

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

CHRISTIAN LOPEZ, *Applicant*

vs.

**STUART DEAN COMPANY AND STARR SPECIALTY INSURANCE COMPANY,
administered by
ESIS,
*Defendants***

**Adjudication Number: ADJ16859150
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Award (F&A) issued by the workers compensation administrative law judge (WCJ) on June 3, 2025.

Applicant alleges that the WCJ erred in not awarding attorneys' fees to applicant's counsel or impose sanctions against defendant under Labor Code¹ section 5813.

We have received an Answer from defendant.

The WCJ issued a Report and Recommendation recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer and the contents of the Report and Recommendation (Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will deny reconsideration.

¹ All further references are to the Labor Code, unless otherwise stated.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on June 30, 2025 and 60 days from the date of transmission is August 29, 2025. This decision is issued by or on August 29, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on June 30, 2025, and the case was

transmitted to the Appeals Board on June 30, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Section 5909(b)(1) because service of the Report in compliance with Section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 30, 2025.

Pursuant to section 5813(a), the Workers' Compensation Appeals Board has the discretionary power 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 purpose of causing unnecessary delay or a needless increase in the cost of litigation...." (Cal. Code Regs., tit. 8, § 10421(b)(6).)

Under section 5813 and WCAB Rule 10421, sanctions are discretionary; under no circumstances is a WCJ required to order costs or sanctions. (Lab. Code, § 5813 (a) [the WCJ "may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs..." and a WCJ "in its sole discretion, may order additional sanctions..." (emphasis added)]; Cal. Code Regs., tit. 8, § 10421(a); *Runnion v. Workers' Comp. Appeals Bd.* (1997) 59 Cal.App.4th 277, 287 [62 Cal.Comp.Cases 1511] (*Runnion*) *Avance v. Workers' Compensation Appeals Bd.* (2004) 69 Cal.Comp.Cases 1, 5 ["The WCAB also reasonably exercised its discretion under section 5813 in choosing not to impose sanctions..."].)

For the reasons stated in the Report, we are persuaded that the WCJ did not abuse her discretion in declining to impose sanctions and attorney fees in this matter. 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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 29, 2025

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

**CHRISTIAN LOPEZ
NADEEM H. MAKADA
DIETZ, GILMOR & CHAZEN**

LN/md

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

Elizabeth Dehn, Workers' Compensation Judge, hereby submits her report and recommendation on the Petition for Reconsideration filed herein

Introduction

On June 17, 2025 applicant filed a Petition for Reconsideration of my May 30, 2025 Findings and Award.

Petitioner did not assert any of the enumerated grounds for reconsideration specified in Labor Code section 5903. Instead, petitioner asserts that I erred in not awarding attorneys' fees and sanctions under Labor Code section 5813. The petition was timely filed and accompanied by the verification required under Labor Code section 5902 and Regulation 10940(c). Defendant has filed an answer recommending that the petition for reconsideration be denied.

Facts

Christian Lopez, [...] while employed on June 10, 2022 as a metal painter/helper at South San Francisco, California by Stuart Dean sustained an accepted injury to the left shoulder and neck. The applicant's employment with Stuart Dean was terminated on June 29, 2022.

Applicant, through his attorney, filed a petition for penalties, sanctions, attorneys' fees, and administrative audit on December 26, 2023.

The matter proceeded to an expedited hearing on March 18, 2024 on applicant's claim of temporary total disability for the period of August 25, 2023 to the present and continuing, attorneys' fees, and defendant's claim for credit for alleged payment of temporary disability while the applicant was allegedly incarcerated. The petition for penalties was deferred.

In my April 5, 2024 Findings of Fact and Award, I found that the applicant was temporarily totally disabled for the period of August 25, 2023 through and including January 22, 2024 and awarded temporary disability and attorneys' fees.

The matter proceeded to trial once again on April 28, 2025. The parties stipulated to the level of permanent disability the need for medical care. The only disputed issue was applicant's claim for penalties, sanctions and attorneys' fees.

In my May 30, 2025 Findings and Award, I found that the defendant unreasonably delayed the payment of temporary total disability benefits for the

period of August 25, 2023 through January 22, 2024, and awarded a 25% penalty on the amount of delayed temporary total disability pursuant to Labor Code section 5814. I found that applicant was not entitled to attorneys' fees under Labor Code section 5814.5 and that defendants' conduct did not warrant the imposition of sanctions under Labor Code section 5813. It is from that Finding and Award that applicant seeks reconsideration.

Discussion

Applicant's petition for penalties sought sanctions, penalties and attorneys' fees for the same alleged conduct: namely, defendant's failure to pay temporary disability in this case. Penalties under Labor Code section 5814, which apply when payment that is due is either delayed or denied, are an inducement for prompt payment, while sanctions under our Labor Code section 5813 are "designed to protect against litigation abuses, not to remedy or penalize delayed payments of awards." (Duncan v. Workers' Comp. Appl. Bd, (2008) 73 Cal. Comp. Cases 1197, 1202.) Bad faith actions or tactics "include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation," disrupt or delay proceedings, or that "are done for an improper motive or are indisputably without merit." (Title 8, Cal. Code Reg. section 10421(b).) Applicant has presented no evidence that would support a finding of sanctions.

I did not make a finding that defendant engaged in bad faith actions or tactics in this case. Applicant did not present any specific evidence that defendants acted from a willful failure to comply with their statutory obligation to provide benefits, or acted with an improper motive when they did not pay TTD. The Petition for Reconsideration does not cite to any evidence in the record that would support an allegation of bad faith actions or tactics. Based on the facts presented at both the expedited hearing and the evidence submitted at the trial in this matter, I do not believe that there is a basis to award sanctions in this matter.

Likewise, there was no basis to award the requested attorneys' fees in this matter. Labor Code section 5814.5 contains a provision to award reasonable attorneys' fees incurred in the enforcement of an award. Applicant filed the petition for penalties prior to the issuance of any award of any benefits in this case. Even though applicant's December 26, 2023 penalty petition alleged that sanctions should be awarded due to "defendant's blatant disregard for the WCAB order" there was no evidence presented that there was an award or order that was disregarded. (Exhibit 8, admitted at the April 28, 2025 trial, page 3.) I did issue a Finding and Award of temporary disability in this matter in my April 5, 2024 Award, which did include an award of attorney's fees from the amount of TTD that was awarded. However, there is no evidence that applicant attorney needed to enforce that award, so I found no basis to award the requested attorney's fees.

Applicant finally raised a demand that this matter be referred to the audit unit. That was not one of the issues framed for trial. However, I did award a penalty pursuant to Labor Code section 5814. The DWC at least on a monthly basis submits to the Audit Unit copies of all findings and awards that issue penalties. (Title 8, Cal. Code Reg. section 10112.2.) Therefore, the Audit Unit will be notified of the penalty in this file if it has not been notified already.

Recommendation

For the foregoing reasons, I recommend that applicant's Petition for Reconsideration, filed herein on June 9, 2025, be denied. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

Date: 6/30/2025

Elizabeth C. Dehn
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE