed to the delay by failing to promptly notify the defendant of it; and (9) evidence of the effect of the delay on the injured employee. (*Ramirez, supra*, at pp.1329-1330.)

Per the Opinion:

When applying Labor Code section 5814 (a) to assess penalties, case authority indicates the WCAB must "use its discretion to accomplish a fair balance and substantial justice between the parties." Please see the case of *Ramirez v. Drive Financial Services*, (2008) 73 CCC 1324 (appeals board en banc). Admittedly, a balance can be a challenge where each case must be approached by applying its own unique set of facts to Labor Code section 5814(a). The burden of proof for 5814 (a) is for applicant's attorney to show a delay, and then to show that

the delay was “unreasonable.” Defense attorney has argued that the applicant should have gone through the UR process; the UR process is for determining medical treatment issues for admitted body parts, UR is NOT for a determination on whether a body part was injured AOE/COE or as a compensable consequence of an AOE/COE injury. Defense attorney has also suggested in his brief that the compensable consequence injury arising beyond the five-year mark is significant. The applicant attorney correctly pointed out on page 4 of his brief that, “[j]urisdiction remains open forever to claim compensable consequence injuries.” Applicant’s Exhibits 31-34 and items for judicial notice demonstrate that there was a delay between when a request for addressing the eye issue was first made on 9-9-2024 and when a PQME in ophthalmology was agreed to on 4-23-2025. The primary issue here is whether this six-month period becomes “unreasonable” under 5814 considering all circumstances. When we realize the UR process is not the correct method, and that the body part dispute must be resolved pursuant to LC 4062.2, we need to examine how well LC 4062.2 was followed. Within eight days of the allegation of the compensable consequence eye injury, defendant authorized an ophthalmological consult exam. Neither side provided information at trial on whether the exam with Dr. Kurwa took place. Neither side provided evidence that there was an objection to the report of Dr. Kurwa, which would have triggered the process for an ophthalmological QME.

(Opinion, p. 7 [emphasis in original].)

Here, the WCJ concluded that, after taking all of the circumstances into consideration, defendant did not unreasonably delay the QME evaluation in the specialty of ophthalmology such that penalties and attorney’s fees are warranted under sections 5814 and 5814.5. We will not disturb those determinations.

Under section 5813 and WCAB Rule 10421, sanctions are discretionary and the WCJ is *not required* to order costs or sanctions. (Lab. Code, § 5813(a) [the WCJ “*may* order a party, the party’s attorney, or both, to pay any reasonable expenses, including attorney’s fees and costs...” and a WCJ “*in its sole discretion*, may order additional sanctions...” (emphasis added)]; Cal. Code Regs., tit. 8, § 10421(a); *Runnion v. Workers’ Comp. Appeals Bd.* (1997) 59 Cal.App.4th 277, 287 [62 Cal.Comp.Cases 1511]; *Avance v. Workers’ Compensation Appeals Bd.* (2004) 69 Cal.Comp.Cases 1, 5 [“The WCAB also reasonably exercised its discretion under section 5813 in choosing not to impose sanctions...”].)

As discussed in the Opinion:

Labor Code section 5813 (a) says that a WCJ or the Commissioners “may order a party, the party’s attorney, or both, to pay reasonable expenses, including attorney’s fees and costs, incurred by another party...” as a result of three things.

These three things are: 1) bad faith actions; 2) frivolous tactics; or 3) tactics solely intended to cause unnecessary delay. This section also allows a WCJ or the Commissioners to order additional sanctions up to \$2500 to be paid to the General Fund. We need to apply the applicable facts in this case to the law to determine if the defense attorney's letter of 10/30/2024 violated Labor Code section 5813.

The first burden of proof is for the applicant's attorney to show that the letter of the defense attorney was sent to Dr. Weingarten; applicant attorney accomplished this burden of proof with Exhibit 34, EAMS ID 58689329. The next hurdle for the burden of proof is demonstrating that the defense attorney's letter of 10/30/2024 constitutes bad faith considering the cascading circumstances in September and October of 2024. On September 9, 2024, the defense attorney entered into a Stipulated Award which resolved the Petition to Re-Open, including slightly increased permanent disability and the additional work-related body part of sleep. Please see EAMS numbers 78403309 and 78403339.

On the same day, September 9, 2024, the defense attorney and applicant attorney entered into a Stipulation/Order, signed by the WCJ, that the issue of whether the applicant had suffered a compensable consequence eye injury because of his industrially related diabetes, would be sent to Doctor Kurwa for his opinion. Please see EAMS number 78403159. About a week later, on September 17, 2024, defendant's adjuster Jill Sterling sent to Doctor Kurwa in Defense Exhibit AA an authorization letter for Doctor Kurwa to examine the applicant for eye disease and for Doctor Kurwa to issue a report. Ms. Sterling's letter stated, "prompt reporting is important so we can provide appropriate benefits." Please see EAMS number 57111313. A copy of this letter went to the applicant's attorney.

On October 30, 2024, about six or seven weeks after 09-10-2024, the defense attorney sent his letter of October 30, 2024, to Doctor Gerald Weingarten. Please see Applicant's Exhibit 34, EAMS number 58689329. During the 48 hours after signing of the Stipulation/Order of September 9, 2024, the applicant attorney proposed an ophthalmology panel qualified medical evaluation. Please see Applicant's Exhibit 31.

Applicant attorney also proposed a supplemental report from the internal panel qualified medical examiner, Doctor Weingarten about whether he felt an ophthalmology panel qualified medical examination was necessary. Please see Applicant's Exhibits 32 and 33. Applicant's attorney made these proposals even before an examination could be set with Doctor Kurwa, and Doctor Kurwa's examination was purportedly designed to address applicant's eye problems. There is a possibility these efforts by the applicant's attorney on 9-9-24 and September 10, 2024 may have had an influence on the defense attorney's decision to send his October 30, 2024 letter set out in Applicant's Exhibit 34.

Defense attorney advised Dr. Weingarten in the October 30, 2024, letter that the parties had settled the Petition to Re-Open, and that “given this settlement, please be advised that defendants object to any additional costs, expenses, fees, or charges related to further evaluation for reports associated with this matter.” The applicant attorney’s Post-Trial Brief on page 2 addresses this part of the controversial letter of 10-30-2024; applicant attorney argued that these statements by defense attorney were “not a correct statement of fact or law.” While the WCJ has some sympathy for the arguments by the applicant attorney, the real issue is whether this ill-advised letter of 10-30-2024 reaches the significant level of conduct for bad faith, or frivolous tactics or delay tactics.

The WCJ does not see any evidence supporting bad faith actions in the October 30, 2024 letter based on the letter itself, nor based on the surrounding circumstances. The WCJ does not see any evidence of frivolous tactics by the defense attorney in the letter of October 30, 2024. The WCJ does not see any evidence of tactics solely intended to cause delay by the defense attorney in the letter of October 30, 2024; The parties were waiting for the hopefully “prompt reporting” of Doctor Kurwa, the eye specialist they agreed to use to evaluate applicant’s eye health.

It is found that defendant attorney’s correspondence dated October 30, 2024 does not violate Labor Code section 5813.

(Opinion, pp. 5-7.)

With respect to applicant’s contentions relating to section 5813, the WCJ goes on to note that:

The only issue focusing on Labor Code section 5813 concerned whether “defendant attorney’s correspondence dated October 30, 2024 violate[d] LC5813?” The WCJ feels there was no 5813 violation which was justifiable because of the possibly flawed legal arguments which defense attorney made in this matter.

When the defense attorney sent the October 30, 2024 letter to [prior QME] Doctor Weingarten, the Petition to Reopen for New and Further Disability had already been resolved by way of the 47% Stip Award, and the parties had already agreed to a consultation evaluation with Doctor Kurwa, and the only remaining issue was the compensable consequence injury and any need for possible medical treatment for this eye injury.

The defense attorney’s letter of October 30, 2024 did not provide Doctor Weingarten with information designed to persuade Dr. Weingarten on what Doctor Weingarten’s medical findings or medical opinions should be. Instead,

the letter of October 30, 2024 simply communicated to Doctor Weingarten that the defendant felt it should not have to pay for any additional medical expenses with an internal PQME.

There was no evidence provided at trial that the October 30, 2024 correspondence to Doctor Weingarten “caused him not to respond” and/or “caused further delay....” The WCJ saw no bad faith and no frivolous tactics in the defense attorneys’ letter of October 30, 2024 which would meet the standard for a 5813 violation.

(Report, p. 3.)

In the Report, the WCJ notes that while:

The WCJ agrees with applicant attorney that a compensable consequence claim of injury can be made long after the fifth anniversary of the date of the work injury. There is no statute of limitations for compensable consequence claims. The WCJ also agrees with applicant’s attorney that a request for a panel qualified medical evaluator may be made, even beyond five years from the date of injury. *Neither of these two contentions by applicant’s attorney in his Petition for Reconsideration were issues at the trial in this case.*

(Report, pp. 2-3 [emphasis added].)

The WCJ found that applicant did not meet his burden of showing that sanctions should be imposed against defendant for a violation of section 5813. Moreover, because sanctions and penalties under section 5813 and/or section 5814 were not warranted, an award of attorney’s fees under section 5814.5 was also not appropriate.

We agree, and we will not disturb the WCJ’s conclusions with respect to applicant’s claims against defendant. (Findings 1, 2, 3.)

III.

We now turn to defendant’s Petition for Reconsideration. Defendant asserts that it agreed to a consult on September 9, 2024, but rather than proceeding with a consult, applicant demanded a QME panel. It asserts that it had no obligation to agree to the panel. Defendant then asserts that it then agreed to the QME panel in March 2025, but that applicant’s attorney delayed the process by asking for attorney’s fees pursuant to applicant’s petition for sanctions. Defendant further asserts that despite the agreement to the panel, at the time of trial in August 2025, applicant still had made no efforts to proceed with requesting the panel, so that it was applicant’s attorney who caused the delays resulting in a significant expenditure of time and resources by defendant to defend against applicant’s petitions and demands.

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) The "essence of due process is simply notice and the opportunity to be heard." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936.) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker, supra*, at 157-158.)

Taken together, sections 5313 and 5815 require the WCJ to "make and file findings upon all facts involved in the controversy" and to issue a corresponding award, order or decision that states the "reasons or grounds upon which the [court's] determination was made." (Lab. Code, §§ 5313, 5815; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).)

At trial, the parties framed the following issue:

4. Costs and sanctions against applicant attorney for applicant attorney seeking a supplemental qualified medical evaluator's report from Dr. Weingarten and an additional panel in ophthalmology *after five years beyond the date of injury and post resolution of the new and further claim.*

(MOH/SOE, June 30, 2025, p. 3 [emphasis added].)

While somewhat similar, Finding 4 does not appear to squarely address the issue raised at trial:

It is found that no costs and no sanctions will be allowed against the applicant attorney because the applicant attorney sought a supplemental panel qualified medical evaluation report from Dr. Weingarten and/or a supplemental additional panel in ophthalmology in this case.

(Finding 4, August 21, 2025 Findings and Order, p. 2.)

With respect to Finding 4, the WCJ stated in his Opinion that:

[W]ell beyond the fifth anniversary of the date of injury, a compensable consequence event can occur and . . . substantial medical evidence is needed to address a compensable consequence issue, even if there is a prior Stipulated Award in the matter.

It is found that no costs and no sanctions will be allowed against the applicant attorney because the applicant attorney sought a supplemental panel qualified

medical evaluation report from Doctor Weingarten and/or a supplemental additional panel in ophthalmology in this case.

(Opinion, p. 9.)

Defendant appears to raise a new issue in its Petition for Reconsideration, claiming that applicant's attorney caused delays and engaged in frivolous conduct when he failed to initiate the QME process after defendant agreed to the panel. This contention appears to be different than that raised at trial, which is whether applicant's attorney conduct in obtaining a new panel "after five years beyond the date of injury and post resolution of the new and further claim" was sanctionable. The WCJ did not include that phrase in his finding; yet in his Opinion, the WCJ observed that a panel after five years and subsequent to a resolution was proper.

Because defendant's Petition for Reconsideration was filed on September 5, 2025, after the WCJ's Report was filed on August 27, 2025, the WCJ did not address defendant's contentions, and we cannot discern whether defendant raises a new issue in its Petition. The WCJ's finding that omits the phrase stating "after five years beyond the date of injury and post resolution of the new and further claim" appears to be a broader finding with respect to whether sanctions should be imposed against applicant. In order that the WCJ can review the contentions of defendant's Petition and consider whether he intended to make a broader finding, and so that the parties are provided with an opportunity to be heard, due process requires that we return the matter to the WCJ to re-issue a Finding on Issue 4.

Accordingly, we deny applicant's Petition, grant defendant's Petition, affirm the Findings and Order issued on August 21, 2025, except that we defer the issue of costs and sanctions against applicant's attorney (Finding 4), and return the matter to the WCJ to issue a new finding.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DENIED**.

IT IS FURTHER ORDERED that defendant's Petition for Reconsideration of the Findings and Order issued by the WCJ on August 21, 2025, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued by the WCJ on August 21, 2025, is **AFFIRMED** except it is **AMENDED** as follows:

4. The issue of whether costs and sanctions will be allowed against the applicant attorney because the applicant attorney sought a supplemental panel qualified medical evaluation report from Dr. Weingarten and/or a supplemental additional panel in ophthalmology is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 27, 2025

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

**HOWARD CASTRO
BERKOWITZ AND COHEN
PEARLMAN, BROWN AND WAXBORN**

JB/pm

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