

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

ANA ROSA GONZALEZ, *Applicant*

vs.

**PATIN VINEYARD MANAGEMENT, insured by UNDERWRITERS INSURANCE
COMPANY, adjusted by SEDGWICK, *Defendants***

**Adjudication Number: ADJ11097484
Santa Rosa District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.

In the Findings and Award of February 3, 2020, the workers' compensation judge (WCJ) found that defendant unreasonably delayed payment of the Compromise and Release (C&R) entered into by the parties on or about August 19, 2019, justifying imposition of a 10% penalty in the amount of \$880.18, pursuant to Labor Code section 5814. The WCJ also found that applicant is entitled to interest from August 20, 2019 through November 26, 2019, and that applicant's attorney is entitled to attorney's fees pursuant to Labor Code section 5814.5. The WCJ deferred the fee amount pending further proceedings.

Defendant filed a timely petition for reconsideration of the WCJ's decision. Defendant contends, in substance, that because defendant did not act unreasonably in paying the C&R, the WCJ erred in assessing a penalty and attorney's fees. Defendant further contends that the evidence does not justify a finding that applicant is entitled to the interest awarded by the WCJ.

Applicant filed an answer.

The WCJ submitted a Report and Recommendation ("Report").

Based on our review of the record and applicable law, we will affirm the WCJ's award of interest but rescind the WCJ's assessment of a penalty and attorney's fees. As we explain below, defendant did not act unreasonably under the circumstances. Further, there is no basis to award

attorney's fees under section 5814.5 because the payment of compensation was not unreasonably delayed or refused after the C&R was issued.

We begin by reviewing the factual circumstances and legal basis used by the WCJ to support her imposition of a penalty and attorney's fees, as set forth in her Opinion on Decision:

This matter was resolved via Compromise and Release (C&R) on August 19, 2019. Pursuant to the settlement, payment in the total amount of \$8,801.75 was initially issued to the applicant two days after the C&R was approved, August 22, 2019. (Def. Exh. P.) Payment to the applicant was split between two checks, one in the amount of \$3,000.00 for the permanent disability and the other in the amount of \$5,801.75 allocated for future medical treatment. Defendant's initial settlement payments to both applicant and applicant's attorney were clearly timely.

In a fax 53 days later, on October 11, 2019, the applicant's attorney provided notice to the defendant that the applicant had not yet received her settlement checks, (App. Exh. 21.)

Subsequently, defendant stopped payment and reissued the applicant's two settlement checks on October 25, 2019. (App. Exh. 8.) Defendant followed up with the applicant attorney confirming the applicant's receipt of the settlement checks or, in the alternative, whether the payments should be stopped. (Def. Exh. T.) Absent a response, the defendant unilaterally stopped payment the next day on November 14, 2019. (Def. Exh. P.) A third set of applicant's settlement checks were sent to the applicant attorney's office on November 26, 2019 and subsequently deposited by the applicant. (App. Exh. 9.)

...

Consideration is given of the fact that until applicant's fax of October 11, 2019, defendant had no reason to doubt that it satisfied its legal obligations under the Compromise and Release. The defendant's emails of November 13 and November 25 went unanswered, resulting in the stop payment and reissuance of applicant's settlement checks. (App. Exh. 13/App. Exh. 10.) Prompt response from the parties may have eradicated or in the least mitigated this situation. Further, there is no evidence to suggest that there is a history of delayed payments in this case. Instead, this appears to be an

isolated instance that the defendant sought to promptly correct, although with difficulty, through a series of futile communication and reproduced checks.

Under these circumstances, a 10% penalty per Labor Code §5814 is appropriate. The penalty applies to the net amount of the Compromise and Release of \$8,801.75, which amounts to \$880.18 payable directly to the applicant.

To the above circumstances, we add that it appears one of the reasons applicant failed to receive her checks in a timely manner is that she was evacuated from her usual residence because of the wildfires that were burning in the vicinity at the time. This is shown by the testimony provided by applicant at trial on January 13, 2020:

The applicant doesn't know her current address, but it's in Sebastopol. She moved there about a month ago. Before that, she lived on Merlot Way in Windsor. She lived at that residence in August and October of 2019. The applicant was evacuated from Windsor due to the Kincadee fires. She was out of her house for about a week and a half. It was around October 26th that she was evacuated, and returned back home in the beginning of November.^[1]

She received the settlement checks on November 14th. She went to deposit the checks and withdraw cash. The bank wouldn't let her withdraw all the cash for security reasons. She initially withdrew \$1,000. She returned four days later to withdraw \$2,800. When she went back, she was told there was nothing in her account, and her checks had bounced. At that time, there were bank fees in the amount of \$150.

She did not get the checks until she picked them up from her attorney's office. She deposited them right away after picking them up. [...]

[...]

It is settled law that the only justification for a delay in paying compensation is reasonable doubt as to liability from a medical or legal standpoint. (*Kerley v. Workmen's Comp. App. Bd.* (1971) 4 Cal.3d 223 [36 Cal.Comp.Cases 152]; *State Compensation Ins. Fund v. Workers Compensation Appeals Bd.* (1998) 66 Cal.App.4th 1154 [63 Cal.Comp.Cases 1133].)

In this case, defendant could not have had a reasonable doubt concerning its duty to promptly pay applicant the proceeds that she was owed under the C&R. However, our analysis

¹ The locations mentioned by applicant are in Sonoma County, which was experiencing devastating wildfires at the time.

does not end there. Rather, the next question is whether defendant unreasonably delayed payment of the C&R after applicant failed to timely receive two sets of settlement checks that had *already been sent by defendant in a timely manner*. We believe that the failure of applicant and her attorney to timely communicate with defendant over the fate of the settlement checks played a key role in her failure to receive them until December 2, 2019. The WCJ spoke to this issue in her Opinion on Decision, noting that “defendant's emails of November 13 and November 25 went unanswered, resulting in the stop payment and reissuance of applicant's settlement checks. [...] Prompt response from the parties may have eradicated or in the least mitigated this situation. Further, there is no evidence to suggest that there is a history of delayed payments in this case. Instead, this appears to be an isolated instance that the defendant sought to promptly correct, although with difficulty, through a series of futile communication and reproduced checks.”

The above part of the WCJ’s analysis undermines her imposition of a penalty under the factual circumstances described in her Opinion on Decision. Although we disagree that a penalty is justified here, we agree with the WCJ’s statements that there was a failure of timely communication by both parties regarding the missing checks; that there is no evidence of a history of delayed payments; that the situation was an isolated instance that defendant sought to promptly correct; and that all of this happened in the context wherein applicant was not at her usual mailing address because she had been evacuated on account of the Kincaid wildfires. We further note that a certain amount of delay is inherent when a stop-payment is issued on a check that has already been timely mailed. Unfortunately, applicant’s bank imposed significant charges for bounced checks and insufficient funds. However, the regulation of banks is not within the Appeals Board’s purview.

As for attorney’s fees, Labor Code section 5814.5 only authorizes such fees “[w]hen the payment of compensation has been unreasonably delayed or refused subsequent to the issuance of an award[.]” For the reasons already discussed above, there was no unreasonable delay or refusal to pay compensation in this case. Hence, there is no basis to award attorney’s fees under section 5814.5.

Finally, although defendant also contests the WCJ’s finding that applicant is entitled to interest, we find no basis to overturn the finding. The WCJ correctly explained that the terms of the C&R provided that interest would be waived if the C&R was paid within 30 days, which did not happen. Defendant’s petition for reconsideration points to nothing in the language of the C&R

that would exempt defendant from liability for the payment of interest in this situation. We affirm the WCJ's award of interest.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award of February 3, 2020 is **AFFIRMED**, except that paragraphs (b.) and (c.) of the Award are **RESCINDED** and **DELETED** from said decision, Findings 6 and 9 are **RESCINDED**, and the following Findings 6 and 9 are **SUBSTITUTED** in their place:

FINDINGS OF FACT

6. Defendant did not unreasonably delay payment to applicant pursuant to the C&R, therefore applicant is not entitled to any increase under Labor Code section 5814.

9. Applicant's attorney is not entitled to attorney's fees under Labor Code section 5814.5.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

I DISSENT. (See Attached Dissenting Opinion)



/s/ MARGUERITE SWEENEY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 23, 2021

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

**ANA ROSA GONZALEZ
RICHARD MEECHAN
SAMUELSEN GONZALEZ**

JTL/bea

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

DISSENTING OPINION OF COMMISSIONER MARGUERITE SWEENEY

I join the majority in affirming the WCJ's award of interest, but I dissent on the issues of penalty and attorney's fees, which I would affirm with the clarification of the WCJ's findings as discussed below. Concerning the penalty amount, I am convinced the WCJ properly applied the factors laid out in *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 [Appeals Board en banc]. Still, I would amend the WCJ's findings to clarify and specify the unreasonable actions of defendant, thus providing the foundation for the penalty awarded by the WCJ pursuant to Labor Code section 5814. As I explain below, defendant acted unreasonably in stopping payment on the second set of settlement checks without notifying applicant, resulting in additional delay and hardship to her.

Preliminarily, I agree with the majority that not all of defendant's actions concerning the settlement checks were unreasonable. Relevant to the WCJ's third finding, I believe that the first set of checks that issued on August 22, 2019 did not involve an unreasonable act by defendant. Similarly, in connection with the WCJ's fifth finding, I believe that the second set of checks that were reissued on October 24, 2019 did not involve an unreasonable act by defendant. In reference to these two findings, it appears that the first set of checks never arrived, while the second set of checks was not received until November 14, 2019, due to the fires and evacuations in applicant's hometown of Windsor. However, defendant unreasonably failed to notify applicant on November 13, 2019 that defendant was stopping payment on the October 24, 2019 checks, and then defendant unreasonably failed to reissue checks until November 26, 2019. These unreasonable actions are the ones that justify imposition of a penalty under section 5814, and I would add a new finding to the WCJ's decision to make this clear.

The following chronology shows where defendant went wrong. On November 13, 2019, applicant's attorney's office contacted defendant with information that the second set of checks (October 24, 2019) had not arrived. Thus, as of November 13, 2019, it had been 20 days since the October 24, 2019 checks were issued. (See applicant's exhibit 10, email dated 11/13/19 from defense counsel to applicant's attorney; applicant's exhibit 11, email dated 11/25/19 between staff of applicant's attorney.)

On or about November 14, 2019, applicant notified her attorney that she received the checks that had issued on October 24, 2019. (See applicant's exhibit 18, 11/24/19 office memorandum of Angelica Finlaw, an office employee of applicant's attorney.) However,

defendant's benefit printout includes a log of checks to applicant, both issued and stopped, showing that on the same day, November 14, 2019, defendant unilaterally stopped payment on the October 24, 2019 checks. (Defense exhibit P.) Yet defendant failed to notify applicant or her attorney of this stop-payment.² The result of this, according to applicant's trial testimony, is that she deposited the October 24, 2019 checks into her bank account, the checks bounced, and the bank charged her a fee of \$150.00. (Summary of Evidence, 1/13/20, p. 6:10-14.)

Defendant's failure to notify applicant or her attorney that defendant was unilaterally stopping payment on the October 24, 2019 checks involved several unreasonable acts, justifying the penalty assessed by the WCJ under section 5814. First, defendant stopped payment on the checks without further confirmation of whether applicant had received them, which happened on November 14, 2019. Secondly, defendant failed to inform applicant or her attorney that defendant was stopping payment on the checks. Finally, defendant waited more than ten days to issue new checks, finally received by applicant on December 2, 2019. These unreasonable actions by defendant are described in the declaration of Andrea Dominguez, a paralegal employed by applicant's attorney. (See applicant's exhibit 23.) The declaration shows that defense counsel told Dominguez on November 25, 2019, for the first time, that defense counsel had contacted her client on November 13, 2019 and asked the claims adjuster to stop payment. Exhibit P shows that defendant failed to reissue another set of checks until November 26, 2019. The checks did not arrive in applicant's attorney's office until December 2, 2019. (See applicant's exhibit 20, internal office memorandum of applicant's attorney.)

Based on the foregoing chronology, I am persuaded that even though defendant initially addressed the problems with the checks, and even though the fires likely caused delays, it was unreasonable for defendant to stop payment on November 13, 2019 and then wait to find out what would happen, without notifying applicant's attorney. These actions of defendant caused additional delay, which I find to be unreasonable. Although the WCJ noted that applicant's attorney could have handled the situation differently, with better communication, defendant acted

² Exhibit S, an email from defendant's claims adjuster to defense counsel dated November 13, 2019, only establishes the dates that the first two sets of settlement checks issued, not that applicant or her attorney was ever advised about the same. Exhibit T, an email from defense counsel to applicant's attorney dated November 13, 2019, only confirmed that defense counsel was aware applicant had not received the second set of settlement checks and requested that applicant's attorney let defense counsel know if applicant's attorney wanted defendant to stop payment again and reissue another set of checks. However, defendant stopped payment anyway and did not reissue the final set of checks until November 26, 2019.

unreasonably regarding disposition of the settlement checks during the time period between November 13, 2019 and November 26, 2019. (*Khan v. Workers' Compensation Appeals Bd., Env'tl. Serv. Prods. Mfg.* (2006) 71 Cal.Comp.Cases 1168 (writ den.) [Delay in payment of settlement check mailed to incorrect address, absent any evidence of a good excuse, justified imposition of a penalty.]

I would affirm the WCJ's award of interest, penalty, and attorney's fees, but I would amend the WCJ's findings to clarify and specify the actions taken by defendant that were unreasonable under section 5814, as set forth above.



WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA
NOVEMBER 23, 2021**

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

**ANA ROSA GONZALEZ
RICHARD MEECHAN
SAMUELSEN GONZALEZ**

JTL/bea

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