WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GUSTAVO DE LA CRUZ, ***Applicant***

vs.

HEYHAN, INC. dba MILLER COLLISION SERVICES;
PROCENTURY INSURANCE COMPANY, ***Defendants***

Adjudication Numbers: ADJ10527650; ADJ11246224
Riverside District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER 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 WCJ's Report, which we adopt and incorporate, we will grant reconsideration, amend the WCJ's decision as recommended in the Report. For the reasons stated below, we will also amend Findings of Fact number one (1) to find that applicant sustained a specific injury to his bilateral knees while employed on September 29, 2015. We will otherwise affirm the decision of March 20, 2026.

We note that former Labor Code[1] 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.

[1] All further statutory references are to the Labor Code, unless otherwise noted

(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 April 27, 2026 and 60 days from the date of transmission is June 26, 2026. This decision is issued by or on June 26, 2026, 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 be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on April 27, 2026, and the case was transmitted to the Appeals Board on April 27, 2026. 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 April 276, 2026.

In addition to amending the WCJ's March 20, 2026 decision to allow 15% attorney fees from the $5,829.74 penalty awarded as recommended in the Report, we also amend Findings of Fact number one (1) to find that applicant sustained a specific injury to his bilateral knees while employed on September 29, 2015. This is consistent with the parties' stipulations in the April 4, 2024 Stipulations with Request for Award.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of March 20, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of March 20, 2026 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Gustavo De La Cruz, born [], while employed on September 29, 2015, as an auto painter, Occupational Group Number 321, at San Diego, California, by Heyhan, Inc., dba Miller Collision Services, insured by Procentury Insurance Company, sustained injury arising out of and in the course of employment to bilateral knees.

* * *

4. Applicant's attorney has performed services of a reasonable value of $874.00.

IT IS ORDERED THAT defendant pay $5,829.74 directly to the injured worker, Gustavo De La Cruz, within 30 days, less attorney's fee in the amount of $874.00, payable to applicant's attorney. Interest on this amount pursuant to Section 5800 shall not accrue until after the 30-day grace period for payment of the penalty has passed.

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

JUNE 25, 2026

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

GUSTAVO DE LA CRUZ
LAW OFFICES OF JESSE A. MARINO, APC
LAUGHLIN, FALBO, LEVY & MORESI, LLP

PAG/cm

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

Applicant has filed a timely, verified Petition for Reconsideration, dated 4/13/26, and received on 4/14/26, challenging the Joint Findings and Order and Opinion on Decision issued by the undersigned WCJ on 3/17/26. Said order was served by the Riverside District Office on 3/20/26, giving Applicant until 4/14/26 to petition for reconsideration.

This case involves an injured worker, Gustavo de la Cruz, an auto painter who was 48 years old on the specific date of injury, as well as the last day of the companion CT period, when he injured his bilateral knees. The cases settled via joint stipulated award on 4/4/24. The case later proceeded to trial on the issues of Labor Code Section 5800 interest, 5813 sanctions, 5814 penalties, and 5814.5 attorney fees, the resulting decision from which Applicant now appeals.

Said decision found that Applicant was entitled to a 20% penalty of $5,829.74 pursuant to Labor Code Section 5814, but did not set aside a portion of that for attorney fees, and also found that nothing was owed under Sections 5800, 5813, or 5814.5.

Petitioner contends that by the order, decision, or award that the court acted in excess of its powers, that the evidence does not justify the findings of fact, and that the findings do not support the order, decision, or award. An answer has not yet been filed by Defendant at the time of this report. Based on the discussion below, the court recommends that the Petition either be denied, or in the alternative that the court's decision be amended to allow up to 15% in attorney fees from the $5,829.74 awarded in penalties to compensate Applicant's attorney for his services in obtaining the penalty for his client, but otherwise affirming the decision.

II
FACTS

Various periods of TD were at issue in this case. One such period was 4/11/19 through 12/19/19. Defendant paid this period timely but at a reduced rate. It was not until a trial regarding earnings that the correct rate was determined in an F&O dated 8/2/19. That decision was then appealed by Defendant. The court wrote in its opinion that:

> according to Applicant's verified petition of 9/13/24, it took Defendant until 4/15/20 to pay retro TD for the period of 4/11/19 through 12/19/19 subsequent to the 8/2/19 F&O which established the correct earnings. Granted, the case was up on appeal, but that decision issued on 1/27/20. Payment was not made until 82 days later.

The court found that to be an unreasonable delay and awarded a 20% penalty per Labor Code Section 5814 on the amount of TD that was delayed for that period.

TD for periods other than 4/11/19 through 12/19/19 were in dispute until the parties settled the retroactive periods in the 4/4/24 stipulated award.

III

DISCUSSION

Applicant first argues on p. 2, lines 2-5 of the petition for reconsideration that, based on the stipulations with request for award dated 3/22/24, Defendant admitted that payment of TTD was late. The stipulations provided on p. 7, paragraph 9, that Defendant would pay retroactive TTD of $87,834.30. However, while the court did find an unreasonable delay with respect to retroactive TD for the period of 4/11/19 through 12/19/19, the court did not find the delay unreasonable for any other periods of TD. As the court explained in its opinion on decision:

> We do not find there to be an unreasonable delay with respect to any other TD for periods other than 4/11/19 through 12/19/19. Those other periods of claimed TD were in dispute. Defendant was alleging the employer could have provided modified duties had the Applicant not quit, and they were also disputing whether he was earning income from his own business. There was also a discrepancy as to causation with some medical reports suggesting Applicant was TD due to a specific injury while QME Dr. Kim only found a CT in Exhibits P and Q. And, per Defendant's trial brief, "Judge Yee opined that the medical records did not support temporary total disability, and that the applicant testified he was working." This was on p. 2 of Judge Yee's Opinion on Decision, dated 3/8/18. The TD issue was also deferred repeatedly by agreement per Applicant's own admission. And the first day of trial for the TD issue, which was 6/10/21, got continued to an MSC on 7/14/21, at which Applicant asked to go off calendar. A new DOR re: treatment was then filed on 4/6/22. TD was not listed as an issue. Finally a new DOR was filed for the TD issue on 11/7/23 and a trial was again set on that issue for 3/21/24. That trial also went off calendar because the parties had reached a settlement. None of this shows any unreasonable delay for the periods other than 4/11/19 through 12/19/19.

Applicant next contends that on p. 3, lines 7-8, of the petition for reconsideration that the TD issue was tried early and that "applicant received an award in his favor noting his entitlement to TTD benefits at his average weekly wages…." And Applicant again asserts on p. 5, line 17 that Defendant was "ordered to pay TTD" as a result of that same trial. And then on line 25, Applicant refers to the Commissioners' Opinion on Decision after Reconsideration dated 1/27/20 as a "new Award." But, as the court explained in its opinion on decision:

> Applicant contends that Judge Yee's F&O of 8/2/19 was an award, and that once the Commissioners essentially upheld it on 1/27/20 that payment became due as of 3/20/20. ***The 8/2/19 F&O was not an award.*** That decision merely determined the average weekly earnings of the Applicant, which was $1,826.26. The issue of retroactive TD was specifically deferred. Although this decision may have had the effect of proving that TD paid for the period of 4/11/19 through 12/19/19 had been underpaid, there was no order to pay the difference at that time.

This also happened to be the basis for the court to hold that no Labor Code Section 5800 interest was owed on the retroactive TD. The court further pointed out that while such interest would be applicable to the stipulated award approved on 4/4/24, the parties expressly stipulated that this was waived if the award was paid within 30 days, which it was.

Applicant argues on p. 8, lines 12-18 that the undersigned failed to appreciate that Applicant had to file for multiple hearings, had to proceed forward in multiple trials, and had to respond to a petition for reconsideration filed by the Defendant simply to get Applicant paid at the correct rate, and that the court only awarded a 20% penalty and no 5814(a) penalties and costs to the attorney. But the court noted above that at many of these hearings, the parties agreed to defer the TD issue. Also, there is no provision for costs or attorney fees in Labor Code Section 5814(a). The court is also not required to issue a 25% penalty but must accomplish a fair balance. As the court explained in its opinion:

> Under Labor Code Section 5814, the amount of compensation unreasonably delayed or denied shall be increased by up to 25% of the value of the compensation unreasonably delayed or denied, or up to $10,000 whichever is less. The increase could have been as little as 10% had Defendant paid a self-imposed penalty pursuant to Labor Code Section 4650. Since they elected not to pay a self-imposed penalty, then the penalty shall be in excess of 10%. This court typically awards either a penalty of 15%, 20%, or 25% depending on the severity of the delay and any other relevant circumstances.

> Our decision on this issue must accomplish a fair balance and substantial justice between the parties. The delay here was 82 days long, and there were no mitigating arguments made by Defendant. As the court has seen much longer delays than this, the court will not impose the maximum penalty, but instead hereby imposes a 20% penalty.

As to Labor Code Section 5813, although Applicant briefly recites the code section on p. 9, lines 5-10, he does not explain its application to the facts of the case. This was also noted in the court's opinion, as follows:

> Labor Code Section 5813 requires bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. Pursuant to Labor Code Section 5813 and CCR Section 10421, sanctions can be raised via petition or on the court's own motion. A petition is a request for court action pursuant to CCR Section 10510(a). But there is no petition for sanctions here. Although Labor Code Section 5813 is mentioned in the title of the petition on the first page, it is never discussed in the actual body of the petition and there is no specific request for sanctions in its prayer. Rather, the petition discusses at length Applicant's arguments under Labor Code Sections 4650, 5814, 5800, and 5814.5, in that order. It is Applicant's burden to show how there are any bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. For what it's worth, Applicant did actually discuss Labor Code Section 5813 in their trial brief of 12/12/25. But this was just a quotation of the code section itself with no discussion of its application to the facts of the case. Having no actual petition for sanctions, the other option would be for the court to find sanctions on its own motion. But discerning no obvious bad faith conduct by the Defendant here, the court declines to impose sanctions against the Defendant on its own motion.

As to Labor Code Section 5814.5 attorney fees, coupled with the court's earlier explanation that Judge Yee's 8/2/19 F&O was not an award, the court explained in its opinion that:

> Labor Code Section 5814.5 requires the payment of reasonable attorney fees when the payment of compensation has been unreasonably delayed or refused *subsequent* to the issuance of an award that has secured the payment of compensation pursuant to Section 3700. In other words, this section would only be applicable if Defendant had delayed or refused the payment of TTD *subsequent to the issuance of the 4/4/24 stipulated Award.* There is no allegation that Defendant delayed payment following that award. Applicant's argument deals solely with the delay in payment prior to that award. As such, no attorney fees pursuant to Section 5814.5 are due.

Applicant argues on p. 10, lines 10-12 that "failure to refer the case to [Judge Yee] in Pomona was also a violation of his due process rights since [Judge Yee] had heard the case from the beginning." The court disagrees that this was a violation of Applicant's due process, which is simply notice and opportunity to be heard. Applicant received that here in Riverside. Labor Code Section 5700 does envision that once a case is heard by a judge that it should be continued to be heard and concluded by that same judge, and in practice, cases are often transferred from one venue to another to follow a judge that has transferred. Here, however, the court in consultation with the presiding judge in Riverside, determined that transfer to Judge Yee in Pomona was not necessary, as this trial was akin to supplemental proceedings because the case in chief had essentially already resolved by stipulated award. Similarly, cases set for lien trials do not always get sent back to the trial judge who originally heard the case in chief. The point seems to be moot anyway because Applicant writes on p. 10, line 14 that he "conceded to trial in Riverside." Indeed, once the decision to keep the case here in Riverside was made, there was no further objection.

Applicant goes on to argue that a 10% Section 4650 penalty should have been paid by the Defendant, presumably on the amount that was paid for retroactive TD as part of the stipulated award. But the case of *Leinon v. Fishermen's Grotto* (2004) 69 CCC 995, 998 (en banc) held that a 4650(d) penalty is applicable only when liability for disability payments is not in dispute. As long as the benefits are promptly paid within 14 days of the issue being resolved, then no penalty per Section 4650(d) is owed. Here, Defendant paid the retroactive TD agreed to in the stipulations with request for award approved on 4/4/24 just seven days later on 4/11/24. As for the earlier payment of TD for the period of 4/11/19 through 12/19/19, although no Section 4650 penalty was paid, the court has awarded a 20% Section 5814 penalty. Pursuant to Section 5814(d), had Defendant paid a 4650 penalty for that period, then the court would have been obliged to deduct it from the amount awarded under Section 5814.

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied, or in the alternative that the court's decision be amended to allow up to 15% in attorney fees from the $5,829.74 in penalties awarded but otherwise affirming the decision.

Respectfully submitted,

DATE: 4/25/26

Ashley L. Odor
WORKER'S COMPENSATION JUDGE