

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

GUILLERMO GONZALEZ, et al., *Applicants*

vs.

**THE BICYCLE CASINO; ARCH INDEMNITY INS. CO., administered by
GALLAGHER BASSETT, et al., *Defendants***

Adjudication Numbers: ADJ12226694, ADJ12414651, ADJ12414992, ADJ12414993

**OPINION AND DECISION
AFTER REMOVAL;
ORDER IMPOSING
SANCTIONS AND COSTS**

(En Banc)

We previously granted removal in these matters on our own motion to provide an opportunity to study and address the issues of sanctions and costs under Labor Code¹ section 5813. On June 17, 2024, we issued an Order of Consolidation and Notice of Intent to Impose Sanctions and Costs (“Notice”) (En Banc). In the Notice, we issued a notice of intent to impose sanctions of up to \$2,500.00 against Susan Garrett in two (2) instances where it appeared that she filed petitions for reconsideration with willful intent to disrupt or delay the proceedings of the Workers’ Compensation Appeals Board or with an improper motive, or where it appeared that such actions were indisputably without merit (up to \$5,000.00 total). We also issued a notice of intent to impose sanctions of up to \$2,500.00 against Lance Garrett in two (2) instances where it appeared that he filed petitions for reconsideration with willful intent to disrupt or delay the proceedings of the Workers’ Compensation Appeals Board or with an improper motive, or where it appeared that such actions were indisputably without merit (up to \$5,000.00 total). Lastly, we issued a notice of intent to award reasonable expenses, including attorney’s fees and costs, associated with the petitions for reconsideration filed in each of these matters. If awarded, the amount of such costs was deferred to the trial level.

¹ All future references are to the Labor Code unless noted.

We received no response from either Susan Garrett or Lance Garrett.

Having reviewed the records in each of these matters and pursuant to section 5813, as our Decision After Removal we will impose sanctions of \$2,500.00 against Susan Garrett in two (2) cases for a total of \$5,000.00. We will also impose sanctions of \$2,500.00 against Lance Garrett in two (2) cases for a total of \$5,000.00.

We will also issue an order of reasonable expenses, including attorney fees and costs, however, we will defer the amount to the parties to adjust with jurisdiction reserved at the trial level in the event of a dispute. We will order these consolidated matters returned to the presiding judge (PJ) of the Los Angeles District Office, Hon. Robert Rassp, to oversee consolidated proceedings on the issue of reasonable expenses. (§ 5310.) PJ Rassp may exercise his discretion to conduct proceedings in the manner he deems most expedient in keeping with due process. Prior to any hearing date, the parties in each case shall meet and confer and shall advise the trial court whether the issue of reasonable expenses has been privately resolved by way of a stipulation for approval by the WCAB.

To secure uniformity of decisions in the future, the Chair of the Appeals Board, upon a unanimous vote of its members, assigned this case to the Appeals Board as a whole for an en banc decision.² (§ 115.)

FACTS

The facts of these matters were detailed in the June 17, 2024 Notice, which is adopted and incorporated herein. (See, Order of Consolidation and Notice of Intent to Impose Sanctions and Costs (En Banc), June 17, 2024, p. 2, “FACTS”, through p. 4 “DISCUSSION”.) In summary, Garrett Law Group through Susan Garrett and its hearing representative Lance Garrett, while supervised by attorney Susan Garrett, set issues for trial, and then on the day of trial, filed for reconsideration as a means of preventing the trial from moving forward. That is, based upon the timing of their filings, they filed the petitions for reconsideration solely to delay the trial proceedings in each case, as evidenced by their action of not proceeding to trial in each case. In

² En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and workers’ compensation administrative law judges. (Cal. Code Regs., tit. 8, § 10325; *City of Long Beach v. Workers’ Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].) This en banc decision is also adopted as a precedent decision pursuant to Government Code section 11425.60(b).

each case, filing of the petition for reconsideration caused trial level proceedings to immediately halt. (See Cal. Code Regs, tit. 8, § 10961.)

Neither Susan Garrett nor Lance Garrett responded to the Notice.

DISCUSSION

The Appeals Board is authorized to impose sanctions under section 5813, which states, in pertinent part:

(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.

(§ 5813(a).)

As detailed in the Notice, WCAB Rule 10421(b) provides a comprehensive but non-exclusive list of actions that could be subject to sanctions. As applicable here, subdivision (b) states that a party may be subject to sanctions where the party has engaged in the following actions:

(1) Failure to appear or appearing late at a conference or trial where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct.

(2) Filing a pleading, petition or legal document unless there is some reasonable justification for filing the document.

(4) Failing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure . . . or with any award or order of the Workers' Compensation Appeals Board, including an order of discovery, which is not pending on reconsideration, removal or appellate review and which is not subject to a timely petition for reconsideration, removal or appellate review. . .

(5) Executing a declaration or verification to any petition, pleading or other document filed with the Workers' Compensation Appeals Board: (A) That:

(i) Contains false or substantially false statements of fact;

- (ii) Contains statements of fact that are substantially misleading;
- (iii) Contains substantial misrepresentations of fact;
- (iv) Contains statements of fact that are made without any reasonable basis or with reckless indifference as to their truth or falsity;
- (v) Contains statements of fact that are literally true, but are intentionally presented in a manner reasonably calculated to deceive; and/or
- (vi) Conceals or substantially conceals material facts . . .

(6) Bringing 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 purpose of causing unnecessary delay or a needless increase in the cost of litigation . . .

(7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law . . .

(8) Asserting a position that misstates or substantially misstates the law . . .

(Cal. Code Regs., tit. 8, § 10421(b).)

Sanctions under section 5813 are designed to punish litigation abuses and to provide the court with a tool for curbing improper legal tactics and controlling their calendars. (*Duncan v. Workers' Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294, 302.) Accordingly, sanctions are similar to penalties under section 5814, in that they are designed to have both remedial and penal aspects. (See *Ramirez v. Drive Financial Services*, (2008) 73 Cal.Comp.Cases 1324 (Appeals Board En Banc).)

Susan Garrett and Lance Garrett halted trial proceedings in two cases by filing petitions for reconsideration that were indisputably without merit and filed for the purpose of causing unnecessary delay. The petitions were filed on the morning of trial and without any advance notice to the court, opposing counsel, or witnesses. Their conduct was deliberate, which is evidenced by both the pattern of filing such petitions in multiple cases and their failure to appear in each of these

cases after the petition for reconsideration was filed. They have filed no response to the notice of intent and thus, they have provided no defense or other justification for their conduct.

CONCLUSION

Based on our review, we conclude that the two petitions for reconsideration were filed for the purpose of delaying trial proceedings of the Workers' Compensation Appeals Board. Neither Susan Garrett nor Lance Garrett responded to our Notice. Accordingly, we conclude that their actions were indisputably without merit and that sanctions are appropriate.

For the foregoing reasons,

Having reviewed the records of each case and pursuant to the June 17, 2024 Notice, and **GOOD CAUSE APPEARING, IT IS FOUND THAT:**

1. In *Guillermo Gonzalez* (ADJ12226694), Lance Garrett signed a petition for reconsideration, which was verified by Susan Garrett, that was filed with willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, which was an improper motive, and such action was indisputably without merit.

2. In *Jessica Ordenana* (ADJ12414651, ADJ12414992, ADJ12414993), Lance Garrett signed a petition for reconsideration, which was verified by Susan Garrett, that was filed with willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, which was an improper motive, and such action was indisputably without merit.

For the foregoing reasons,

As the **DECISION AFTER REMOVAL** of the Workers' Compensation Appeals Board, **IT IS ORDERED** that pursuant to Labor Code section 5813 and Appeals Board Rule 10421 (Cal. Code Regs., tit. 8, § 10421), **SUSAN GARRETT** (CA BAR #195580), shall pay sanctions and reasonable expenses, including attorney's fees and costs, as follows:

1. In *Guillermo Gonzalez* (ADJ12226694), sanctions of \$2,500.00 payable to the General Fund and reasonable expenses, including costs and attorney's fees.

2. In *Jessica Ordenana* (ADJ12414651, ADJ12414992, ADJ12414993), sanctions of \$2,500.00 payable to the General Fund and reasonable expenses, including costs and attorney's fees.

Payment shall be made within twenty (20) days (plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Order. Payment shall be made by check payable to the Workers' Compensation Appeals Board, Tax I.D. 94-3160882, for

transmission to the General Fund and shall reference *Guillermo Gonzalez, et al. v. The Bicycle Casino; Arch Indemnity Ins. Co., et al.*, ADJ12226694, ADJ12414651, ADJ12414992, ADJ12414993.

Payment shall be sent to: Workers Compensation Appeals Board, Office of the Commissioners, 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102, ATTENTION: Julie Podbereski.

IT IS FURTHER ORDERED that pursuant to Labor Code section 5813 and Appeals Board Rule 10421 (Cal. Code Regs., tit. 8, § 10421), **LANCE GARRETT** shall pay sanctions and reasonable expenses, including attorney's fees and costs, as follows:

1. In *Guillermo Gonzalez* (ADJ12226694), sanctions of \$2,500.00 payable to the General Fund and reasonable expenses, including costs and attorney's fees.

2. In *Jessica Ordenana* (ADJ12414651, ADJ12414992, ADJ12414993), sanctions of \$2,500.00 payable to the General Fund and reasonable expenses, including costs and attorney's fees.

Payment shall be made within twenty (20) days (plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Order. Payment shall be made by check payable to the Workers' Compensation Appeals Board, Tax I.D. 94-3160882, for transmission to the General Fund and shall reference *Guillermo Gonzalez, et al. v. The Bicycle Casino; Arch Indemnity Ins. Co., et al.*, ADJ12226694, ADJ12414651, ADJ12414992, ADJ12414993.

Payment shall be sent to: Workers Compensation Appeals Board, Office of the Commissioners, 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102, ATTENTION: Julie Podbereski.

IT IS FURTHER ORDERED that the parties shall meet and confer as to the amount of reasonable expenses, including costs and attorney's fees, incurred in each of these cases, with jurisdiction reserved at the trial level in the event of a dispute.

IT IS FURTHER ORDERED that pursuant to Labor Code section 5310 these consolidated matters are **RETURNED** to the Presiding Judge Hon. Robert Rassp, of the Los Angeles District Office to oversee consolidated proceedings on the issue of reasonable expenses, including costs and attorney's fees. (§ 5310.) PJ Rassp may exercise his discretion to conduct proceedings in the manner he deems most expedient in keeping with due process.

WORKERS' COMPENSATION APPEALS BOARD (EN BANC)

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 7, 2024



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

**GUILLERMO GONZALEZ
JESSICA ORDENANA
GARRETT LAW GROUP
HITZKE & FERRAN
HINDEN BRESLAVSKY
ZGRABLICH & MONTGOMERY**

EDL/abs

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