

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

**CLENNON MOORE, *Applicant***

**vs.**

**COUNTY OF LOS ANGELES, OFFICE OF THE COUNTY COUNSEL;  
TRISTAR, *Defendants***

**Adjudication Number: ADJ3953416 (LAO 0452456)  
Los Angeles District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration to study the factual and legal issues of this case. This is our Opinion and Decision After Reconsideration.<sup>1</sup>

Applicant seeks reconsideration of the Findings and Award (F&A) issued on November 25, 2019, wherein the workers' compensation administrative law judge (WCJ) found that (1) applicant timely brought this action to recover penalties for "the amount due [former lien claimant Vision Quest Industries]"; (2) defendant unreasonably delayed or refused to pay compensation to applicant "for the money paid by the defendant to settle the lien of [Vision Quest Industries] in 2016," entitling applicant to an increase of compensation of 25 percent, or up to \$10,000.00, whichever is less; and (3) applicant's representative is entitled to a reasonable attorney's fee for securing applicant's increase in compensation, in an amount to be adjusted by the parties and applicant's representative, with jurisdiction reserved by the WCAB. The WCJ issued an award in favor of applicant and against defendant in accordance with these findings.

Applicant contends that the WCJ erroneously failed to apply the prior version of Labor Code section 5814,<sup>2</sup> thereby limiting the penalty to 25 percent of the compensation, or \$10,000.00, whichever is less.

We received an Answer from defendant.

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<sup>1</sup> This is not the first time this case has been before the Appeals Board. The current panel consisting of Commissioners Zalewski, Sweeney and Lowe replaced the previous panel of Commissioners Brass, Sweeney and Caplane on September 14, 2018.

<sup>2</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, as our decision after reconsideration, we will affirm the F&A.

### **FACTUAL BACKGROUND**

On February 13, 1980, while employed as a medical assistant by defendant, applicant sustained injury to his back, head and psyche.

On October 21, 2019, the matter proceeded to trial as to the following relevant issues: (1) whether applicant is entitled to a penalty for defendant's failure to pay award; and (2) attorney's fees. (Minutes of Hearing, October 21, 2019, pp. 1, 2:20-21.)

At trial, applicant was represented by hearing representatives Marcus Cazares and Danny Boyd. (*Id.*, p. 1.)

The WCJ admitted the following into evidence: a letter from lien claimant Vision Quest Industries' representative to counsel for defendant dated January 28, 2016, confirming the settlement of the Vision Quest Industries' lien on applicant's claim; a letter from Mr. Boyd to counsel for defendant dated August 22, 2016, demanding payment to applicant and himself of section 5814 penalties; and a letter from Vision Quest Industries' representative to the WCAB dated May 18, 2018 requesting withdrawal of its liens and removal of its name as an official party of record in this action. (*Id.*, p. 3:16-17; Ex. I, Letter Confirming Settlement of Lien, January 28, 2016; Ex. H, Letter from Danny Boyd, August 22, 2016; Ex. G, Request for Withdrawal of Liens, May 18, 2018.)

The August 22, 2016 demand letter states:

**Demand for penalties pursuant to 5814 prior to 2003 and 2004. Demand that you pay what you know you owe** in order to avoid additional penalties  
The demand is regarding the medical cost of **VQ Ortho Care** bill from 03/21/2001 to the present.

We're demanding penalties on the real amount of bill and not that which was reached by stipulation . . .

**The total of bill from 2001 to present is approximately \$59,411.40. Our demand was issued using labor** code 5814 which was in effect when all four penalties were awarded. The first was in 1996--all four penalties in this case was awarded prior to 2003. This case is subject to computing the

penalties. The total amount of medical cost against Labor code 5814 demands 10% on full amount of the medical costs plus interest compounded from 2001.

**Further, applicant has four (4) past, present and future penalties which increases mileage and provides** that defendants must pay 40 cents on each dollar paid for medical costs.

We're demanding pursuant to my good figures the sum of \$95,996.86 with \$14,549.52 paid to Mr. Danny Boyd for legal fees and \$81447.34 to be paid to applicant.

(Ex. H, Letter from Danny Boyd, August 22, 2016, p. 1.)

Applicant testified that he received treatment from Vision Quest Industries, but did not pay for the treatment. (Minutes of Hearing, October 21, 2019, pp. 3:21-4:6.)

In the Opinion on Decision, the WCJ states:

The Findings and Orders dated 09/14/1998, and the Findings and Orders dated 03/14/2002, awarded the Applicant increases in compensation to be assessed against medical treatment costs.

According to the letter dated 01/28/2016 (Exhibit I), the defendant agreed to settle the lien of Vision Quest Industries for \$6,400.00. . . .

By letter dated 08/22/2016, (Exhibit H), the Applicant demanded that the defendant pay four penalties, or 40 cents on each dollar paid, for the medical cost of the lien of [Vision Quest Industries]. . . .

The Defendant unreasonably delayed or refused the payment of compensation . . . The Applicant is entitled to an increase in compensation of 25%, or up to ten thousand dollars (\$10,000.00), whichever is less.

The settlement of the lien of VQ Orthocare which this Opinion on Decision is referring to, and to which the penalty would apply, is the settlement of the lien in 2016 for \$6,400.00. The proper reference for this would be the letter dated 01/28/2016 (Exhibit I).

The Applicant's representative is entitled to reasonable attorney's fees for securing increased compensation for the applicant.

In the court's opinion to calculate the amount payable to the Applicant based on the accompanying written decision, the Applicant should be paid the increases in compensation, together with any accrued interest, awarded to him in the Findings and Orders dated 09/14/1998, and in the Findings and Orders dated 03/14/2002.

25% of that amount, or up to \$10,000.00 should also be paid to the Applicant.

The Applicant's representative is entitled to reasonable attorney's fees for securing increased compensation for the Applicant.

The attorney's fees are payable in addition to the compensation payable to the Applicant. . . .  
(Opinion on Decision, pp. 3-4.)

## DISCUSSION

Section 5814 provides as relevant herein:

- (a) 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 (\$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.  
...
- (h) This section shall apply to all injuries, without regard to whether the injury occurs before, on, or after the operative date of this section.
- (i) This section shall become operative on June 1, 2004.

Applicant argues that because he received a final disability award on March 3, 1983, the WCJ erred by imposing penalties pursuant to amended section 5814 and not the version of section 5814 in effect in 1983. More specifically, applicant argues that amended section 5814 may not be applied retroactively because all appeals in his case "have been exhausted and there is a final judgment." (Petition, p. 3:8-9, citing *Green v. Workers' Comp. Appeals Bd.*, (2005) 127 Cal.App.4th 1426, [70 Cal.Comp.Cases 294].) We disagree.

In *Green*, the appeals court explicitly held that amended section 5814 applies retroactively, limiting the increase of compensation payable thereunder regardless of when the injured worker became entitled to workers' compensation benefits or the delay of payment of those benefits occurred. The appeals court reasoned:

New section 5814(h) . . . states explicitly that the new section applies to all injuries, not just to some injuries or those injuries where other events occur after the operative date of new section 5814.

(*Green, supra*, at pp. 1439-1440; see also *Abney v. Aera Energy, Liberty Mut. Ins. Co.*, 69 Cal.Comp.Cases 1552, (Appeals Board en banc) [stating that section 5814 indisputably applies to all unreasonable delays or refusals to pay compensation occurring on or after the date provided in section 5814(i)].)

Furthermore, the case before us is not one in which all appeals have been exhausted and there is a final judgment. Specifically, as stated in the Opinion on Decision, the present dispute did not arise until defendant incurred an obligation to pay applicant additional compensation by reason of its January 28, 2016 settlement of a lien. (Opinion on Decision, p. 3.) It follows that the issue remains in controversy, regardless of whether the underlying disability award is no longer subject to appeal or has been rendered into a final judgment.

It is thus clear that, pursuant to section 5814(h) and *Green*, amended section 5814 applies where, as here, the injured worker received a disability award before the statute was amended and the alleged delay in payment of the award occurred subsequent to the amendment. Accordingly, we are unable to discern merit to applicant's contention that the WCJ erroneously failed to impose penalties pursuant to the prior version of section 5814. Therefore, we will affirm the finding that applicant is entitled to an increase of compensation of 25 percent, or up to \$10,000.00, whichever is less.

Accordingly, we will affirm the F&A.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued on November 25, 2019 is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**/s/ DEIDRA E. LOWE, COMMISSIONER**



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

**September 20, 2021**

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

**CLENNON MOORE  
COLEMAN CHAVEZ & ASSOCIATES  
DANNY BOYD**

**SRO/ara**

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