

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

GUADALUPE GASTELUM, *Applicant*

vs.

**PACIFIC CLINICS; EVEREST NATIONAL INSURANCE COMPANY,
administered by GALLAGHER BASSETT SERVICES, INC, *Defendants***

**Adjudication Number: ADJ9098027
Riverside District Office**

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

Applicant seeks reconsideration of the Findings and Order (F&O) issued on July 7, 2026, by the workers' compensation administrative law judge (WCJ). By the F&O, as relevant here, the WCJ found that there was no evidence of violation of Labor Code sections¹ 5800, 5814, or 5814.5 with respect to the check issued to applicant's attorney in the amount of \$19,500.00; and that there was no unreasonable delay in issuing of the second check.

Applicant contends that the WCJ erred by finding defendant's delay in paying applicant's attorney's fees was not unreasonable, applicant is entitled to penalties, and applicant's attorney is entitled to attorney's fees and interest.

We received an Answer from defendant.² The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

Applicant filed a second Petition to augment the Petition for Reconsideration, in order to reference the transcript of the proceedings of March 10, 2026. We have accepted and considered the supplemental Petition (Cal. Code Regs., tit. 8, § 10964), and we have reviewed the transcript.

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

² Defendant is reminded to comply with WCAB Rule 10940(d) (Cal. Code Regs., tit. 8, § 10940(d).) Applicant filed a supplemental petition in response to defendant's Answer. We do not accept or consider the supplemental response. (Cal. Code Regs., tit. 8, § 10964.)

We have considered the allegations of the Petition for Reconsideration³ and the Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, for the reasons stated in the WCJ's Report as quoted below, and for the reasons discussed below, we will affirm the F&O, except that we amend it to defer the issue of interest under section 5800 (Findings of Fact 2, 4, Order).

FACTS

We will briefly review the relevant facts.

As summarized by the WCJ in the Report, the facts are as follows:

Applicant, Guadalupe Gastelum, a [...] Therapeutic Behavioral Specialist, sustained injury arising out of and in the course of her employment to her back, neck, right knee, psyche, and allegedly to her jaw, chest, shoulders, skin and left knee, while employed on 01/14/2011 by Pacific Clinics. Injuries occurred as a result of a head on vehicular collision.

For the purposes of this current Petition for Reconsideration the relevant procedural history is abbreviated from the entire history of litigation since the filing of the application as there is lengthy and protracted litigation history with prior Trials and a previous Petition for Reconsideration.

The case in chief settled by way of Compromise and Release on 10/23/2024 for the amount of \$195,000.00 less Attorney Fees of \$19,500.00. A Declaration of Readiness to proceed to a Mandatory Settlement Conference was filed by Applicant's Attorney on 12/06/2024, on the issue of payment of penalties and interest regarding the Attorney's Fee from the Order Approving Compromise and Release dated 10/23/2024. The scheduled Mandatory Settlement Conference of 01/14/2025 was continued based on a request by Defendant and a filing by Applicant's Attorney that he did not oppose the request for continuance. The case was then continued to Mandatory Settlement Conference on 03/04/2025. The case was set for a continued Mandatory Settlement Conference on 03/04/2025. At that hearing the case was set for Trial on 04/23/2025. On 04/23/2025 the Trial continued to 06/23/2025 and a witness was ordered to appear.

On the Trial date of 06/23/2025, Judge Haugan noted on the Minutes of Hearing, that following close of discovery of the Mandatory Settlement Conference and after the parties Amended the Pre-Trial Conference Statement on 04/23/2025, Applicant's Attorney caused to be filed a List of Exhibits which extends beyond those identified on the 04/23/2025 Amended Pre-Trial Conference Statement. After a discussion about Defendant's concern with the new Exhibits the case was taken off calendar. The notation from Judge Haugan was "given the confusion and

³ Commissioner Sweeney and Commissioner Gaffney who were on the panel that issued a prior decision in this matter no longer serve on the Appeals Board. Other panelists were substituted in their place.

argument of due process concern from both sides off calendar is appropriate. Parties advised they should meet and confer, and upon filing of a new DOR, list every exhibit/ issue intended to use at subsequent trial”.

A new DOR was filed on 08/01/2025 by Applicant’s Attorney for a Mandatory Settlement Conference and the case was set for hearing on 09/30/2025. At that hearing, the case was set for Trial on 11/25/2025 before the undersigned WCALJ. On that Trial date, the case was continued due to the lengthy discussions by the parties, to a new date of 01/20/2026, which was continued due to unavailability of Applicant’s Attorney to 03/10/2026. On that date the Trial proceeded and since it did not conclude on 03/10/2026, the Trial was continued to 04/23/2026. On 04/23/2026 the Trial was concluded and submitted.

A Findings of Fact and Order and Opinion on Decision Issued on 07/06/2026 and served on 07/07/2026.

(Report, August 7, 2026, p. 2, ¶ 1-p. 3, ¶4.)

In the C&R, as relevant here, the parties stipulated that: “(1) NO PENALTIES OR INTEREST HAVE ACCRUED ON ANY CLASS OF BENEFITS TO DATE, AND NONE SHALL ACCRUE ON THIS SETTLEMENT IF PAID WITHIN 30 DAYS OF DEFENDANT'S RECEIPT OF OACR.” (C&R, ¶ 8.) They further stipulated that: “P&I WAIVED REGARDING ANY AND ALL PAYMENTS IF PAYMENT IS MADE WITHIN 30 DAYS OF DEFENDANT'S RECEIPT OF THE ORDER APPROVING COMPROMISE AND RELEASE.” (C&R, ¶ 9, Comments.)

On October 23, 2024, the WCJ issued an Order Approving the C&R (OAC&R).

Defendant initially issued a check to applicant’s attorney on October 31, 2024, but it was returned to sender the same day, with the return to sender notice received by defendant on November 12, 2024. (Def. Exhs. C; D.)

From November 15, to 27, 2024, applicant’s attorney and defendant’s attorney engaged in a number of email exchanges regarding the check for attorney’s fees. (App. Exhs. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23.)

On December 3, 2024, defendant reissued the check to applicant’s attorney. (Def. Exh. E.)

On July 27, 2026, applicant sought reconsideration of the F&O.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, which states 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 August 10, 2026, and 60 days from the date of transmission is October 9, 2026. This decision is issued by or on October 9, 2026, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 10, 2026, and the case was transmitted to the Appeals Board on August 10, 2026. 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 August 10, 2026.

II.

Here, applicant contends that when defendant did not reissue the check for attorney's fees until December 3, 2024, more than 30 days after the issuance of the OACR, it was an unreasonable delay in the provision of benefits. Applicant seeks the imposition of penalties pursuant to section 5814, attorney's fees pursuant to section 5814.5, and statutory interest on sums not paid pursuant to section 5800.

We first turn to the issue of penalties.

Pursuant to section 5814(a):

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).)

In *Ramirez v. Drive Financial Services (Ramirez)* (2008) 73 Cal.Comp.Cases 1324 (Appeals Board en banc), we emphasized that section 5814 affords a WCJ discretion in determining the penalty which should be assessed, with a primary view towards the goals of encouraging the prompt payment of benefits by making delays costly on defendants, and of ameliorating the effects of any delays on the injured worker. To that end, in *Ramirez*, we listed factors to be considered in assessing a section 5814 penalty: (1) evidence of the amount of the payment delayed; (2) evidence of the length of the delay; (3) evidence of whether the delay was inadvertent and promptly corrected; (4) evidence of whether there was a history of delayed payments or, instead, whether the delay was a solitary instance of human error; (5) evidence of whether there was any statutory, regulatory, or other requirement (e.g., an order or a stipulation of the parties) providing that payment was to be made within a specified number of days; (6) evidence of whether the delay was due to the realities of the business of processing claims for benefits or the legitimate needs of administering workers' compensation insurance; (7) evidence of whether there was institutional neglect by the defendant, such as whether the defendant provided a sufficient number of adjusters to handle the workload, provided sufficient training to its staff, or

otherwise configured its office or business practices in a way that made errors unlikely or improbable; (8) evidence of whether the employee contributed to the delay by failing to promptly notify the defendant of it; and (9) evidence of the effect of the delay on the injured employee. (*Id.* at pp.1329-1330.)

In this case, the WCJ was tasked with determining whether defendant unreasonably delayed payment of applicant attorney's fees that would warrant an award of penalties and attorney's fees. Here, we agree with the WCJ's conclusion that the record does not support a finding of unreasonable action by defendant that would support an award of penalties or attorney's fees. As explained by the WCJ in the Report:

In his Petition Applicant's Attorney continues to argue that the payment of Attorney's Fees in this matter of \$19,500.00 was unreasonably delayed. This WCALJ went through extensive documents and exhibits filed by both parties and heard Witness Testimony of Ana Ariza on 03/10/2026 in regard to the checks issued to Applicant's Attorney's office. The Court continues to find that there was no unreasonable delay in this matter. There is no question that the original check of \$19,500.00 was issued timely to Applicant's Attorney. The check issued to Applicant's Attorney Jeffrey Trombacco, was issued initially on 10/31/2024 (Defendant's Exhibit B) in the amount of \$19,500.00. No interest would have been due and payable as the Attorney's Fee check was issued timely. Included in Defendant's Exhibit D was an envelope stamped "Return to Sender Vacant Unable to Forward 11/15/24" The original check to Applicant's Attorney dated 10/31/2024 issued timely as it issued eight days after the Order Approving Compromise and Release issued on 10/23/2024.

A check in the amount of \$19,500.00 issued to Applicant's Attorney Jeffrey Trombacco at the address: 341 Corporate Terrace Circle, Suite 104, Corona CA 92879 on 10/31/2024. (Defense Exhibit B). There is an envelope with a typed postal stamp on it that shows "returned to sender vacant unable to forward" with a date of 11/15/2024. (Defense Exhibit D).

On 11/15/2024, there was an e-mail from the Defense Attorney to Applicant's Attorney requesting confirmation as to whether the checks to his client and to the Attorney had been received. (Applicant's Exhibit 5). There is another e-mail exchange between Defense Attorney and Applicant's Attorney on 11/27/2024 in which there was a discussion about reissuing the check as it was returned undeliverable. (Applicants Exhibit 3).

At time of Trial on 03/10/2026, Witness Ana Ariza from Gallagher Bassett testified. Ms. Ariza testified that if the check was issued on 10/31/2024, it would have been mailed the day after on 11/01/2024. She does not personally know if the check went out on 11/01/2024. They are told to put checks into the system, and that the following day they are mailed out, and they are mailed from Clinton, Iowa. This

is where all checks are issued unless it is a Direct Deposit. Based on her review of the file, she is not sure they asked Defense Counsel about the check, or if Josephine was notified by Counsel that the check had not been cleared. The Witness was asked about the procedure they go through if a check cleared Citibank. It is her understanding that Citibank is the bank they used for checks. She has never contacted Citibank to see if the check has cleared and does not contact them directly, and that is forwarded to their Financial Department to ask Citibank. The process when they have a check pending that is not cleared, and the party says the check is untimely, is they check the status in the system. If it is determined that the check is not cleared, they can make a stop payment within 24 to 48 or possibly up to 72 hours. They did issue a stop payment on the check dated 10/31/2024, and that stop payment was placed or at least requested on 11/26/2024, as the check had been returned on 11/22/2024 which was a Friday, so the next business day would have been Monday 11/26/2024. The Resolution Manager was off on Monday, so she requested the stop payment on Tuesday. That was Josefina, who came back on Tuesday, and the stop payment request went out on 11/26/2024. Again, they received the notice that the check was returned on 11/22/2024. The replacement check was issued on 12/03/2024, that is when it was put into the system. Her belief is that it then goes out on 12/04/2024. The date on the check itself would be the issue date which was 12/03/2024. Generally, she does not get involved in checking on the status of whether a check is clear after it issues. (Amended Minutes of Hearing pg. 8 lines 6-25).

Based upon all the Exhibits and the testimony, it appears that the original check to Applicant's Attorney issued on 10/31/2024. It appears that it was returned to sender by the post office on or about 11/15/2024. The Witness testified that it appears the check was returned to them on or about 11/22/2024 which was a Friday. The Witness, Ms. Ariza, testified that the next business day was Monday but the Adjuster handling the claim, Josephine, was off on Monday so she would not have seen it until Tuesday 11/26/2024. It appears that the stop payment went out on 11/26/2024. They were closed early on Wednesday 11/27/2024 as that was the day before Thanksgiving and when Josephine returned on Tuesday, as she was off on Mondays, that would have been 12/03/2024. On that date the check was put in the system, and the check was issued the next day on 12/04/2024.

In *State Comp. Ins. Fund. v. Workers' Comp. Appeals Bd.* (1998) 18 Cal. 4th 1209, 77 Cal. Rptr. 2d 528, 959 P.2d 1204 the court noted "When penalties are assessed in the workers' compensation setting, we have cautioned that 'the board should proceed with a view toward achieving a fair balance between the right of the employee to prompt payment of compensation benefits, and the avoidance of imposition upon the employer or [insurance] carrier of harsh and unreasonable penalties.'" (Gallamore, supra, 23 Cal. 3d at p. 828.) We have since reiterated this position. (*Christian v. Workers' Comp. Appeals Bd.* (1997) 15 Cal. 4th 505, 517 [63 Cal. Rptr. 2d 336, 936 P.2d 115]; *Rhiner v. Workers' Comp. Appeals Bd.*, supra, 4 Cal. 4th at p. 1230.) CA(3) (3) Reading together Sections 5814 ("The question of delay and the reasonableness of the cause therefor shall be determined by the

appeals board in accordance with the facts.") and 5952 (review by an appellate court is limited to whether the Board's decision "was unreasonable" and is supported by "substantial evidence" we thus turn to an examination of the factual basis of the Board's decision that SCIF's delay was unreasonable, keeping an eye on whether the Board's decision represents a fair balance between the interests of the employee and employer."

(Report, August 7, 2026, p. 4, ¶ 1-p. 7, ¶ 1.)

As described by the WCJ, the evidence supports finding that the delay was due in part to the realities of the business of processing claims for benefits or the legitimate needs of administering workers' compensation insurance.

Additional factors weigh in favor of finding no unreasonable delay by defendant in issuing payment for attorney's fees.⁴ Notably, the evidence supports finding the delay to be inadvertent and promptly corrected. The check was sent to applicant's attorney's confirmed address, but it was returned to sender, which defendant had no way of knowing would occur. Thereafter, defendant's attorney attempted to work with applicant's attorney to have the check reissued. Yet, the evidence suggests that applicant's attorney, the intended recipient of the funds, may have contributed to the delay by failing to promptly notify the defendant of non-receipt and by failing to confirm whether he wanted the check reissued.

Defendant's attorney contacted applicant's attorney by email on November 15, 2024, before the 30 days had elapsed, to confirm receipt of payment. (App. Exh. 5.) Applicant's attorney did not respond until three days later on November 18, 2024, to indicate he did not receive payment for attorney's fees. (App. Exh. 6.) In multiple emails on November 20, 2024, defendant's attorney asked applicant's attorney if he wanted the check reissued. (App. Exhs. 8, 10, 11.) On November 20, 2024, although applicant's attorney responded to defendant attorney's email, he did not answer the question as to whether he wanted the check reissued. (App. Exh. 9.) Then, on November 26, 2024, after the 30-day period set forth in the C&R elapsed, applicant's attorney demanded penalties, attorney's fees, and interest for delayed payment. (App. Exh. 12.) On November 27, 2024, applicant's attorney finally confirmed he wanted the check reissued and to which address. (App. Exh. 23.) The check was thereafter reissued on December 3, 2024. The email exchanges between defendant's attorney and applicant's attorney reflect a possible lag by applicant's attorney in responding to inquiries from defendant's attorney regarding whether he wanted the check

⁴ We did not focus on those factors with limited or no applicability in the instant case.

reissued. Such actions raise the question as to whether the replacement check could have been issued sooner had applicant's attorney responded more quickly.

Thus, we agree with the WCJ's decision that the record does not support finding that defendant unreasonably delayed payment of attorney's fees to warrant penalties or attorney's fees.

Turning to the issue of interest, section 5800 states that:

All awards of the appeals board either for the payment of compensation or for the payment of death benefits, shall carry interest at the same rate as judgments in civil actions on all due and unpaid payments from the date of the making and filing of said award. Such interest shall run from the date of making and filing of an award, as to amounts which by the terms of the award are payable forthwith. As to amounts which under the terms of the award subsequently become due in installments or otherwise, such interest shall run from the date when each such amount becomes due and payable.

(Lab. Code, § 5800.)

“[W]hen a WCAB award specifically provides that attorney fees are to be paid directly to the attorney, any post-award interest that accrues on the attorney fees must also be paid directly to that attorney.” (*Kozdin v. State Comp. Ins. Fund* (2010) 186 Cal.App.4th 480, 490 [75 Cal.Comp.Cases 711].) Here, the award provided that attorney's fees were to be paid directly to applicant's attorney. In the C&R, the parties agreed that no interest “shall accrue on this settlement if paid within 30 days of defendant's receipt of OACR” and that interest was “waived regarding any and all payments if payment is made within 30 days of defendant's receipt of the Order Approving Compromise and Release.” The WCJ concluded that since payment was issued to applicant's attorney within the 30-day period and payment was sent to the correct address, applicant's attorney had waived the right to interest by the terms of the agreement.

However, interest is mandatory. At some point, defendant owed the monies and interest began to accrue, and there is nothing in the record to indicate that defendant paid any interest. Since the WCJ did not consider when interest began to accrue, and apparently concluded that it was waived, we will defer the issue. Since the amount is bound to be quite small, the parties are encouraged to resolve the issue amicably without further burdening the scarce resources of the WCAB.

Accordingly, we grant the Petition for Reconsideration, amend the F&O to defer the issue of interest under section 5800 (Findings of Fact 2, 4, Order), and otherwise affirm the F&O.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Order issued on July 7, 2026 by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the decision after reconsideration of the Worker's Compensation Appeals Board, that the Findings and Order issued on July 7, 2026 by the WCJ is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

2. No violation of Labor Code section 5814 is found in regard to the check issued to applicant's attorney in the amount of \$19,500.00, and applicant's attorney is not entitled to a corresponding award of attorney's fees under Labor Code section 5814.5.

* * *

4. The issue of interest on the Award under Labor Code section 5800 is deferred.

ORDER

Pursuant to Finding of Fact 2, applicant and applicant's attorney are not entitled to penalties and attorney's fees under Labor Code sections 5814 and 5814.5.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 9, 2026

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

**GUADALUPE GASTELUM
LAW OFFICES OF JEFFREY M. TROMBACCO
COLANTONI, COLLINS, MARREN, PHILLIPS, AND TULK, LLP**

DC/pm

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