

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

JANETTE NEVES RIVERA, *Applicant*

vs.

CITY AND COUNTY OF SAN FRANCISCO, Permissibly Self-Insured, *Defendant*

**Adjudication Number: ADJ22856965 [ADR Case No. SFFD-ADR-02493]
San Francisco District Office**

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

Applicant seeks reconsideration of an arbitrator's Findings & Award of June 6, 2026, wherein, as relevant to the instant Petition, it was found that "Applicant's claim for additional period of ... [temporary disability is] denied" and that "Applicant is entitled to a penalty under Labor Code § 5814." In this matter, while employed as a firefighter during a cumulative period ending July 12, 2023, applicant sustained industrial injury to the low back causing temporary disability from July 15, 2023 through August 14, 2024.¹ Applicant went off work in July of 2023 but defendant did not accept the injury until October 21, 2025 and did not pay benefits until November 13, 2025. When payment was finally advanced in November of 2025, defendant paid one year of salary continuation pursuant to Labor Code section 4850 (corresponding to the period July 15, 2023 to July 13, 2024) and temporary disability indemnity corresponding to the period July 14, 2024 to August 14, 2024 (Transcript of May 27, 2026 arbitration at pp. 5-6). The arbitrator found applicant entitled to a Labor Code section 5814 penalty of only \$1,734.80, which he calculated as 25 percent of the temporary disability indemnity due from July 14, 2024 to August

¹ The arbitrator did not issue any findings regarding applicant's injury or dates of disability. We note that at trial, it appears that the parties stipulated only to injury to the low back (Transcript of May 27, 2026 arbitration at p. 5) despite the fact that independent medical evaluator physical medicine specialist Steven D. Feinberg found injury to both the lumbar and cervical spine (August 13, 2024 report at p. 20). Additionally, the arbitrator listed the date of injury as July 12, 2023, despite the fact that the medical record and the pleadings treat the injury as a cumulative injury.

14, 2024². The arbitrator did not explain why he assessed a section 5814 penalty only on this portion of applicant's temporary disability period, and not on the one year that she was entitled to Labor Code section 4850 salary continuation benefits.

Applicant contends that the arbitrator erred in (1) not finding applicant entitled to temporary disability indemnity for any period after August 14, 2024 and in (2) not assessing a penalty on the entire period of delayed compensation. We have received a short three-paragraph Answer from defendant, and the arbitrator has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explain below, we will grant reconsideration and amend the arbitrator's decision to reflect a maximum Labor Code section 5814 penalty of \$10,000.00, calculated on the entire period of delayed benefits.

I.

Up through July 1, 2024, petitions for reconsideration were subject to former Labor Code section 5909, which 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.)

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former Labor Code section 5909, which stated 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 Labor Code section 5909(a) (in effect from July 2, 2024 through June 30, 2026), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the

² Dr. Feinberg found applicant permanent and stationary as of August 14, 2024. It is unclear whether applicant has been paid any permanent disability indemnity advances. Permanent disability was not at issue at the May 27, 2026 hearing.

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 July 7, 2026 and 60 days from the date of transmission is Saturday, September 5, 2026. The next business day that is 60 days from the date of transmission is Tuesday, September 8, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Tuesday, September 8, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

Labor Code section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026) 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. Labor Code section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) 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, the Report was served on July 6, 2026, and the case was transmitted to the Appeals Board on July 7, 2026. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under Labor Code section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026), because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on July 7, 2026.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the arbitrator or the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by Labor Code section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026). While this failure to provide notice does not alter

³ 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.

the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on July 7, 2026.

II.

Turning to the merits, with regard to entitlement to temporary disability benefits beyond August 14, 2024, applicant essentially argues that defendant is estopped from relying on the permanent and stationary date in Dr. Feinberg's report because defendant ignored Dr. Feinberg's repeated opinion that applicant sustained industrial injury and compensable disability.⁴

While we appreciate applicant's rhetorical flourish, our decision must be based on the evidence in the record, and we have no power to punitively create further temporary disability because of unreasonable delays or bad faith litigation tactics. The Labor Code provides other remedies for this type of conduct (see, e.g., Lab. Code, §§ 5813, 5814). "[T]emporary disability indemnity is payable during the injured worker's healing period from the injury until the worker has recovered sufficiently to return to work, or until his/her condition reaches a permanent and stationary status." (*Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 868 [44 Cal.Comp.Cases 798].) Here, Dr. Feinberg opined that applicant's condition reached permanent and stationary status on August 13, 2024. Accordingly, the arbitrator correctly found that temporary disability benefits ended on that date.

However, we find that the arbitrator erred in awarding a Labor Code section 5814 penalty of only \$1,734.80. The arbitrator's explanations in the Opinion on Decision and in the Report are not a model of clarity. Labor Code section 5814(a) states, in pertinent part, "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." Since the arbitrator found a Labor Code section 5814 penalty on the temporary disability corresponding to the period July 14, 2024 to August 14, 2024, he necessarily found that this compensation was unreasonably delayed. It follows that the Labor Code section 4850 benefits that were also payable as a result of a finding of industrial injury and resultant disability that was due at the same time and finally paid on the same date was also unreasonably delayed.

⁴ Dr. Feinberg's report is dated August 13, 2024 but it was stated at trial that temporary disability benefits were paid through August 14, 2024. We have not been asked to address this one-day difference.

Dr. Feinberg authored numerous reports dated February 21, 2024, April 25, 2024 and May 15, 2024 indicating that applicant's decades of work as a firefighter contributed to her condition. In August of 2024, Dr. Feinberg clearly indicated that despite other conditions and possible symptom magnification, there was clearly an industrial component to applicant's injury, and that applicant's injury had caused temporary disability spanning the entire period she was off work until the date of the report when she was found permanent and stationary. (August 13, 2024 report at p. 20.) Although this report was dated August 13, 2024, it apparently was not mailed to the parties until October 2, 2014. Nevertheless, liability was not accepted for over one year after receipt of this report.

In a Labor Code section 5814 penalty case, "the burden is on the employer or carrier to establish the existence of a genuine doubt, from a medical or legal standpoint, as to its liability for the benefits to be advanced." (*Kerley v. Workmen's Comp. App. Bd.* (1971) 4 Cal. 3d 223, 227 [36 Cal.Comp.Cases 152].) In this case, the defendant has not provided any explanation regarding why it ignored Dr. Feinberg's conclusion for over one year. Defendant apparently agreed to pay compensation after a second reporting physician confirmed Dr. Feinberg's opinions. However, it is not explained why this confirmation was necessary.

Accordingly, we find applicant entitled to a maximum Labor Code section 5814 penalty of \$10,000.00. We note that this is less than 6 percent of the compensation delayed. We find applicant's counsel entitled to 15 percent of this recovery.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings & Award of June 9, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings & Award of June 9, 2026 is **AMENDED** as follows:

Findings

1. Applicant's claim for an additional period of temporary disability is denied.
2. Applicant is entitled to a \$10,000.00 penalty under Labor Code section 5814.
3. Applicant's counsel is entitled to a reasonable attorneys' fee of \$1,500.00, representing 15 percent of applicant's Labor Code section 5814 recovery.

Award

AWARD IS MADE in favor of Janette Neves Rivera against the City and County of San Francisco, permissibly self-insured, as follows:

a A Labor Code section 5814 penalty in the amount of \$10,000.00 less an attorneys' fee of \$1,500.00 payable to Brown & Delzell, LLP, whose lien is hereby allowed.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 8, 2026

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

**JANETTE NEVES RIVERA
BROWN & DELZELL
SAN FRANCISCO CITY ATTORNEY
SAUL ALLWEISS, ARBITRATOR**

DW/oo

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