

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

MARIA ALEJANDRA MEZA, *Applicant*

vs.

**WEST COAST TERRACE HEALTHCARE & WELLNESS CENTER;
XL INSURANCE administered by INTERCARE, *Defendants***

**Adjudication Number: ADJ16384093
Marina del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order (F&O) issued on October 8, 2025. The workers' compensation administrative law judge (WCJ) found in pertinent part that applicant was not entitled to penalties, sanctions, or costs pursuant to either Labor Code section 5813¹ or section 5814 and that applicant's counsel was not entitled to fees.

Applicant argues that the WCJ erred by finding that defendant's delay in authorizing hip surgery did not warrant costs and sanctions pursuant to sections 5813 and 5814. Applicant also argues that attorney's fees should be paid pursuant to sections 5813 and 5814.5 for counsel's efforts in getting hip surgery authorized.

Defendant filed an answer. The WCJ issued a Report and Recommendation (Report) recommending denial.

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

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

FACTS

Applicant sustained an injury on April 7, 2022 while employed by defendant as an “LVN” to her right hip, right knee, and lumbar spine.

On November 16, 2023, Dr. Brad Penenberg, surgical consultant, issued a request for authorization for a right total hip arthroplasty as well as pre-operative and post-operative testing and durable medical equipment. Defendant issued a UR denial on November 27, 2023. Applicant filed a declaration of readiness to proceed to expedited hearing (DOR) on January 5, 2024 alleging that the UR determination was untimely. The matter was continued three times and finally heard on June 12, 2024.

On June 12, 2024, the case proceeded to trial. The issues submitted were whether a UR denial of right hip replacement surgery dated November 27, 2023 was untimely, and whether, if untimely, the Appeals Board has jurisdiction to award the surgery and whether substantial medical evidence supported the surgery.

On August 20, 2024, the WCJ issued a Findings and Award (F&A) finding that the UR denial was timely decided but untimely communicated as it was not relayed to the physician within 24 hours of the decision by either telephone, facsimile, or electronic mail. Pursuant to *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc) (*Dubon II*), the Appeals Board had jurisdiction to address the issue of whether the treatment was reasonably necessary. She found that the reporting of the consulting physician Dr. Brad Penenberg and the deposition transcript of the Qualified Medical Evaluator (QME) Dr. Jonathan Berkowitz were substantial evidence to support that the surgery was reasonably necessary, and she awarded the surgery.

The surgery went forward on September 12, 2024. (Minutes of Hearing (Further) MOH, 07/23/2025.) Applicant filed a petition for penalties pursuant to sections 5813 and 5814 dated November 25, 2024, alleging bad faith and unreasonable delay for defendant’s delay in authorizing the hip surgery.

The parties entered into Stipulations with Request for an Award (Stipulations), and an Award issued on April 30, 2025. The Stipulations note that temporary disability was paid from September 13, 2022 through September 10, 2024 and permanent disability was paid beginning on April 18, 2023. The Stipulations indicate that applicant was found to be at maximum medical

improvement March 24, 2025. At page 7 of the stipulations, item 8 is crossed out so as to indicate that the issue of penalties under section 5814 was not resolved.

On July 16, 2025, the matter went forward to trial on the following issues:

1. Applicant's Petition for Penalties, Costs, and Attorney fees based on the untimely issuance of authorization for right hip replacement surgery.
2. The statutory limit for temporary total disability benefits according to Labor Code section 4656(c).
3. The transition, at the time of termination of temporary disability benefits, to permanent disability benefits.

(MOH, July 16, 2025, 2:23-3:2.)

The WCJ issued an F&O on October 7, 2025 finding, in relevant part, that defendant had not violated sections 5814 and 5813 by delaying or denying medical treatment or temporary disability benefits. (F&O, 10/7/2025, p. 3.) The WCJ noted:

“...the Defendant had some reasonable legal basis to not authorize the surgery pursuant to Dr. Penenberg’s RFA as UR denied the surgery. In the interim, between the date of the RFA, 11/16/2023, and the date of final surgery, 9/12/2024, the parties were litigating the issue of UR denial. This does not constitute an unreasonable delay under Labor Code Section 5814 or 5814.5 as the parties were actively litigating the issue of surgery. The Applicant’s request for sanctions must be denied.”

(*Id.* at p. 3.)

The WCJ further noted that defendant did not exhaust temporary disability by unreasonably delaying the surgery noting that a prior trial on the issue of temporary disability had raised a genuine legal basis for terminating temporary disability at that time. The benefit printout notes that temporary disability was paid for a continuous period of 104 weeks through September 10, 2024. (Defendant’s H.) Last, the WCJ concluded there was no evidence of bad faith conduct solely intended to cause delay to support sanctions under section 5813.

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.

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 November 19, 2025 and 60 days from the date of transmission is Sunday, January 18, 2026. The next business day that is 60 days from the date of transmission is Tuesday, January 20, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Tuesday, January 20, 2026 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 November 19, 2025 and the case was transmitted to the Appeals Board on November 19, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that

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.

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 19, 2025.

II

In addition to the analysis outlined in the Report incorporated hereto, we add the following analysis.

Section 5813 provides that “[t]he workers’ compensation referee or appeals board may order a party, the party’s attorney, or both, to pay any reasonable expenses, including attorney’s fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay” (Lab. Code, § 5813(a).)

WCAB Rule 10421, promulgated under section 5813, discusses the nature and scope of conduct that is subject to sanctions. Subdivision (b) provides that “[b]ad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include 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.” (Cal. Code Regs., tit. 8, § 10421(b).) Subdivision(b)(6)-(b)(8) outline considerations for determining whether a position or defense is *indisputably* without merit. The regulation goes on to note, that the subdivision is “specifically intended not to have a “chilling effect” on a party’s ability to raise and pursue a legal issue.” (Cal. Code Regs., tit. 8, § 10421(b).)

Applicant argues that defendant failed to show good cause for unreasonably delaying authorization for the hip replacement surgery following an untimely UR denial. This argument is misplaced. First, it is applicant’s burden to prove bad faith actions or tactics that are frivolous or intended to cause delay. Applicant provides no evidence of bad faith tactics.

Second, Applicant suggests that continued denial in the face of an untimely UR denial is enough to show that defendant’s position was frivolous pursuant to WCAB Rule 10421. However, even if defendant’s position that the UR determination was timely was frivolous³, defendant’s position that the surgery was not medically necessary was not. In *Dubon II*, *supra*, (2014) 79

³ We do not opine that defendant’s position was frivolous as on its face as the determination appeared timely, but the ultimate finding was a more nuanced finding that the determination the evidence did not show that the determination was communicated timely.

Cal.Comp.Cases 1298, the Appeals Board held that it has jurisdiction to determine whether a UR decision is timely. If a UR decision is untimely, the determination of medical necessity for the treatment requested may be made by the Appeals Board. (*Dubon II, supra*, at pages 1299, 1300.) As noted by the WCJ in her original opinion, she found that the medical reporting was substantial evidence to rebut the Medical Treatment Utilization Schedule (MTUS) despite applicant not having completed the recommended course of injections prior to surgical intervention. Defendant had a genuine basis to argue that the record did not support the treatment based on MTUS. Until that determination was made by the WCJ, there was a legitimate dispute and defense. Defendant's position was not without merit pursuant to *Dubon II* and therefore cannot be the basis for sanctions, costs, or attorney's fees pursuant to section 5813.

Further, we agree with the WCJ that there was not an unreasonable delay pursuant to section 5814. 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].)"

In addition to the genuine medical or legal doubt outlined above, Applicant has not proven unreasonable delay on any other grounds. Applicant stresses that the surgery was not authorized for ten months, however, this entire period was the period in which litigation was occurring. The matter was jointly continued several times, and the record does not indicate malfeasance on the part of defendant for the delay in litigation. Once the F&A issued awarding the surgery, defendant promptly authorized it such that the surgery was *completed* within a month of the award. There is no evidence of unreasonable delay.

Finally, we note attorney's fees cannot be awarded pursuant to section 5814.5 without an enforceable award. Under section 5814.5, "[w]hen the payment of compensation has been unreasonably delayed or refused subsequent to the issuance of an award [...] 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; see also *Ramirez, supra*, 73 Cal.Comp.Cases 1324 (Appeals Board En Banc) "The right to seek attorney's fees under section 5814.5 comes into existence only after applicant has

been awarded compensation and defendant has unreasonably delayed payment.”) Applicant’s petition seeks fees pursuant to section 5814.5 for counsel’s efforts in pursuing authorization of the hip surgery. The Award for ongoing medical treatment to the right hip is dated April 30, 2025 following the award of the hip surgery. These efforts precede any award of either ongoing medical treatment or the surgery itself. Therefore, fees cannot be awarded pursuant to section 5814.5.

Accordingly, applicant’s Petition for Reconsideration is denied.

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 F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 20, 2026

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

**MARIA ALEJANDRA MEZA
ALVES LAW
HINDEN BRESLAVSKY**

TF/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
NOTICE OF TRANSMITTAL TO THE WCAB

I

INTRODUCTION

Petitioner contends that the Petitioner was aggrieved by the WCJ's decision in that she acted in excess of her powers in denying the Petitioner's claim for an imposition of Sanctions against Defendant under Labor Code Sections 5814, 5814.5 and 5813, and as such the decision should be overturned; and that furthermore, the Petitioner should be awarded additional TD benefits beyond the 104 weeks and Attorney Fees based on the imposition of Sanctions

II

JURISDICTIONAL FACTS

This case came on for trial on July 16, 2025, on the issue of whether the Defendant is in violation of Labor Code Section 5813 by willfully and in bad faith engaging in tactics that were frivolous or solely intended to cause unnecessary delay in denying and delaying the right hip surgery. Additionally, Petitioner takes the position that under Labor Code Section 5814 and 5814.5 sanctions should issue for Defendant's unreasonable delay in authorizing the surgery. The trial was submitted on the record after which the parties filed trial briefs. After reviewing all the evidence, and the history of litigation on this case, the WCJ found that no sanctions should be issued and no attorney's fees are owing. The Findings and Order was issued on 10/7/2025. The Petitioner filed a timely Petition for Reconsideration and Defendant has filed its answer.

III.

APPLICANT HAS NOT SHOWN THAT THERE WAS AN UNREASONABLE DELAY
IN PROVIDING THE RIGHT HIP SURGERY IN VIOLATION OF LABOR CODE
SECTION 5814

The chronology of case events noted below reveals that the Petitioner failed to meet her burden of proving that Defendant violated Labor Code Section 5814. The evidence submitted by the

parties fails to show that there was an unreasonable delay on the part of Defendant in authorizing the right knee surgery.

To put these issues in context, this is the third trial on this case. The first was set on 3/13/2023, on the issue of Temporary Disability (TD). On that date, the parties entered into a Stipulations and Award for payment of retroactive TD benefits.

Next, Petitioner filed for an Expedited Hearing on the issue of the Petitioner's entitlement to continuing TD benefits. The trial proceeded on 10/2/2023, and a Findings and Award issued on 12/28/2023. PQME Dr. Berkowitz's report of 3/17/2023, indicated Petitioner was not MMI, and that she needed right hip surgery, (Ex 1). On the contrary, PTP Dr. Dini indicated that there was a need for the surgery but simultaneously found that the Petitioner was MMI, (Ex. A). Based on Dr. Dini's report, Defendant terminated TD benefits, (Ex. C). The WCJ found the report of PQME Dr. Berkowitz to be more persuasive and awarded the Petitioner TD benefits from 4/17/2023 and continuing.

Petitioner then filed a DOR on 1/5/2024, for an Expedited Hearing claiming a Utilization Review (UR) denial of surgery was untimely. No appeal to Independent Medical Review (IMR) was filed by Petitioner. That trial took place on 6/12/2024, and the Findings and Award was issued on 8/20/2024. The WCJ found that the denial was untimely, granting the Board jurisdiction, and ordered the surgery to proceed based upon the substantial medical evidence and Applicant's testimony. On 9/12/2024, the right hip surgery took place.

In each of these cases, the Defendant had some legal basis for taking the position they did. Defendant did not authorize the surgery pursuant to the UR denial of Dr. Penenberg's Request for Authorization (RFA). Dr. Penenberg was the consultant to whom the Petitioner was referred by PQME Berkowitz. In the time between the date of the RFA, 11/16/2023, and the date of final surgery, 9/12/2024, the parties were litigating the issue of UR denial. This does not constitute an unreasonable delay under Labor Code Section 5814 or 5814.5 as the parties were actively litigating the issue of surgery. Where there is a genuine doubt created by medical evidence, the delay in treatment is not without a reasonable basis; (*Castaneda v.*

WCAB, (2021) 86 CCC 35. Here, there was a genuine doubt from a legal and a medical viewpoint, i.e., whether benefits were due to the Applicant (Dr. Dini found the Applicant MMI and not TTD), and later, in the case of the delay in the provision of surgery, Defendant relied upon UR denial; (See also *Gangwish v WCAB* (2001) 66 CCC 584; and *Kerley v. WCAB* 4 Cal 3d 227). For these reasons, Petitioner's claim for 5814 benefits must be denied.

IV.

NO VIOLATION OF LABOR CODE SECTION 5813 HAS OCCURRED

The standards for sanctions under Labor Code Section 5813 are higher than those of Labor Code Section 5814. This section applies to a party who has engaged in willful and bad faith conduct solely intended to cause a delay. It is intended as a punitive measure against parties who abuse the legal process or otherwise act in bad faith; (*Ramirez v. Drive Financial Services* (En Banc) 2008 73 CCC 1324). There is no evidence in this case which shows an intent to cause delay, nor any bad faith conduct.

V.

THE EXHAUSTION OF TD BENEFITS CAN NOT BE COMPENSATED VIA THE SANCTIONS PROVISIONS OF THE LABOR CODE

An unfortunate consequence of our workers' compensation system is that, where the parties litigate issues such as medical treatment, those delays often result in TD benefits having been exhausted by the time the medical issues are resolved. Here, the Petitioner's 104-week TD benefits were terminated approximately 3 weeks after the date of the surgery. *Labor Code Section 4646(C)(1)* provides for a limit of TD benefits to 104 weeks payable within 5 years of the date of injury. In *Baltazar v WCAB* (2008) 73 CCC 486, the Appeals Board refused to extend the 104-week cap in TD benefits where there was a delay in TD benefits. The remedy for the delayed provision of benefits is found in the penalty statutes of Labor Code Section 5814 and Labor Code Section 5813. Thus, the Petitioners petition for additional TD benefits to be paid to account for the lapse of benefits during and after surgery is without merit.

VI.

ATTORNEYS FEES

There is no award for attorneys' fee under Labor Code Section 5814.5 as no sanctions.

VII

RECOMMENDATIONS

For all the reasons stated herein, it is respectfully recommended that Petitioner's Petition for Reconsideration be denied in its entirety.

DATE: November 19, 2025

**ANA MARIA VELLANOWETH
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE**