

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

KEITH DAHL, *Applicant*

vs.

**QUEEN OF THE VALLEY HOSPITAL, permissibly self-insured,
adjusted by CORVEL CORPORATION. *Defendants***

**Adjudication Numbers: ADJ15013684
Santa Rosa District Office**

**OPINION AND ORDERS
GRANTING PETITION
FOR RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the “Findings and Award” (F&A) issued on May 7, 2025, by the workers’ compensation administrative law judge (WCJ). The F&A, in pertinent part, found that defendant did not unreasonably delay payment of temporary disability, permanent disability, or reimbursement to Employment Development Department (EDD), but found that applicant was entitled to attorney’s fees pursuant to Labor Code¹ section 5813 and awarded attorney’s fees with the parties to adjust.

Applicant argues that defendant’s approximately 3-month delay in signing and submitting a settlement with EDD constituted a bad-faith delay of benefits.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition and the contents of the WCJ’s Report. Based on our review of the record, we will grant the Petition for Reconsideration and as our Decision After Reconsideration, we will rescind the May 7, 2025 F&A and return this matter to the trial level for further proceedings.

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

FACTS

Applicant worked as a director on August 14, 2020, when he sustained an industrial injury to his back. (Minutes of Hearing and Summary of Evidence, March 5, 2025, p. 2, lines 7-10.) This matter proceeded to trial upon the issues of penalties and attorney's fees. (*Id.* at p. 4, lines 3-21.)

The parties stipulated to the following facts:

February 27, 2024:

Cross examination of panel QME Dr. Amster, who confirmed AOE/COE regarding low back and right lower extremity.

March 20, 2024:

Defendant sends proposed Stipulation and Order regarding TD and EDD lien to the applicant.

March 22, 2024:

Applicant returns partially executed Stipulation and Order regarding retro TD and EDD.

April 1, 2024:

Defendant writes to EDD regarding demand for information regarding lien.

April 2, 2024:

Defendant files fully executed Stipulation and Order with the WCAB for approval.

April 23, 2024:

Defendant issues permanent disability.

April 30, 2024:

WCAB approves Stipulation and Order granting TD and resolution of EDD lien.

May 3, 2024:

Defendant writes to EDD regarding demand for information regarding lien.

May 13, 2024:

Defendant issues retro TD payment to the applicant, less an approved attorney fee per Stipulation and Order.

July 5, 2024:

Defendant files DOR regarding EDD lien.

July 25, 2024:

EDD provides defendant with partially executed EDD lien settlement agreement signed by EDD representative.

November 1, 2024:

EDD Lien Settlement signed by defense counsel.

December 12, 2024:

Defendant issues payment to EDD.

(*Id.* at p. 2, line 18 through p. 3, line 31.)

The April 30, 2024 stipulation contained, in pertinent part, the following language “To EDD: \$70,564; for the period of 8/9/21 to 8/7/22 to be held by defendant pending resolution of the lien with EDD” and “Interest and penalties waived if payment made within 30 days of approval.”

Per the Pre-trial Conference Statement, applicant sought to call the person most knowledgeable about the delayed payment to EDD. The adjuster who testified at trial had no knowledge of what caused the delay in this case as she was not assigned to the file when the delay occurred. (*Id.* at pp. 6-7.)

Applicant’s underlying case has not yet resolved and pursuant to applicant’s April 30, 2024 letter to defendant, applicant is seeking an award of permanent total disability. (Applicant’s Exhibit 2.)

DISCUSSION

I.

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.

(§ 5909.)

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 3, 2025, and 60 days from the date of transmission is Saturday, August 2, 2025, which by operation of law means this decision is due by Monday, August 4, 2025. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on August 4, 2025, so that we have timely acted on the Petition as required by 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on June 3, 2025, and the case was transmitted to the Appeals Board on June 3, 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 3, 2025.

II.

The WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (§ 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).)

Section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476, citing *Evans v. Workmen’s*

Comp. Appeals Bd. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (§§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

In the Report, the WCJ suggests that reimbursement to EDD may not constitute ‘compensation’ to justify an award of penalties under section 5814. While EDD payments are not ‘compensation’ within the meaning of Division 4, the lien of EDD attaches to the payment of temporary disability, which is compensation and thus, an award of penalties may issue where such benefits are not distributed in good faith.

In the Opinion on Decision, the WCJ stated: “Considering the record, this is not a situation where the defendant was an idle actor. The defendant attempted to retrieve the necessary information to issue accurate reimbursement to EDD. The defendant cannot be faulted by the inactivity of EDD. As such, the court finds no basis to award penalties for an unreasonable delay to reimburse EDD.” (Opinion on Decision, p. 2.) Applicant does not appear to seek penalties based upon defendant’s initial conduct up through July 25, 2024, when EDD signed a stipulated agreement. It appears that defendant’s conduct through that point was reasonable.

Instead, applicant argues that defendant improperly delayed submission of the stipulation until November 2024. However, there is nothing in the record explaining the reason for this delay and nothing in the record about why the payment was not made until December 12, 2024. Defendant’s trial brief does not contain any explanation. The sole person who

testified had no knowledge of the cause of delay. No exhibits explain the delay. The record is devoid of any evidence upon which a determination of penalties can be made.

Next, the WCJ awarded attorney's fees pursuant to section 5813 based upon defendant's failure to timely reimburse applicant's attorney for a doctor deposition. However, no findings of fact issue that defendant acted frivolously or in bad faith. In the Opinion on Decision, the WCJ stated: "[F]or reasons unknown to the court, the deposition fee wasn't reimbursed to Mr. Bloom until a year later[.]" (Opinion on Decision, p. 2.) This is not sufficient support for the award of attorney's fees.

We would finally observe that applicant's underlying benefits have not yet resolved and it appears that the parties may be disputing whether applicant is permanently and totally disabled. Upon return, the WCJ may consider whether judicial economy would best be served in trying issues of penalties and attorney's fees alongside all other disputed issues.

Accordingly, we grant the Petition for Reconsideration and as our Decision After Reconsideration, we rescind the May 7, 2025 F&A and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the May 7, 2025 Findings and Award issued by the Workers' Compensation Administrative Law Judge is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the May 7, 2025 Findings and Award issued by the Workers' Compensation Administrative Law Judge is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



CRAIG SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 1, 2025

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

**KEITH DAHL
LAW OFFICE OF JOHN A. BLOOM
WAI, CONNOR & HAMIDZADEH**

EDL/mc

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