

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

STEVE CUNNINGHAM, *Applicant*

vs.

**UNITED LAUNCH ALLIANCE; STARR INDEMNITY AND LIABILITY COMPANY,
administered by BROADSPIRE, A CRAWFORD COMPANY, *Defendants***

**Adjudication Number: ADJ10748514
Santa Barbara District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the June 20, 2025 Findings and Award (F&A) wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant, while employed as a propulsion engineering manager by defendant during the period from January 30, 2014 through January 30, 2015, sustained an injury arising out of and in the course of employment (AOE/COE) to the brain and nervous system warranting a 100% permanent total disability pursuant to a Findings and Award dated March 20, 2024 as well as Labor Code¹ section 4650(d) increases of \$16,839.10 in connection to temporary disability awarded; \$47,911.34 in connection permanent disability awarded; \$1,647.54 in connection with attorney's fees associated with retroactive temporary disability² awarded; and \$27,033 in connection with attorney's fees associated with retroactive permanent disability awarded.

Applicant contends that the WCJ failed to address "the 34 penalties asserted against defendant" at trial and argues that "this matter should be remanded" back to the WCJ for a supplemental F&A awarding these penalties based upon "defendant's bad faith conduct." (Petition, p. 17.)

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

² There is a typographical error in Findings of Fact number 6. The \$1,647.54 in attorney's fees pertains to temporary disability awarded not permanent disability awarded.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration (Petition) be denied.

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the decision for the sole purpose of amending the June 20, 2025 F&A to correct a typographical error in Findings of Fact number 6. We otherwise affirm the WCJ's June 20, 2025 F&A.

FACTS

Applicant claimed that, while employed by defendant as a propulsion engineering manager during the period from January 30, 2014 through January 30, 2015, he sustained an injury AOE/COE to the brain and nervous system.

The parties proceeded with discovery and retained Dr. Jacobo Chodakiewitz as the neurological panel Qualified Medical Evaluator (PQME). Dr. Chodakiewitz evaluated applicant on July 19, 2018, and issued a report dated July 27, 2018, wherein he found that applicant's cognitive problems were industrially related, and that applicant had reached permanent and stationary status. (Applicant Exhibit 1, pp. 37-38.) The WCJ later found that Dr. Chodakiewitz's reporting was not substantial medical evidence. As such, pursuant to section 5701, Dr. Ezekiel Fink was selected as a "regular physician." (Order Un-submitting Matter and Appointing Labor Code Section 5710 "Regular Physician" in the Field of Neurology, January 29, 2020.)

Dr. Fink evaluated applicant on January 11, 2022, and issued a corresponding report dated January 11, 2022, as well as a supplemental report dated February 20, 2023. Dr. Fink was deposed by the parties on December 12, 2023.

In his February 20, 2023 report, Dr. Fink diagnosed applicant with dementia "of the Alzheimer's type" as well as headache and sleep impairment and opined that based upon neuropsychological testing results, applicant was "unable to work in any setting." (Applicant Exhibit 12, pp. 2, 6.)

On January 30, 2024, the parties proceeded to trial on the issues of temporary disability, permanent disability, apportionment, need for future medical treatment, liens, attorney's fees, and reimbursement pursuant to section 5811. (Minutes of Hearing and Orders, January 30, 2024, p. 3.)

On March 20, 2024, the WCJ issued a F&A wherein he held, in relevant part, that applicant sustained an injury AOE/COE to the brain and nervous system and pursuant to section 4662(a)(4), was permanently totally disabled with a brain injury resulting in permanent mental incapacity which entitled applicant to temporary disability indemnity for the period from January 30, 2015 through November 30, 2017, as well as permanent disability indemnity. (Findings and Award, March 20, 2024, pp. 1-2.) This F&A thereafter became final.

On February 26, 2025, the matter proceeded to trial on the issues of penalties, sanctions, costs, attorney's fees pursuant to section 5814.5, referral to the audit unit, and enforcement of the March 20, 2024 F&A. (Minutes of Hearing and Orders, February 26, 2025, p. 2.)

On June 20, 2025, the WCJ issued a new F&A which held, in relevant part, that applicant was entitled to section 4650(d) increases of \$16,839.10 in connection to temporary disability awarded; \$47,911.34 in connection permanent disability awarded; \$1,647.54 in connection with attorney's fees associated with retroactive temporary disability awarded; and \$27,033 in connection with attorney's fees associated with retroactive permanent disability awarded.

DISCUSSION

I.

Preliminarily, 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 under the Events tab 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 July 25, 2025, and 60 days from the date of transmission is September 23, 2025. This decision was issued by or on September 23, 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 and Recommendation shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on July 25, 2025, and the case was transmitted to the Appeals Board on July 25, 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 July 25, 2025.

II.

Turning now to the merits of the Petition, applicant alleges that the WCJ failed to address “the 34 penalties asserted against defendant” at trial and argues that “this matter should be remanded” back to the WCJ for a supplemental F&A based upon “defendant’s bad faith conduct.” (Petition, p. 17.)

On the issue of penalties for unreasonable delay and/or nonpayment of benefits, section 5814 states, in relevant part, that:

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.

(Lab. Code, § 5814(a).)

Here, as underscored by the WCJ in his Report, “[d]efendant admits the Award was not paid timely.” (Report, p. 3.) Accordingly, defendant issued payments for section 4650(d) penalties with interest as well as “three (3) Labor Code § 5814 checks, each in the maximum allowable amount of \$10,000.00, two to the Applicant and one to Applicant’s counsel.” (*Ibid.*) Notwithstanding these payments, applicant argues that multiple additional penalties should be awarded in this case.

The case of *Gallamore v. Workers’ Comp. Appeals Bd.* (1979) 23 Cal. 3d 815, 824, 828 provides instruction on the issue of multiple penalties. In *Gallamore*, the court held that where “circumstances disclose separate and distinct acts of delay or nonpayment, and prior notice was given of the applicant’s intent to seek separate or additional penalties for such acts, then multiple penalties are appropriate in a single penalty proceeding.” The subsequent case of *Christian v. Workers’ Comp. Appeals Bd.* (1997) 15 Cal.4th 505, 516, clarified, however, that simply because an employer or carrier does not resume benefit payments upon receipt of notice by the applicant of the applicant’s intent to seek penalties does not by itself create a separate and distinct act for which imposition of penalties is authorized. “If a carrier or employer believes that its conduct is justified, imposing multiple penalties on the theory that each notice gives the insurance carrier the occasion to reconsider the decision to terminate or change the amount of benefits payments would not fairly serve the deterrent purpose of section 5814. Instead, employers or carriers would be compelled, under the coercive force of the potential penalties, to continue payments to which they believe a worker is not entitled simply because multiple penalties might be assessed if the worker was able to give repeated notice of intent to seek penalties for conduct based on the same decision.” (*Id.* at p. 517.)

In *Christian*, the applicant became temporarily totally disabled and the defendant began payment of temporary disability indemnity. After some time, the defendant stopped payments, and the matter went to trial. The WCJ found the discontinuance to be unreasonable and awarded the applicant a ten percent penalty for each unpaid payment due. Thereafter, reconsideration was sought, and the Appeals Board granted reconsideration to amend the WCJ’s decision to impose a single penalty against all temporary disability indemnity payments due. The Court of Appeals, however, annulled the Appeal Board’s decision and reinstated the multiple penalties. The matter then proceeded up to the Supreme Court which ultimately held that section 5814 permitted multiple penalties for nonpayment of benefits only when the delay and/or refusal was unreasonable

and attributable to separate and distinct acts. The Supreme Court held that in the case of *Christian*, the defendant terminated the applicant's temporary disability benefits by a single act when it concluded, at the time of termination, that applicant was no longer entitled to benefits. As such, the defendant's nonpayment when each payment was due, did not constitute separate and distinct acts for penalty purposes.

Similarly here, the delays by defendant in the payment of temporary disability indemnity owed, and any corresponding penalties and attorney's fees, do not constitute separate and distinct acts. Rather, they consist of a single, ongoing, continuous act, which began when defendant, believing applicant was no longer entitled to benefits, made the decision to terminate them. Taking into consideration defendant's prior penalty payments, we agree with the WCJ that defendant "has paid the maximum allowable under Labor Code § 5814," and, as such, additional penalties are not warranted herein. (Report, p. 3.)

As noted above, there is a typographical error which requires correction. As such, we will grant the Petition for the sole purpose of correcting Findings of Fact number 6. We otherwise affirm the June 20, 2025 F&A.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the June 20, 2025 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the June 20, 2025 Findings and Award is **AFFIRMED, EXCEPT** as **AMENDED** below.

FINDINGS OF FACT

6. It is found Defendant owes a Labor Code § 4650(d) increase of \$1,647.54 in connection with the attorney fees associated with the retroactive temporary disability awarded herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 23, 2025

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

**STEVE CUNNINGHAM
STOUT, KAUFMAN, HOLZMAN & SPRAGUE
FLOYD SKEREN MANUKIAN LANGEVIN**

RL/cs

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