

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

**LUIS AMEZCUA BARAJAS, *Applicant***

**vs.**

**PACIFIC DISTRIBUTING, INC.;**  
**STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ9930606  
Stockton District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and the Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto.<sup>1</sup> Based on our review of the record, and for the reasons stated in the WCJ's report and opinion, which are both adopted and incorporated herein, and the reasons stated below, we will deny reconsideration.

Pursuant to Labor Code section 5813(a), the Workers' Compensation Appeals Board has the discretion to order the payment of sanctions for "bad-faith actions or tactics which are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813(a).) Bad-faith actions or tactics are defined as "actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit" and include "[b]ringing a claim, conducting a defense or asserting a position: (A) That is: (i) Indisputably without merit; (ii) Done solely or primarily for the purpose of harassing or maliciously injuring any person; and/or (iii) Done solely or primarily for the

---

<sup>1</sup> Commissioner Sweeney, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist was appointed in her place.

purpose of causing unnecessary delay or a needless increase in the cost of litigation....”  
(Cal. Code Regs., tit. 8, § 10421(b)(6).)

For the reasons stated in the Report and the Opinion on Decision, we are persuaded that the WCJ acted within the allowed discretion to find no bad faith. Therefore, we do not disturb the WCJ’s decision.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

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



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

**September 5, 2023**

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

**CENTRAL VALLEY INJURED WORKER LEGAL CLINIC, INC  
OCCUPATIONAL INJURY LAW CENTER**

**PAG/mc**

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

## REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

### I. INTRODUCTION

The matter came on the trial calendar to have the issue of penalties after the issue of additional attorneys' fees to the prior applicant's counsel was determined. The Findings of Fact found no additional fee was payable based upon the plain meaning of the language in question. Now, there has been a finding that there is no penalty due for bringing the issue to trial. The applicant's current attorney, Central Valley Injured Workers' Legal Clinic ("CVIWLC") filed a timely verified Petition for Reconsideration ("Petition"). No answer has been filed by prior counsel, Occupational Injured Law Center ("OILC"). It is recommended that the Petition be denied.

### II. FACTS ON DISPUTED ISSUES

This matter resolved by way of Stipulations with Request for Award after the applicant changed attorneys of record from OILC to CVIWLC. The prior attorney resolved his entitlement to fees by way of a Stipulation and Award and/or Order that included the language, "in full satisfaction of attorney fee lien". After CVIWLC filed a petition to reopen, the matter later resolved by way of Compromise and Release. The matter came on the trial calendar to resolve the issue of whether the prior counsel is entitled to a further fee out of the later settlement by way of Compromise and Release. It was found that no additional fee was due to OILC. After a further trial on the issue of penalties, it was found that no penalty was due.

### III. DISCUSSION

One of the tasks of the Workers' Compensation Appeal Board ("WCAB"), and other courts, is to interpret language. In the present matter, OILC had questions about the meaning of the language used to resolve its prior attorney fee. An interpretation of the language was provided, and no additional fee was due. While frustrating, since the plain meaning of the language was used, there are time when interpretation of legal terms of art is necessary. Thus, interpretation of language in a settlement is a colorable issue for trial.

### IV. RECOMMENDATION

For the reasons given above, it is respectfully recommended that the Petition for Reconsideration filed by CVIWLC be denied.

Deborah A. Whitcomb

Workers' Compensation Judge

26 July 2023

## OPINION ON DECISION

**Whether costs, sanctions, and attorney fees are awardable after prior counsel's request for additional attorney's fee after a Stipulation and Order and Award was resolved based upon the language of the stipulation resulting in no further fee and was affirmed after reconsideration.**

Central Valley Injured Workers' Legal Clinic ("CVIWLC") filed a petition for penalties pursuant to Labor Code Section 5813, which reads as follows:

*Labor Code Section 5813 (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 on or after January 1, 1994.*

Thus, for CVIWLC to prevail in obtaining attorney fees and costs CVIWLC has the burden of proof to show there has been bad-faith actions or tactics that are frivolous or to cause unnecessary delay. In reviewing the petition filed by CVIWLC the basis for the demand for penalties et al is that Occupational Injury Law Center ("OILC") refused to withdraw its demand for attorney fees associated with a Compromise and Release after previously resolving a demand for attorney fees associated with the previous Stipulations with Request for Award that included language precluding further attorney fees. The issue proceeded to trial and reconsideration where CVIWLC prevailed and owed no further attorney fees.

While it is frustrating to “know” the meaning of a phrase, it is still a triable issue which does not rise to the level of bad-faith or frivolous. If interpreting the meaning of the phrase, “in full satisfaction of attorney fee lien”, had been done more than once then possibly not withdrawing the demand would be frivolous. However, such is not the case here. Further, although further attorney fees would be connected to further work on the case, sometimes such issues require determination to remind the attorneys of the evidentiary standard. Again, to proceed with litigation of such an issue is not frivolous. Since there is no evidence that the litigation of the issue was either in bad faith or frivolous, there are no penalties, sanctions, attorney fees, or costs imposed.

Deborah A. Whitcomb  
Workers' Compensation Judge