

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

GABRIEL ALONSO, *Applicant*

vs.

**LAZY DOG RESTAURANT AND BAR;
GENERAL CASUALTY COMPANY OF WISCONSIN,
administered by QBE SPECIALTY INSURANCE, *Defendants***

**Adjudication Numbers: ADJ16419247, ADJ16419200
Pomona District Office**

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

Defendant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on November 5, 2025. The WCJ found, in relevant part, that payment of fees to applicant's attorney associated with a Compromise & Release (C&R) was untimely. He further found defendant is to pay applicant attorney the following: (1) interest in the amount of \$433.36 for the delay of 111 days from which payment should have been rendered; (2) \$2,137.50 pursuant to Labor Code section 5814(a)¹ for the unreasonable delay; and (3) \$1,250.00 pursuant to section 5814.5 in enforcing the interest and penalties. The WCJ awarded applicant's attorney \$3,820.86 for interest, penalties, and costs for the unreasonable delay of payment.

Defendant contends that the WCJ abused his discretion and misinterpreted section 5814 in assessing the penalty in a circumstance which is not warranted.

We have not received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that we dismiss defendant's Petition for Reconsideration (Petition).

¹ All section references are to the Labor Code, unless otherwise indicated.

We have considered the allegations of the Petition and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will grant reconsideration, rescind the F&A, and return the matter to the trial level for further proceedings consistent with this opinion.

FACTS

We will briefly review the relevant facts.

On July 13, 2022, applicant filed an Application for Adjudication of Claim (Application) claiming a cumulative injury to multiple body parts while employed by defendant as a dishwasher from February 15, 2021 to November 15, 2021. Applicant filed Amended Applications on January 18, 2023 and February 13, 2023 to add additional body parts.

On July 13, 2022, applicant filed another Application claiming a second injury to his fingers while employed by defendant as a dishwasher on February 6, 2021.

On April 8, 2025, the day of trial, the parties entered into a settlement agreement by way of a C&R to settle applicant's claimed injuries in the amount of \$95,000. As relevant herein, paragraph 8 of the C&R states in pertinent part that "Interest is waived if paid within 30 days of the date of the Order approving the C&R." (C&R, ¶ 8.) On the same day, the WCJ issued an Order Approving the C&R (OACR) and designated defendant to serve.

On May 20, 2025, applicant's attorney filed a "Petition for Penalties Pursuant to Labor Code Section 5814 and Attorney Fees Pursuant to Labor Code Section 5814.5" (Petition for Penalties and Attorney Fees). On August 25, 2025, applicant's attorney filed another Petition for Penalties and Attorney Fees.

On November 3, 2025, the parties proceeded to trial on the sole issue of "attorney fees in regard to the C&R and any interest, penalties, or costs associated thereto." (Minutes of Hearing and Order of Consolidation, (MOH) at p. 3.) The parties stipulated that:

On May 9, 2025, applicant counsel had yet to receive payment. Defendant made several good faith attempts to re-send the check. These attempts included a May 6, 2025 attempt, a June 5, 2025 attempt, a June 27, 2025 attempt, a July 25, 2025 attempt, and an August 6, 2025 attempt. These attempts were returned to sender for an unknown reason. Attempts were made to both a P.O. Box and a home address at applicant counsel's request. A successful attempt was made when the check was sent via FedEx on August 27, 2025. Applicant counsel received the check on August 28, 2025. The successful FedEx attempt was accomplished at the requested home address.

Presently defendant is unwilling to pay interest. . .

(MOH, p. 2, line 20, -- p. 3, line 1.)

At trial, no witnesses were presented to testify, and no exhibits were submitted.

DISCUSSION

I.

Preliminarily, 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 under the Events tab 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 cases were transmitted to the Appeals Board on November 26, 2025, and 60 days from the date of transmission is January 25, 2026, which is a Sunday. The next business day that is 60 days from the date of transmission is Monday, January 26, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision was issued by or on January 26, 2026, so that we have timely acted on the petition as required by section 5909(a).

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that: Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on November 26, 2025, and the cases were transmitted to the Appeals Board on November 26, 2025. Service of the Report and transmission of the cases 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 November 26, 2025.

II.

We first provide a brief review of the relevant applicable law.

Pursuant to section 5800, when compensation is unpaid, the calculation of interest and defendant's liability for it is automatic. That is, under section 5800, all awards for payment of compensation carry interest on payments due from the date of the making and filing of the award. This means that once an award is made and once payment is due, interest begins to accrue. Interest on an attorney's fee award is payable to the applicant's attorney together with the award of attorney's fees because it "compensates the attorney for the loss of income and earning power occasioned by delays in the receipt of fees." (*Winters v. Workers' Comp. Appeals Bd. (Roa)* (2000) 65 Cal.Comp.Cases 1354, 1355 (writ den.).) Here, this means that once the 30 day period in Paragraph 8 in the C&R expired, defendant began to owe interest on the unpaid amount. We observe that defendant's failure to properly tender the interest owed may give rise to additional penalty claims.

Section 5814 provides:

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 dollars (\$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.

(Lab. Code, § 5814(a).)

Under subdivision (a), compensation is increased after a finding of unreasonable behavior by defendant. As a result, the “penalty” is actually part of the award, *the award which is applicant’s*. (See *Mintzer v. Workers’ Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 1491.) Therefore, by the plain language of section 5814, even when the penalty is awarded for unreasonable delay in payment of attorney’s fees, the penalty is to be awarded to applicant, and not to applicant’s attorneys. However, subdivision (a) also states that the Appeals Board shall use its discretion “to accomplish a fair balance and substantial justice between the parties.” And, the Appeals Board may order payment of reasonable attorney’s fees for legal services against an applicant’s compensation. (Lab. Code, §§ 4903(a), 4906(a), (b), (d); Cal. Code Regs., tit. 8, §§ 10775, 10776, 10778.) Consequently, while a penalty award is applicant’s compensation, on occasion reasonable applicant’s attorney’s fees may be ordered against a penalty award *at the discretion of the Appeals Board*.

Section 5814.5 provides:

When the payment of compensation has been unreasonably delayed or refused subsequent to the issuance of an award by an employer that has secured the payment of compensation pursuant to Section 3700, the appeals board shall, in addition to increasing the order, decision, or award pursuant to Section 5814, award reasonable attorneys’ fees incurred in enforcing the payment of compensation awarded.

(Lab. Code, § 5814.5.)

In contrast to section 5814, under section 5814.5, when an award of compensation is increased, “reasonable attorneys’ fees incurred in enforcing the payment of compensation awarded” *shall* be awarded *in addition to* the increased award. Therefore, while payment of increased compensation under an award is awarded to applicant under section 5814, by the plain language of section 5814.5, attorney’s fees for obtaining the increased compensation are directly awarded to applicant’s attorney.

Nonetheless, just as a reasonable fee is awarded to an applicant’s attorney as a percentage of applicant’s compensation under section 4903(a), by the same token, that section also allows a reasonable fee to be awarded to an applicant’s attorney as a percentage of the increase in applicant’s compensation, that is, as a percentage of the penalty. Moreover, section 5814.5 states that attorney’s fees shall be awarded *in addition to* the increased award; nothing in section 5814.5 states that an applicant’s attorney relinquishes the right to request a fee under section 5814 when

the attorney receives a fee under section 5814.5. Consequently, it is within the WCJ's discretion to award reasonable attorney's fees as a percentage of the penalty award under sections 5814(a) and 4903(a) and an award of reasonable hourly attorney's fees under section 5814.5.

In *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324, 1331 (Appeals Board en banc), we stated that "section 5814(a) ... provides that a penalty is payable only '[w]hen payment of compensation has been *unreasonably* delayed or refused.' (Emphasis added.) Relevant here, we note that a delay or a refusal to pay is generally not 'unreasonable' if the defendant had 'genuine doubt from a medical or legal standpoint as to [its] liability.' (*Kerley v. Workers' Comp. Appeals Bd.* (1971) 4 Cal.3d 223, 230 [36 Cal.Comp.Cases 152].)"

Thus, here defendant must first provide evidence as to the proper mailing of the checks, and then the burden shifts to applicant to rebut the presumption of mailing by way of credible evidence that the payments were not received. (See *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803 (Appeals Board en banc) [discussing the presumption of mailing].) Then, applicant's burden is to demonstrate that defendant's behavior was unreasonable by way of evidence. The WCJ must then apply the balancing test as set forth in *Ramirez, supra*.

In the instant case, we are unable to provide meaningful review as to whether any interest, penalties under section 5814(a), and/or attorneys' fees under section 5814.5 are due because of the state of the record. We note that the matter was submitted with stipulations but without testimony or any exhibits. It is impossible to consider the issue of whether defendant's behavior was unreasonable as the mere fact that multiple checks were mailed does nothing to explain why the behavior occurred.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on

decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350])).

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’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*, at p. 476 citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Accordingly, we will grant defendant’s Petition, rescind the F&A, and return this matter to the trial court to create a record. We recommend that all parties be given an opportunity to submit evidence and that the evidence be properly admitted. Following development of the record, the WCJ may issue a new decision from which any person aggrieved thereby may seek reconsideration. This is not a final decision on the merits of any issues raised in the Petition and any aggrieved person may timely seek reconsideration of the WCJ’s new decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the decision of November 5, 2025 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 5, 2025 Findings and Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with the opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 23, 2026

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

**GABRIEL ALONSO
LAW OFFICE OF LIONEL E. GIRON
STOCKWELL HARRIS WOOLVERTON & FOX**

JL/abs

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