WORKERS' COMPENSATION APPEALS BOARD  

STATE OF CALIFORNIA  

KATHRYN GREEN-RHOADS,  

Applicant,  

vs.  

GRAN TEASLEY, dba TEDDY BEAR CARPET CARE; NATIONAL AMERICAN INSURANCE COMPANY,  

Defendant(s).  

Case No. RDG 0060772  

OPINION AND DECISION  
AFTER RECONSIDERATION  

On March 4, 1997, the Workers’ Compensation Appeals Board (Board) granted lien claimant’s (petitioner) Petition for Reconsideration. Reconsideration was granted for further study of the facts and the applicable law in order to give the Board a complete understanding of the record and to enable it to make a just and reasoned decision. The Board has now completed its review, and for the reasons set forth below, will rescind the workers’ compensation referee’s (WCR) Order assessing Labor Code section 5813 sanctions. The Board finds that Labor Code section 5813 is applicable only to Applications for Adjudication of Claim (applications) which are filed on or after January 1, 1994 for injuries occurring on or after January 1, 1994. Therefore sanctions may not be assessed in the present matter where the injury occurred prior to January 1, 1994.

Petitioner sought reconsideration of the Findings and Order issued December 9, 1996, in which the WCR assessed sanctions in the sum of $1,729.50 against petitioner for its “willful failure” to appear at a noticed hearing on January 19, 1996 (sic, the hearing was actually held on January 18, 1996). Petitioner contended that the Board’s authority to assess sanctions applies only to cases in which an application is filed on or after January 1, 1994, and “[t]he application in this matter was filed in 1992, well before
section 5813 became effective.” Petitioner further contended that it “has acted with reasonable justification” and the imposition of sanctions is “unjust.”

Applicant alleged industrial injury to the spine, neck and head in May of 1992. No application was filed with the Board. The Board’s file was opened by pre-application pleadings filed on April 18, 1994. The pre-application pleadings included a DWC-1 form (Employee’s Claim for Workers’ Compensation Benefits), dated February 10, 1994. The claim form does not indicate when the employer first learned of applicant’s alleged injury.

On August 29, 1995, the parties settled applicant’s claim by way of Compromise and Release agreement (C&R) in the sum of $2,500.00, with a Thomas\(^1\) finding. Paragraph No. 7 of the C&R contained the following language regarding petitioner’s lien claim:

> “Lien of Cox Chiropractic to be paid, adjusted or adjudicated by defendants. WCAB jurisdiction requested. Defendant insurer to hold applicant harmless.”

The Order Approving Compromise and Release (OAC&R) issued on September 21, 1995.

It was in connection with proceedings involving petitioner’s lien claim and specifically petitioner’s failure to appear at a rescheduled hearing, that the issue and imposition of sanctions occurred. While those facts are somewhat lengthy, and aside from the merits, the initial issue is whether Labor Code section 5813 sanctions may be imposed where the application was filed after January 1, 1994, but involves a pre-January 1, 1994 injury.

Labor Code section 5813 provides:

---

\(^1\) Thomas refers to Thomas v. Sports Chalet, Inc., (1977) 42 Cal.Comp.Cases 625 (En Banc Decision). In Thomas, the Board found that the parties may compromise and release present or future rehabilitation rights if there are in the case serious, legitimate, and good faith issues (i.e., genuine doubt or question as to the validity of the claim) that, if resolved against the worker, would result in denial of all benefits.
“(a) The workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars ($2,500) to be transmitted to the General Fund.

“(b) The determination of sanctions shall be made after written application by the party seeking sanctions or upon the appeal board's own motion.

“(c) This section shall apply to all applications for adjudication that are filed on or after January 1, 1994. Leg.H. 1993 ch. 121, effective July 16, 1993, ch. 1242.”

As reflected above, on July 16, 1993 the Legislature added Section 5813 to the Labor Code and provided the Board with authority to award sanctions. Subdivision (c) of Section 5813 provides that the section shall apply to all applications for adjudication of claim that are filed on or after January 1, 1994. The 1993 amendment was part of a comprehensive legislative package, including changes to the Insurance Code, designed to reform the workers' compensation system and to reduce its costs. This package was

2 Labor Code section 5813 parallels Code of Civil Procedures section 128.5. This section provides, in part:

“(a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

***

“(b) For purposes of this section:

***

“(2) Frivolous means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.”

GREEN-RHOADS

For these reasons, the Board finds that the WCR did not have authority to grant defendant’s petition and award sanctions for petitioner’s alleged misconduct pursuant to Labor Code section 5813. Accordingly, the Board will rescind the Findings and Order (Sanctions) of December 9, 1996. The Board will substitute in place thereof an order denying not only defendant's petition for sanctions pursuant to Labor Code section 5813, but also denying petitioner's petition for sanctions. This latter petition was in effect denied by the WCR in the December 1996 decision and this order will, in effect, affirm that denial.

For the foregoing reasons,

IT IS ORDERED that as the Board’s Decision After Reconsideration, the Findings and Order (Sanctions) issued December 9, 1996, be, and the same hereby is, RESCINDED, and the following Order is SUBSTITUTED therefor:

ORDER

IT IS HEREBY ORDERED that both defendant National American Insurance Company's and lien claimant Golden State Health Care Recovery's Petitions for Sanctions pursuant to Labor Code section 5813, be, and they hereby are, DENIED.

WORKERS' COMPENSATION APPEALS BOARD

/s/ COLLEEN S. CASEY

I CONCUR,

/s/ RICHARD P. GANNON

/s/ ARLENE N. HEATH

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

JULY 17, 1997

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD EXCEPT LIEN CLAIMANTS BUT INCLUDING PETITIONER LIEN CLAIMANT.

vp

GREEN-RHOADS