

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

**JAVIER NAVARETTE, *Applicant***

**vs.**

**CENTRAL VALLEY CONCRETE, ZURICH AMERICAN INSURANCE, *Defendants***

**Adjudication Number: ADJ10346260  
Stockton District Office**

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

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Finding of Fact and Orders of October 19, 2022, wherein it was found that defendant was liable for a 15 percent Labor Code section 5814 penalty "of the 289.4 miles submitted plus interest." In this matter, in a Findings and Award of December 11, 2020, it was found that while employed during a cumulative period ending January 25, 2016 as a concrete truck driver, applicant sustained industrial injury to his back, neck, lower extremities and psyche causing permanent disability of 35% and the need for further medical care.

Applicant contends that the WCJ erred in not assessing the maximum penalty of 25% allowed by Labor Code section 5814. We have not received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration and amend the WCJ's decision to assess the maximum 25% penalty allowed by Labor Code section 5814.

On December 9, 2021, applicant submitted logs for mileage to medical appointments between October 4, 2018 to September 1, 2021 for reimbursement.<sup>1</sup> Pursuant to Labor Code section 4603.2(b)(2), defendant had 45-days, or until January 23, 2022, to submit payment. However, by March 23, 2022, defendant had not submitted payment, and applicant filed a petition

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<sup>1</sup> The December 9, 2021 letter and attachments also request reimbursement for prescription medicine. However, it appears that only a penalty for the unreasonable delay in reimbursement for mileage is currently at issue.

for Labor Code section 5814 penalties. It appears that defendant finally paid for the mileage on July 19, 2022 – 222 days after submission of the mileage logs, and 177 days after payment was due – while the petition for penalties was pending.

Labor Code section 5814(a) states:

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.

In *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 (Appeals Board en banc), we emphasized that Labor Code 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. To that end, in *Ramirez*, we listed several factors to be considered in assessing a Labor Code section 5814 penalty. The factors listed in *Ramirez* are: (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, instead, 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*, 73 Cal.Comp.Cases at pp.1329-1330.)

Here, especially given the relatively small amount of money owed in mileage, only a maximum penalty would be consistent with the statute's primary goal of encouraging the prompt payment of benefits. The amount unreasonably delayed by defendant, including the Labor Code

section 4603.2(b)(2) late fee and interest comes out to approximately \$200.<sup>2</sup> A penalty of 15%, or only about \$30, does not sufficiently encourage the prompt payment of benefits or adequately compensate the disabled injured worker for the delay in payment. Here, the delay in payment was over seven months from the submission of the mileage logs, and over three months after the filing of the petition for penalties. Defendant did not place any evidence regarding any of the mitigating *Ramirez* factors. Therefore, we find a maximum 25% penalty appropriate to the facts herein.

Accordingly, we will grant reconsideration and amend the WCJ's decision to reflect that applicant is entitled to a maximum Labor Code section 5814 penalty of 25% of the unreasonably delayed mileage.

For the foregoing reasons,

**IT IS ORDERED** that that Applicant's Petition for Reconsideration of the Finding of Fact and Orders of October 19, 2022 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Finding of Fact and Orders of October 19, 2022 is **AMENDED** as follows:

#### **FINDINGS OF FACT**

1. The parties stipulate that defendants did not pay the mileage and prescriptions that were part and parcel of Central Valley's December 9, 2021 correspondence, which is Applicant's Exhibit 6 on July 19, 2022. Penalties and interest were not part of that payment.
2. The parties stipulate that all other issues are deferred, specifically penalties pursuant to 5814, 5814.5 and medical treatment issues.
3. Defendant unreasonably delayed the payment per LC5814 of medical mileage reports from Applicant Submission dates 11/6/19; 10/8/21 (2 pages) Applicant's 6 pages 1-3. 289.4 miles total.
4. This was not a delay from a previous award.

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<sup>2</sup> It is unclear the amount that defendant ultimately paid for the mileage, but it appears that the WCJ found 289.4 miles at issue (our calculation of the mileage logs found 286.4 miles). Mileage reimbursement during the years 2018 to 2021 fluctuated between 54.5 cents per mile and 58 cents per mile. (Lab. Code, § 4600, subd. (e)(2); <<https://www.dir.ca.gov/dwc/WorkersCompensationBenefits.htm>> [as of December 28, 2022].) Without making any formal finding on the issue, according to our calculations, the mileage, 4603.2(b)(2) late fee and interest total approximately \$200.00.

**ORDER**

a) Defendant is to pay a 25% penalty of the 289.4 miles submitted plus interest.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**December 30, 2022**

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

**JAVIER NAVARETTE  
CENTRAL VALLEY INJURED WORKER LEGAL CLINIC  
SAMUELSEN, GONZALEZ, VALENZUELA & BROWN**

**DW/abs**

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