WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RUBEN PEREZ, ***Applicant***

vs.

BEYER SERVICES, LLC;
ALASKA NATIONAL, administered by PACIFIC COMPENSATION INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ19351944
Lodi District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Lien claimant, applicant's former attorneys, seeks reconsideration of the Findings and Award (F&A) issued on April 6, 2026. The workers' compensation administrative law judge (WCJ) found that lien claimant was entitled to penalties pursuant to Labor Code section 5814[1] payable by applicant's current attorney for failure to pay a stipulated award to resolve an attorney fee dispute timely, and that sanctions, costs, and attorney's fees pursuant to section 5813 were not warranted, nor were attorney's fees pursuant to section 5814.5.

Lien claimant contends that the WCJ erred by not awarding reasonable expenses pursuant to section 5813.

We did not receive an answer from any party. The WCJ issued a Report and Recommendation (Report) recommending denial of lien claimant's Petition.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will grant reconsideration, amend the F&A to find that lien claimant's petition for penalties is denied and to

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

award payment to lien claimant pursuant to the August 14, 2025 agreement, and otherwise affirm the decision of April 6, 2026.

FACTS

Applicant claimed to have sustained an injury on May 8, 2024, arising out of and in the course of employment to the back and spine. On January 7, 2025, a WCJ issued an Order Approving a Compromise and Release (OAC&R) in the amount of $22,500.00, "less AA's fee." The OACR ordered that "[applicant's current attorneys] to resolve prior AA lien and hold PCIC harmless of lien." Attorney's fees were ordered in the amount of $3,375.00.

On March 3, 2025, lien claimant filed a Declaration of Readiness to Proceed (DOR) for a lien conference to resolve the attorney's fees. A hearing on May 5, 2025 was taken off calendar by joint agreement. On May 15, 2025, lien claimant re-filed a DOR for the same dispute. On July 21, 2025, a second hearing occurred during which trial was set. On August 14, 2025, the parties entered into a Stipulation, wherein applicants' current attorneys would take $2,668.00 and lien claimant would take $707.00, which was approved by the WCJ. There is nothing in the Stipulation that states how payment is to be made. The WCJ did not designate service of the order, and there is no proof of service in the record.

On September 29, 2025, lien claimant filed a Petition for Penalty, alleging that payment had not been received. Lien claimant requested a penalty of 25% plus 10% interest and attorney's fees.

On November 5, 2025, lien claimant filed a DOR for a lien conference to "force applicant counsel to provide settlement check and resolution of penalties demand made 09/29/25." At the mandatory settlement conference on February 18, 2026, the matter was set for trial.

Trial went forward on March 16, 2026. The issues set for trial were (1) attorney's fee, (2) penalties, (3) interest, (4) Labor Code section 5813, and (5) enforcement of Stipulation and Order. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 2:11-16.)

Angela Carriedo, the executive assistant at applicant's attorney's firm, testified in relevant part as follows. (Reporter's Transcript of Proceedings (Transcript); 8:17-21.) She is in charge of issuing checks to lien claimants but also has access to Quickbooks to verify transactions. (*Id*. at 9:6, 18.) In this matter, though, she did not issue the check but could verify that the check in the amount of $707.00 issued on February 17, 2026. (*Id.* at 9:20-10:2 and 11:14-16.) The witness testified that it is not their practice to make a copy of the check before it is mailed. (*Id.* at 11:1-3.)

In regard to payment, she could not provide any information as to why the check was sent late; she also confirmed that the system does reflect a settlement of the fee in August of 2025. (*Id*. at 15:20-16:2.) They did not receive the penalty petition or a demand letter in September of 2025. (*Id*. at 16:8-14.) Prior to the issuance of the check in February 2026, there were no instructions provided to the staff to issue a check. (*Id*. at 17:7-10.) On March 3, 2026, and March 10, 2026, they emailed lien claimant without response. (*Id*. at 18:6 & 19:8-12.)

At the conclusion of testimony, lien claimant made a statement as an offer of proof indicating that lien claimant's office had not located a check from applicant's attorneys. (*Id*. at 21:7-10.)

On April 6, 2026, the WCJ issued the F&A. In his Opinion, the WCJ stated that he awarded penalties under section 5814(a) citing the approximately six-month delay in paying lien claimant the fee split, which the WCJ found to be unreasonable. The WCJ awarded a 25% penalty as a result. He likewise ordered interest to be paid pursuant to section 5800. The WCJ declined to award reasonable expenses pursuant to section 5813 as he found no evidence of bad faith or frivolous tactics. Additionally, he did not award fees pursuant to section 5814.5 as applicant's attorneys are not an employer for the purposes of the section.

DISCUSSION

I.

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.
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> (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 May 15, 2026, and 60 days from the date of transmission is Tuesday, July14, 2026. This decision is issued by or on June 30, 2026, so that we have timely acted on the petition as required by section 5909(a).

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on May 15, 2026, and the case was transmitted to the Appeals Board on May 15, 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 May 15, 2026.

II.

Pursuant to section 5813(a), the Workers' Compensation Appeals Board has the discretionary power to order the payment of sanctions for "bad-faith actions or tactics which are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813(a).) Bad-faith actions or tactics are defined as "actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit" and include "[b]ringing a claim, conducting a defense or asserting a position: (A) That is: (i) Indisputably without merit; (ii) Done solely or primarily for the purpose of harassing or maliciously injuring any person; and/or (iii) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation…." (Cal. Code Regs., tit. 8, § 10421(b)(6).) Sanctions under section 5813 are designed to punish litigation abuses and to provide the court with a tool for curbing improper legal tactics and controlling their calendars. (*Duncan v. Workers' Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294, 302.) Accordingly, sanctions are similar to penalties under section 5814, in that they are designed to have both remedial and penal aspects. (See *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 (Appeals Board En Banc).)

Under section 5813 and WCAB Rule 10421, sanctions are discretionary; under no circumstances is a WCJ 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 the WCJ explained in the Report, lien claimant did not present any evidence that applicant's current attorneys acted frivolously or with intention to cause delay; instead, the testimony at trial indicated that a mistake occurred. In addition, as discussed further below, the Stipulation was silent as to payment. On this record, lien claimant provided notice to applicant's attorneys that he expected payment in the penalty petition of September 29, 2025, but there is no evidence that lien claimant attempted to collect payment before that, and no evidence of any attempts thereafter that would demonstrate that applicant's attorney chose to ignore a request for payment. For the reasons stated in the Report, we are persuaded that the WCJ did not abuse his discretion in declining to impose sanctions and attorney fees in this matter. Therefore, we do not disturb the WCJ's decision as to section 5813.

III.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. I.A.C.* (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. I.A.C.* (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. I.A.C.* (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

Here we observe that the F&A awards penalties to lien claimant pursuant to section 5814, which is a legal error. Under section 5814(a), when payment of *compensation* pursuant to an award has been unreasonably delayed or refused, the part of the payment that has been delayed or refused shall be increased up to twenty five percent (25%) or $10,000.00 whichever is less.

We highlight the long-held recognition that any penalty under section 5814 belongs to *applicant*, rather than their attorneys or any lien claimant. (See *Vogh v. Workers' Comp. Appeals Bd.* (1968) 264 Cal.App.2d 724, 728 [33 Cal.Comp.Cases 491] ["If the [Labor Code section 5814] penalty is appropriate, it applies to the compensation to which the applicant is entitled and it is payable to the *applicant* and not to the lienholder"]; see also Lab. Code, § 4902.) Under subdivision (a), compensation is increased after a finding of unreasonable behavior by defendant. As a result, the "penalty" is actually part of the award, *the award which is applicant's*. (See *Mintzer v. Workers' Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 1491.) Therefore, by the plain language of section 5814, even when the penalty is awarded for unreasonable delay in payment of attorney's fees, the penalty is to be awarded to applicant, and not to applicant's attorneys. Thus, any appropriate award of penalties would not be payable to lien claimant, but to applicant.

Moreover, it has been held that even though attorney's fees generally are payable against "compensation" they may be a separate class of benefit. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (1981) (*LaFavor*) 117 Cal.App.3d 143, 150 [46 Cal.Comp.Cases 348].) Compensation is defined as including, "every benefit or payment conferred by this division *upon an injured employee*." Likewise, "the penalty for unreasonable delay in the payment of compensation is designed to help an employee obtain promptly the cure or relief he is entitled to under the law, and to compel his employer to provide this cure or relief in timely fashion." (*Davison v. I.A.C.* (1966) 241 Cal.App.2d 15, 18 [31 Cal.Comp.Cases 77]). As we stated in our en banc opinion in *Ramirez*, *supra*, 73 Cal.Comp.Cases 1324, section 5814 affords a WCJ discretion in determining the penalty which should be assessed, with a primary view towards the goals of encouraging the prompt payment of benefits by making delays costly on *defendants*, and of ameliorating the effects of any delays on the *injured worker*.

In this case, the party seeking penalty for unreasonable delay is the lien claimant, and the party they are seeking this remedy from is the current attorney. Likewise, as soon as the employer satisfied all payments as outlined in the C&R, the species of benefit presumably held in trust by applicant's current attorneys was no longer "compensation." Section 5814 does not contemplate that the penalty would be paid by any party other than the employer nor does it compensate a lien claimant for delays in payment of a fee that is no longer compensation.

Finally, we note that the OACR did not actually order that defendant pay the attorney's fees to applicant's current attorneys and it did not order that applicant's current attorneys hold the amount of fees in trust. More significantly, the Stipulation does not identify how payment of $707.00 is to be made to lien claimant nor does it identify when payment is to be made. Instead, it appears that the Stipulation is simply an agreement as to the division of the attorney's fees. Thus, it is not a true award, and interest is not appropriate.

Accordingly, we grant the Petition for Reconsideration, affirm the F&A, except that we amend it to find that lien claimant's petition for penalties is denied, and to award lien claimant payment of $707.00 pursuant to the Stipulation.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the decision of April 6, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of April 6, 2026 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

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2. Lien claimant's Petition for Penalties pursuant to Labor Code section 5814 is denied.

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AWARD

Award hereby issues as follows:

Lien claimant John Gonzalez and Central Valley Injured Worker Legal Clinic, Inc., is Awarded $707.00 pursuant to the August 14, 2025 Stipulation, less amounts already paid by Alvandi Law Group. Interest is waived if payment is made within 30 days of this Award.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 14, 2026

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

RUBEN PEREZ
CENTRAL VALLEY INJURED WORKER LEGAL CLINIC
ALVANDI LAW
COPPERPOINT LEGAL
PACIFIC COMP CLAIM

TF/md

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