

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

ABRAHAM CHRISTIAN, *Applicant*

vs.

RING SECURITY AGENCY, INC.; WESTPORT INSURANCE COMPANY, *Defendants*

**Adjudication Numbers: ADJ4316583 (SAL 0108105) ADJ3920506 (MON 0315103)
Salinas District Office**

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

Applicant and defendant each seek reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of March 2, 2022, wherein it was found that "Interest was payable to the Law Office of Vic Redula from the date of the Order issued on 2/22/21 until paid on 2/25/21" (Finding No. 5), "A penalty under [Labor Code] section 5814 is payable to the Law Office of Vic Redula on the unpaid interest" (Finding No. 6), and "A reasonable attorney's fee per [Labor Code] section 5814.5 is payable to the Law Office of Vic Redula..." (Finding No. 7.)

In these matters, by way of a Compromise and Release approved on February 10, 2020, in exchange for \$400,000.00, applicant settled his claims that while employed as a security officer on December 4, 2002 (ADJ3920506) and October 6, 2003 (ADJ4316583), he sustained industrial injury to his neck, back, knee, digestive system, psyche, eyes, and in the forms of sleep dysfunction, sexual dysfunction, hypertension, and temporomandibular syndrome. The Compromise and Release set aside \$60,000.00 in attorneys' fees "to be held in trust until further written agreement between current and prior applicant attorneys of record or further order on the court without recourse against these settling defendants." (Compromise and Release, ¶8.) The parties agreed that "The Settlement sum includes any claim for interest up to thirty (30) days from service of the Order Approving Compromise and Release upon defendant." (Addendum 9(A) to Compromise and Release, ¶6.) In a Findings and Award of February 22, 2021, an Order was

issued “that Defendant pay the attorney’s fees withheld pending resolution of the dispute, as follows:

1. \$28,500.00 to Vic Redula, Esq.;
2. \$28,500.00 to Wachtel Law; and,
3. \$3,000.00 to the Law Offices of Rucka, O’Boyle, Lombardo & McKenna.”

Three days later, defendant paid Mr. Redula the \$28,500.00 but did not add any interest to its payment. Mr. Redula insisted on interest dating back to the date of the Order Approving the Compromise and Release, and later filed a Petition for Penalties for the unreasonable refusal to pay interest. Defendant contends that it owes no interest.

In his Petition, applicant contends that the WCJ erred in not computing interest from the February 10, 2020 approval of the Compromise and Release, and not basing a Labor Code section 5814 penalty on this amount. In its Petition, defendant contends that it owes no interest, let alone any Labor Code section 5814 penalty or section 5814.5 attorney’s fee. We have not received any answers and the WCJ has filed a Report and Recommendation on Petitions for Reconsideration (Report).

We will deny the applicant’s Petition for the reasons stated in the Report. As stated by the WCJ:

By the terms of the C&R, the attorney’s fees were not due and payable until either a written agreement among the attorneys or further order of the court. The order to pay Mr. Redula and the other attorneys did not occur until 2/22/21, when it became due and payable. Interest does not run until payment is due and payable, not when the C&R was approved on 2/20/20. Per Labor Code § 5800, “All awards of the appeals board either for the payment of compensation or for the payment of death benefits, shall carry interest at the same rate as judgments in civil actions on all due and unpaid payments from the date of the making and filing of said award. Such interest shall run from the date of making and filing of an award, as to amounts which by the terms of the award are payable forthwith. *As to amounts which under the terms of the award subsequently become due in installments or otherwise, such interest shall run from the date when each such amount becomes due and payable.*” (Emphasis added.)

Interest was thus payable from the date of the Order issued on 2/22/21 until paid on 2/25/21.

However, with regard to defendant’s Petition, we will grant reconsideration and find that there was no unreasonable refusal to pay interest. Labor Code section 5814 mandates penalties

when compensation has been “*unreasonably* delayed or refused, either prior to or subsequent to the issuance of an award....” (Lab. Code, § 5814, subd. (a) [emphasis added].) As we stated in our en banc opinion in *Ramirez v. Drive Financial Services* (2008) 73 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.) A delay or a refusal to pay is 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].)”

In this case, the defendant has presented sufficient evidence that it had genuine doubt from a legal standpoint as to its liability to convince us that a Labor Code section 5814 penalty and section 5814.5 attorneys’ fees are not warranted. Defendant had a nonfrivolous argument that it “paid” the attorneys’ fees under the Compromise and Release by placing the combined \$60,000.00 attorneys’ fee in trust within 30 days of the Order Approving Compromise and Release, and that the subsequent division of this Award was not subject to interest. Defendant also had a nonfrivolous argument that the 30-day waiver of interest in the Compromise and Release was tolled until an agreement or order to divide attorneys’ fees. While the WCJ ultimately decided that defendant’s interpretation was incorrect given the precise wording of the Compromise and Release, we do not find defendant’s arguments unreasonable. Since defendant had genuine doubt as to its liability, and indeed successfully defended against applicant’s claims of interest dating back to the Order Approving Compromise and Release, Labor Code section 5814 penalties and section 5814.5 attorneys’ fees are not warranted. We therefore grant reconsideration and amend the WCJ’s decision to find that defendant did not unreasonably refuse the payment of interest.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Award of March 2, 2022 is **DENIED**.

IT IS FURTHER ORDERED that Defendant's Petition for Reconsideration of the Findings and Award of March 2, 2022 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of March 2, 2022 is **AMENDED** as follows:

FINDINGS OF FACT

1. The stipulations set forth in the 9/17/20 Minutes of Hearing are hereby incorporated.
2. Both cases were resolved by Compromise and Release and Order Approving Compromise and Release on 2/10/20.
3. The division of attorney's fees issue was resolved by Findings and Award issued on 2/22/21.
4. Per the WCJ, this matter was tried by virtue of the teleconference system.
5. Interest was payable to the Law Office of Vic Redula from the date of the Order issued on 2/22/21 until paid on 2/25/21.
6. Defendant did not unreasonably refuse or delay the payment of interest. Thus, Applicant's Petition for Penalties is **DENIED**.
7. No Labor Code section 5813 sanctions are payable by either Applicant's attorney or Defendant.

AWARD

AWARD IS MADE in favor of THE LAW OFFICE OF VIC REDULA and against WESTPORT INSURANCE COMPANY, as follows:

- a. Interest on \$28,500.00 from 2/22/21 through 2/25/21.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 9, 2022

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

**CHRISTIAN ABRAHAM
VIC REDULA
CHONG LEGAL GROUP**

DW/oo

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