**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**MARLENE FINANDER,** ***Applicant***

**vs.**

**LOS ANGELES UNIFIED SCHOOL DISTRICT, permissibly self-insured, administered by SEDGWICK CMS,** ***Defendants***

**Adjudication Numbers: ADJ4173897; ADJ3091647**
**Long Beach District Office**

# OPINION AND ORDER DENYING APPLICANT'S PETITION FOR RECONSIDERATION AND GRANTING DEFENDANT'S PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant and defendant each seek reconsideration of the Joint Findings and Orders (JF&O) issued on July 8, 2026 wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed by defendant as a teacher, applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to the neck, back, knees, and legs on May 15, 2000 (ADJ4173897) and to the lungs and psyche during the period from October 7, 1984 through October 7, 1985 (ADJ3091647); defendant is liable for reimbursement to applicant for out-of-pocket medication expenses as documented in applicant's cost billings (Exhibit 25), provided that said medications were approved by defendant, utilization review (UR), or independent medical review (IMR); defendant has not complied with the IMR determination dated November 5, 2024; sanctions pursuant to Labor Code[1] section 5813 should be imposed against defendant for noncompliance with the November 5, 2024 IMR in the amount of $1,500 payable to the General Fund; penalties per section 5814 of 15% are imposed against defendant "provided they pay applicant's reimbursement for the out-of-pocket medications within 30 days, and if not paid in that time, the court will reserve judgment as to whether the penalties

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

should be increased to 20 or 25%"; defendant should be held responsible for any misconduct by Sedgwick CMS and/or Optum Rx; applicant should not be reimbursed with respect to litigation expenses in ADJ4173897, and litigation expenses sought by applicant relative to ADJ3091647 are to be deferred; there is insufficient evidence to prove that defendant retaliated against applicant; and applicant "has not sufficiently proven a pattern of conduct by defendant entitling her to sanctions in excess of what the court found in Finding of Fact no. 9."

The WCJ ordered, in relevant part, reimbursement for the medications plus a 15% penalty pursuant to section 5814 to be adjusted by the parties with jurisdiction reserved for disputes including additional penalties in the event reimbursement is not made within 30 days; payment by defendant and their adjusting agency, jointly and severally, to the General Fund for section 5813 sanctions totaling $1,500; and deferral of additional out-of-pocket medical expenses not covered by the JF&O as well as applicant's request for reimbursement of litigation expenses in ADJ3091647.

Applicant contends that the WCJ erred in denying her request for a lump sum payment of estimated lifetime medical treatment expenses; the WCJ falsely alleged she did not treat within the medical provider network (MPN); her rights were undermined due to missing case documents which defendant was ordered to file; defendant failed to abide by the IMR decision dated November 5, 2024 and should be ordered to comply and pay penalties; defendant acted in a retaliatory manner towards applicant; the court erred in disallowing reimbursement of $1,319.26 in gym membership costs and in failing to admit Exhibits 67, 70-71, and 84-87; defendant waived their right to object to various costs incurred by applicant over the course of 7 plus years and should thus be ordered to reimburse her with penalties and interest; and defendant committed numerous violations warranting additional sanctions.

Defendant contends that applicant failed to meet her burden of proof in establishing that the medications were approved and/or authorized and that she is entitled to section 5814 penalties. Defendant further contends that section 5813 sanctions are not warranted; applicant should not be awarded litigation expenses with respect to the sanctions; further development of the record with respect to the IMR determination dated November 5, 2024, is necessary; and the WCJ failed to rule on the admission of Exhibit 43 and their objections to Exhibits 80-83.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that both Petitions for Reconsideration (Petitions) be denied.

We have considered the allegations in the Petitions and the Answer, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny applicant's Petition, grant defendant's Petition, and affirm the JF&O, except that we will amend it to defer the issue of penalties under section 5814 (Finding of Fact 10; Order).

**FACTS**

Applicant claimed that, while employed by defendant as a teacher, she sustained injury AOE/COE to the neck, back, knees, and legs on May 15, 2000 (ADJ4173897) and to the lungs and psyche during the period from October 7, 1984, through October 7, 1985 (ADJ3091647).

The above claims were settled via Stipulations with Request for Award (Stipulations). In ADJ4173897, the original Award issued on November 15, 2000. Thereafter, applicant filed a Petition to Reopen for New and Further Injury and the claim was again settled via Stipulations. The new Award was issued on June 11, 2001. In ADJ3091647, the original Award was issued on September 21, 1989. Two subsequent Awards also issued, on August 2, 1995, and June 10, 1996. The November 15, 2000 Award (ADJ4173897) and the three Awards in ADJ3091647 are not located in the record.

Following the Awards, the parties had ongoing disputes regarding medical treatment. In a UR determination dated September 19, 2024, a prescription for Zyrtec was denied. Thereafter, applicant requested IMR review, and in a determination dated November 5, 2024 (Exhibits PP/53), IMR overturned the UR denial for prescription of "Zyrtec (Cetirizine) 10mg brand name only[,] take 2 tablets per day with severe allergy #180 refills: 11[.]"

Following this determination, Zyrtec was not immediately provided by defendant, and on September 16, 2024, applicant filed a Declaration of Readiness to Proceed to Expedited Hearing on the issue of the "prior [S]tip date." Thereafter, the matter proceeded to multiple hearings, and in Minutes of Hearing dated January 30, 2025, "[d]efendant agree[d] to authorize medication exactly as IMR determined on 11/5/2024[.]" The WCJ ordered defendant to "address/provide [IMR/Zyrtec] within 5 working days." Thereafter, the matter was set for trial, to be held on May 22, 2025.

On October 26, 2025, stipulations and issues were read into the record. The parties stipulated that while applicant was employed by defendant as a teacher, she sustained injury AOE/COE to the neck, back, knee, and legs on May 15, 2015 (ADJ4173897) and to the lungs and psyche during the period from October 7, 1984 through October 7, 1985 (ADJ3091647); the employer was permissibly self-insured at the time of the injuries; there is a stipulated award in ADJ4173897 dated June 11, 2001 which was approved after a prior November 15, 2000 Award and March 1, 2001 Petition to Reopen; there is also a stipulated Award in ADJ3091647 dated June 10, 1996 which was approved after two prior Awards dated August 2, 1995 and September 21, 1989; future medical remains open for both claims; and defendant is entitled to conduct UR for all requests for treatment. The following issues were set for determination: liability for self-procured medical treatment, specifically, out-of-pocket expenses; whether defendant can be required to enter into a Compromise and Release (C&R) agreement with applicant and whether they can be required to pay the settlement in a lump sum; whether defendant complied with the November 5, 2025 IMR determination; whether any of applicant's out-of-pocket expenses were through a non-MPN doctor and if so, whether defendant is obligated to pay the non-MPN expenses; whether applicant has raised any exception to the doctrine of workers' compensation exclusivity permitting her to sue the defendant in Superior Court, and whether the WCAB has the jurisdiction to make that determination; whether sanctions pursuant to section 5813 should be imposed; whether penalties pursuant to section 5814 should be imposed; whether defendant should be held responsible for the alleged misconduct of Sedgwick and/or Optum Rx, and whether Sedgwick and/or Optum Rx has a due process right to participate in the litigation of this issue; whether applicant should be reimbursed for litigation expenses and if so, whether they would be entitled to a 10% penalty and 7% interest on those expenses; whether defendant retaliated against applicant and should be penalized for that; and whether applicant has proven a pattern of conduct by defendant entitling her to penalties and sanctions.

On December 30, 2025, and April 9, 2026, the parties submitted exhibits. Applicant submitted Exhibits 15-87, most of which pertain to legal filings, correspondence, and various memos/lists with costs, bills, invoices, and demands. Defendant submitted exhibits MM-WW which include various UR determinations dated July 13, 2022 - November 5, 2024, and letters to applicant dated October 17, 2017, January 15, 2018, and July 13, 2017.

On July 7, 2026, the WCJ issued the JF&O. In the Opinion on Decision (OOD), the WCJ stated, in pertinent part, that:

> Exhibit 25 is 70 pages of costs, bills, and invoices which appear to include not only litigation expenses but also pharmacy expenses. As to those pharmacy expenses, Applicant is entitled to all reasonable treatment to cure or relieve her from the effects of her injuries. Defendant is thus ordered to reimburse Applicant for any expenses related to Zyrtec, Advair HFA, Ventolin, Flonase, and Albuterol documented in Exhibit 25, provided those medications were approved by the Defendant, by their UR, or by IMR. The exact amount of reimbursement shall be adjusted by the parties with jurisdiction over any disputes reserved.
>
> ***
>
> Labor Code Section 5814 requires that there be an unreasonable delay in order to impose the penalties authorized therein. Again, this is Applicant's burden of proof. However, as the court has already ordered Defendant to reimburse the Applicant for self-procured medication expenses above, provided they were approved by the Defendant, or by their UR, or by IMR, then the mere fact that Applicant had to obtain these medications out-of-pocket despite such approval would constitute an unreasonable delay. Under Labor Code Section 5814, the amount of compensation unreasonably delayed or denied shall be increased by up to 25% of the value of the compensation unreasonably delayed or denied, or up to $10,000 whichever is less. This court typically awards either a penalty of 15%, 20%, or 25% depending on the severity of the delay and any other relevant circumstances. Our decision on this issue must accomplish a fair balance and substantial justice between the parties. This court now holds that Defendant may pay a 15% penalty on the out-of-pocket expenses awarded by the court above, provided they pay this reimbursement within 30 days of this decision. If the parties are unable to reach an agreement as to the amount of the required reimbursement, or some other dispute arises that prevents payment within 30 days, then the court will reserve judgment as to whether penalties of 20 or 25% should be imposed instead.

(OOD, pp. 8-9.)

It is from this JF&O that applicant and defendant seek reconsideration.

## DISCUSSION

### I.

Preliminarily, 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 sixty (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 24, 2026, and 60 days from the date of transmission is October 23, 2026. This decision is issued by or on October 23, 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.

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 24, 2026 and the case was transmitted to the Appeals Board on August 24, 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 24, 2026.

**II.**

We first turn to the issue of timeliness of the Petitions. It is well established that there are 20 days allowed within which to file for reconsideration from a "final" decision. (Lab. Code, §§ 5900(a), 5903.) This time limit is extended by 5 calendar days to allow for service upon an address within California and 10 calendar days to allow for service upon an address outside of California. (Cal. Code Regs., tit. 8, § 10605(a)(1).) It is further extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be considered timely, a petition for reconsideration must be filed with (i.e., received by) the Appeals Board within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).) This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & 2 Foundry Co. v. Industrial Acc. Com.* (*Hinojoza*) (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

Here, the JF&O issued on July 8, 2026, and according to the proof of service, Sedgwick was served at an address in Kentucky. Thirty days from this date is August 7, 2026. The parties therefore had until August 7, 2026, to file a petition for reconsideration. Applicant's Petition was filed on August 5, 2026, and was therefore timely. Defendant's Petition was filed on July 28, 2026, and was therefore also timely.

**III.**

Turning now to the merits of applicant's Petition, as stated by the WCJ in the Report:

> …Finding of Fact no. 1 found that various exhibits should be either admitted or excluded. Applicant contends that the court erred in excluding Exhibits 67, 70, 71, and 84-87. We explained in our opinion that they were excluded because they were not listed on the Pre-trial Conference Statement (PTCS), as required by Labor Code Section 5502(d)(3) and CCR Section 10759, which are quite clear that exhibits must be listed on the PTCS at the time of the Mandatory Settlement Conference. This is necessary for due process. Furthermore, CCR Section 10670(b)(1) authorizes the court to exclude exhibits that are not listed on the PTCS.

With respect to Finding of Fact nos. 2 and 3, which were simply based on stipulations made by the parties regarding the injuries, Applicant is not appealing those findings, but she contends that the WCAB has outrageously deprived her of her rights by simply not possessing some of the prior awards and stipulations with request for awards in its EAMS system, saying that it is "UTTERLY immoral and unethical for Applicant's RIGHTS to be deprived by "missing" WCAB files!" (Emphasis in original.) In its opinion on decision, the court stated that Defendant should upload these documents to EAMS if they still possess them. Presumably, Applicant already possesses these documents since they are her own awards, but Applicant complains that she has not received the documents since the court's suggestion to Defendant in its opinion that they should upload them, which was not an order. Applicant contends that this is another example of Defendant's stalling, that it is an intentional deprivation of Applicant's rights, and a travesty.

The court merely pointed out in its F&O that it could not find the awards in EAMS, which is not unusual in cases this old. EAMS only started being used by the DWC in late 2008. Paper files were not always transferred to EAMS. These particular cases had already settled and were inactive until they started being litigated again at the District Office in 2019. The awards were apparently not really relevant to the issues being litigated at that time because it was never brought up until the undersigned tried to find them in the file.

With respect to Finding of Fact no. 4, Applicant contends that the court erred in allegedly applying res judicata to disallow $1,319.26 for a gym membership and claims this is another example of bias against the Applicant by the court. Honestly, the court is not sure how applying res judicata makes it biased. Judge Wilson made a decision. Applicant did not appeal it. This court is not biased by not disturbing that final decision.

Finding of Fact no. 5 was that "The defendant cannot be required to enter into a C&R with the Applicant, and they cannot be required to pay a structured settlement in a lump sum." Applicant contends that the court erred in not ordering a lump sum commutation of her future medical benefits. However, this was not an issue specified for the trial. The issue was "Whether the defendant can be required to enter into a C&R with the applicant, and if so, whether they can be required to pay the C&R in a lump sum?" The court ruled in the negative but also discussed the concept of commutation in its opinion because it was mentioned in several of Applicant's exhibits. The court discussed in its opinion that future medical benefits cannot be commuted like indemnity benefits such as PD and life pension. Applicant now argues that future medical benefits can indeed be commuted. Applicant argues that the amount of these future benefits was already determined by the Center for Medicare and Medicaid Services (CMS) in the amount of $136,175, and they assert they could find no code section or case law that says future medical payments cannot be commuted. The purpose of CMS approving a certain amount for future medical is to make sure that Medicare does not have to pay for medical expenses that should be paid by workers' compensation. This approval is obtained where the

parties are contemplating a C&R and the injured worker is receiving Medicare or is soon-to-be Medicare eligible. It has nothing to do with the commutation of benefits which is strictly for indemnity benefits, not future medical. Labor Code Section 5100(a) specifically makes reference to the consideration of whether the injured worker can live without periodic *indemnity* payments.

With respect to Finding of Fact no. 6, although the court found in favor of Applicant on that issue, she inexplicably contends that they filed "dozens and dozens" of petitions for orders and penalties, and that "the court has 99% ignored their rightful requests" and that the court is biased against the Applicant. What Applicant perhaps does not realize is that the WCAB usually must hold a hearing when certain kinds of petitions requesting action are filed. The court does not simply grant every petition. Many times, action on a petition is deferred until the hearing takes place, evidence is submitted including testimony, and the case is submitted for decision. This court even issued an Order Deferring Action on 5/12/25 to try to explain this to Applicant. It would also be inefficient to have separate hearing for every single petition. CCR Section 10787(a) states that "the parties shall submit for decision all matters properly in issue at a single trial…." (Emphasis added.) Obviously, there are exceptions to this rule, as Expedited Hearings can take place on treatment or temporary disability issues, for example, prior to a regular trial on all other issues. But the point is that it is simply not helpful when Applicant files multitudes of motions and petitions, many saying the same thing over and over again, expecting instant court action at the WCAB.

Finding of Fact no. 7 was about whether any of Applicant's out-of-pocket medication expenses were the result of prescriptions from non-MPN doctors. We did not reach that because we had already found in Finding of Fact no. 4 that Defendant was liable to reimburse Applicant for any out-of-pocket medication expenses where the medications were actually approved by the Defendant, or by UR, or IMR. Applicant, however, contends that this court falsely alleged that it is not clear if Applicant's work comp treatment was provided by doctors in Defendant's MPN. They argue that all three doctors who provided care are listed on Defendant's MPN list, and that one of them is listed in the DIR/DWC listing of MPN doctors. Applicant says these are easily searched, publicly available lists. The court did not make any assertion that it was unclear whether her treatment was provided inside the MPN. We do not know where Applicant got that idea from. As explained in its opinion, it was simply not necessary to decide the MPN issue for the court's analysis in finding Defendant liable to reimburse Applicant for her out-of-pocket medication expenses.

Regarding Finding of Fact no. 8, in which the court found that it lacked jurisdiction to determine whether any exception to the doctrine of workers' compensation exclusivity exists which would permit the Applicant to sue Defendant in civil court, Applicant contends that the court has a duty to affirm Applicant's right to sue the Defendant in civil court. We disagree that we have a duty to affirm that Applicant has a right to sue Defendant in civil court. We could have simply stated in our

opinion that we had no jurisdiction and left it at that, but the court did write in its opinion that Applicant can file a civil lawsuit if they wish to pursue an alleged exception to the doctrine of exclusivity. Applicant was apparently satisfied with that because they write on p. 22 of their petition that they agree with the court. In their concluding prayer, however, they again argue that we should assert that Applicant has a right to pursue their alleged exceptions to exclusivity in civil court. We believe we adequately explained in our opinion that we are not the gatekeepers for civil actions. Applicant does not need this court to assert their right to sue in civil court in order for her to be able to do so.

Finding of Fact no. 9 was that Defendant should be sanctioned $1,500 for non-compliance with the 11/5/24 IMR determination. Apparently, Applicant did not believe that was enough. Applicant argues about various alleged lies by Defendant, including Defendant allegedly backdating a letter dated 1/2/20 and then lying about it to Judge Wilson. We could find no such letter and it does not appear to be in evidence. Another example cited is a "venomous" brief filed by Defendant on 8/19/25 with a "documented 100% provable lie" where Defendant allegedly claimed that Brian Fianander did not have authorization to represent the Applicant, whereupon Applicant provided the court with photographic proof of a 12/31/18 retention letter. Even if true, this would not establish an intentional lie by Defendant as opposed to simply not having the retention agreement in their file. Another example cited is that Defendant allegedly cited to an unpublished case in one of his briefs. While if true, this would not be a permissible action by an attorney, we do not believe it necessarily rises to the level of bad faith conduct which is frivolous or solely intended to cause unnecessary delay. We also do not know whether Defendant willfully failed to comply with the rule to not cite unpublished cases. As the party requesting that sanctions be imposed, Applicant has the burden of proof. Applicant goes on to mention various other examples, like Defendant allegedly ratifying—and at the same time covering up for—an adjuster's alleged perjury by signing a document as an attorney. This type of thing is actually not uncommon in workers' compensation. When stipulations with request for award or compromises & release are filed, for example, oftentimes adjusters will sign in the attorney section without indicating they are actually non-attorneys. This is not necessarily bad faith as opposed to simple neglect. Applicant also complains that Defendant filed an unauthorized sur-reply without seeking leave of the court in violation of CA Motion Practice. Applicant may not be aware that pursuant to Labor Code Section 5708 and 5709, proceedings at the WCAB are often very informal and that the WCAB is not bound by the common law or the statutory rules of evidence and procedure. As such, filing a reply to another party's pleading without the court's prior permission is typically not sanctionable. Likewise, Applicant says that they sent Defendant a list of questions to be answered which Defendant ignored. Applicant then filed the questions with the court and argues that the court should have ordered Defendant to answer them or to impose monetary sanctions per CCP Section 2033.010. Again, that is simply not something that is typically done at the WCAB. Finally, Applicant says they filed a list of more than 50 violations of Labor Code Section 98.6(a)(b)(1)(3) and that Defendant should be sanctioned $10,000 per

violation. That code section happens to pertain to the Division of Labor Standards Enforcement, and the court does not believe it is relevant to these proceedings. Applicant also argues there are violations of Corporations Code Section 13400 et seq, BPC Code Section 2286, and CCR Sections 10400-10447. We do not believe any of these vague allegations merit consideration as they do appear relevant to the proceedings, or they are simply too vague and nebulous to understand. It would not be appropriate for the court to analyze all ten of the non-repealed and non-renumbered regulations encompassed by CCR Sections 10400 through 10447 without Applicant first explaining to us how they were each violated.

Finding of Fact no. 11 was that Defendant should be held liable for any misconduct by Sedgwick and its agent Optum RX. This is another issue on which the court ruled in Applicant's favor, but she inexplicably contends that Defendant is "100% legally responsible for the continuing, ongoing misconduct of OptumRx towards Applicant."

With respect to Finding of Fact no. 12, Applicant contends that the Supreme Court totally disagrees with this court. They also contend that it is the Defendant's duty to timely raise objections to Applicant's costs submissions with the specificity that Evidence Code Section 353 requires and that the Supreme Court required in People v. Barnett (1998) 17 Cal. 4th 1044. They argue Defendant never did so and that they waived their rights accordingly, and that Applicant's submissions of costs should be deemed credible on their face and due for payment. We disagree. Litigation costs must be reasonable. One cannot simply subscribe to a service, such as Lexis or Westlaw, over the course of several years of ongoing hearings, and subscribe to several other legal research services during that same time, racking up over $200,000 in alleged litigation costs and expect to be reimbursed for all of that as one's reasonable litigation expenses. When the WCAB awards attorney fees under Labor Code Section 5813, it is for a specific amount of time at an hourly rate. We need to know how much time Mr. Finander actually spent researching the relevant issue, how much time was spent writing a reasonable number of petitions, and how much time was spent attending hearings on the subject.

And once again, like Defendant's appeal of this same issue, Applicant's appeal of the court's deferral of litigation costs pending further development of the record is subject to the removal standard, since it is not a final order. Applicant does not adequately explain how significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration from a final order regarding that issue will not be an adequate remedy. On the other hand, if the Commissioners find that sanctions were not warranted in the first place, then the litigation expenses issue might then be moot, as the court found that Applicant would only be entitled to litigation expenses in connection to the issue of sanctions.

Finding of Fact no. 13 was that there was insufficient evidence of retaliation by Defendant against Applicant. Applicant contends that there was massive retaliation, and that "the court has 100% ignored" the testimony of Applicant's representative,

> Brian Finander, as well as the many case filings submitted to the court for more than 7 and a half years after 12/31/18. We disagree. Mr. Finander's testimony did not prove any retaliation and none of the documentary evidence did, as well. Furthermore, Applicant's credible testimony was that she could not be sure there was any malicious intent. Retaliation is by its very nature malicious. We therefore found there to be insufficient evidence of any retaliation.
>
> And Finding of Fact no. 14 was that Applicant had failed to prove that there was a pattern of conduct by Defendant sufficient to warrant sanctions in excess of what was found in Finding of Fact no. 9. Applicant contends on p. 11 that "Defendants have not changed the way that they operate against Applicant. It is the same now as it was before case filing and since case filing, in an unending 100% discernable pattern." The problem with this contention, as with many of Applicant's contentions, is its extreme vagueness. CCR Section 10945(b) requires petitions for reconsideration to support its contentions by specific references to the record. Applicant, through her non-attorney representative, who happens to be a formerly practicing attorney in Arizona, does not comply with this requirement.

(Report, pp. 3-11.)

We agree with the WCJ's above analysis. We will therefore deny applicant's Petition.

**III.**

Turning now to the merits of defendant's Petition, defendant contends that applicant failed to meet her burden of proof in establishing that the medications outlined in Finding of Fact 4 were approved and/or authorized and that she is entitled to section 5814 penalties per Finding of Fact 10. Defendant further contends that based upon the current record, the section 5813 sanctions outlined in Finding of Fact 9 are not warranted, applicant's representative should not be awarded litigation expenses with respect to the sanctions, and that further development of the record is necessary with respect to the November 5, 2024 IMR determination. (*Id*. at pp. 7-9.) Lastly, defendant avers that the WCJ failed to rule on the admission of Exhibit 43 and their objections to Exhibits 80-83. (*Id*. at p. 9.)

With respect to defendant's contentions, the WCJ states in the Report that:

> Finding of Fact no. 1 found that various exhibits should be either admitted or excluded. Defendant apparently appeals the admission of Exhibits 80-83. Defendant also contended in the conclusion of their petition that the court erred in not ruling on the admissibility of Exhibit 43. That exhibit was marked for identification only at the trial on 4/9/26. As the court wrote in its Opinion on Decision, it turned out from the court's review that Exhibit 43 happened to be identical to Exhibit 24. The court also found that Exhibits 24 and 43 were both admissible. As such, we do not understand why Defendant believes the court did

not rule on the admissibility of Exhibit 43. With respect to Exhibits 80-83, Exhibit 83 was actually admitted without objection at the trial on 4/9/26. As for Exhibits 80, 81, and 82, Defendant objected to those on the basis that they were non-evidentiary pleadings. We admitted them because, although they were allegedly non-evidentiary, they might have tended to prove something relevant in the case such as the date something was filed. Defendant had actually objected to about 39 other separate exhibits on that same basis, and the court ultimately found the objection to be too vague to blanketly sustain, preferring to err on the side of admission as opposed to exclusion.

As for Finding of Fact no. 4, that found Defendant was liable to reimburse Applicant for out-of-pocket medication expenses for Zyrtec, Advair HFA, Ventolin, Flonase, and Albuterol documented in Exhibit 25 provided those medications were approved by the Defendant, by Utilization Review (UR), or by Independent Medical Review (IMR). Finding of Fact no. 10 found that a 15% penalty pursuant to Labor Code Section 5814 should be added to the amount ultimately reimbursed to Applicant for those out-of-pocket medication expenses, provided the reimbursement was accomplished within 30 days. Defendant contends that Applicant did not submit any medical reports or RFAs as exhibits from a primary treating physician requesting any medications, that there is thus no evidence that Defendant failed to provide the medications, and therefore there is no justification to order reimbursement for Applicant's out-of-pocket medication expenses or to impose Labor Code Section 5814 penalties for Defendant's failure to provide those medications to the Applicant, and that the court unfairly shifted the burden of proof to the Defendant to disprove an unsupported allegation. Defendant further contends that the court referenced a prior F&O by Judge Wilson dated 12/10/21 which concerned out of pocket medication expenses for the period of 2017 to 2020, for which Applicant did submit medical reporting. Defendant then points out that Exhibit 25 contains expenses from 2023 to 2024 and argues that the 12/10/21 F&O has no bearing on the issues adjudicated by the current F&O.

The court often orders parties to adjust out-of-pocket expenses with jurisdiction reserved. This is quite common. Otherwise, judges would be knee deep in bean counting. It is not a function judges are particularly suited for and should be handled by the parties instead. As for not having medical evidence to support their claim, we already know that brand name Zyrtec was approved by IMR. As such, any out-of-pocket expenses that Applicant incurred to get Zyrtec should be reimbursed. Exhibit 25 contained various pharmacy expenses. Applicant also testified credibly that the same type of problem happened with various other medications. Testimony is evidence, and, combined with Exhibit 25, the court believes the Applicant established a prima facie case thereby. The burden then shifted to Defendant to show how any of the medications in question were not approved by them, or by their UR, or by IMR.

The court did reference Judge Wilson's prior F&O of 12/10/21, which was partially rescinded on 11/23/22, but the court did not rely on that decision at all in arriving

at its holding that Defendant should reimburse Applicant for Zyrtec, Advair HFA, Ventolin, Flonase, and Albuterol expenses documented in Exhibit 25, which was not one of the exhibits reviewed by Judge Wilson. The purpose of the court's review of Judge Wilson's decision was to make sure that there were not any unresolved out-of-pocket medication expense issues from that earlier decision.

Finding of Fact no. 6 found that Defendant has not complied with IMR determination dated 11/5/24 overturning prior UR decision, and Finding of Fact no. 9 found that sanctions should be imposed against Defendant for that non-compliance in the amount of $1,500 payable to the General Fund. Defendant also contends that sanctions for non-compliance with an IMR holding to provide name brand Zyrtec dated 11/5/24 was not supported by the evidence. Defendant asserts that there were missing pages from the IMR determination and that further development of the record is needed as to the reasoning by Maximus Federal Services for their IMR decision. Defendant next contends that the undersigned judge acted in excess of his powers in issuing sanctions because he addressed petitions for sanctions dated 7/14/20 and 7/13/24 which predated the 11/5/24 IMR determination. Defendant believes the court may have improperly relied on Exhibits 80-83 to impose the sanctions and that these were filed after discovery had already closed infringing on their due process rights.

The court does not agree that further development of the record is needed to locate the missing pages from Exhibit 53. The exhibit clearly shows a determination was made to provide the Applicant with name brand Zyrtec. If Defendant had a dispute with that determination on the basis that there were missing pages making it impossible to understand the rationale of Maximus in making the determination, then Defendant had a remedy by filing an appeal of the IMR determination with the WCAB. They did not take advantage of that remedy and should therefore be precluded from disputing that determination now.

As for addressing petitions for sanctions filed by the Applicant on 7/14/20 and 7/13/24, obviously they would have no bearing on the court's decision to impose sanctions for non-compliance with an IMR determination on 11/5/24. Defendant apparently seems to think then that the only way we could find them liable for sanctions for violating the IMR determination is by relying on Exhibits 80-83. As discussed above, Exhibit 83 was admitted without objection, and Exhibits 80-82 were justifiably admitted over Defendant's objection. Furthermore, the non-compliance with the IMR determination was very evident even without those exhibits, as even Judge Wilson had to order Defendant to provide name brand Zyrtec in his minute order dated 1/30/25. And Applicant credibly testified that she got the name brand Zyrtec, as IMR ordered, just one time but never again.

CCR Section 10421(b) authorizes sanctions for the willful failure to comply with a statutory or regulatory obligation (which encompasses statutes, as well as regulations not included within the rules of the WCAB (CCR §§ 10300-10999) or the AD (CCR §§ 9700-9991). Labor Code Sections 4610.5 and 4610.6 govern IMR.

Pursuant to Section 4610.6(j), upon receiving a determination from IMR that a disputed health care service is necessary, the defendant shall promptly implement the decision. By failing to do so, and failing to appeal the IMR decision, Defendant was in violation of Labor Code Section 4610.6, which is sanctionable per CCR Section 10421(b). In addition, Section 10421(b)(4) specifically authorizes sanctions for a failure to comply with the rules of the WCAB or the AD. CCR Section 9792.10.7 states that upon receiving the IMR determination that a disputed medical treatment is necessary, the defendant shall promptly implement the decision, unless they are filing an appeal, or they are disputing the treatment on non-medical grounds. Section 9792.10.7 happens to be one of the Rules of the AD. As such, a violation of Section 9792.10.7 is sanctionable per Section 10421(b)(4).

Finding of Fact no. 12 found that Applicant should not be reimbursed for litigation expenses with respect to case no. ADJ4173897, but that litigation expenses in connection to ADJ3091647 was deferred. Defendant first contends that if there is no basis for sanctions against them, then there would also be no basis for reimbursement of Applicant's litigation expenses. Defendant further contends that the judge acted in excess of his powers in deferring the issue of reimbursement of Applicant's litigation expenses pending further development of the record. Defendant argues that Applicant's non-attorney representative, Brian Finander, filed a notice of representation from the "Law Offices of Brian Finander," and that any litigation fees he incurs should be the cost of doing business, and that the Applicant's testimony that she is unfamiliar with UR and did not ascribe any maliciousness to the Defendant weighs against reimbursement of any litigation expenses or sanctions.

First, the court points put that Applicant's unfamiliarity with UR has nothing to do with whether they should be entitled to litigation expenses regarding the issue of sanctions. Secondly, the court pointed out that Applicant did not ascribe any maliciousness to Defendant in reaching its opinion that Applicant had not proven Defendant had retaliated against them, which was a separate issue from the reimbursement of litigation expenses issues. We also see no relevance to this particular issue whether Brian Fianander ever filed a Notice of Representation that indicated it was from the "Law Offices of Brian Finander." Mr. Finander apparently denies filing such a notice, and the court does not recall seeing one. Mr. Finander also asserts that he filed the proper paperwork to be recognized as his wife's official non-attorney representative in this workers' compensation case.

We are aware that Mr. Finander was once a practicing attorney in Arizona, according to Defendant's Objection to Communication to Court dated 7/30/25, so it might be possible that a notice with his old letterhead was sent out at one time in these very old cases, but the court simply fails to see how that would be relevant to the issue. Mr. Finander is a non-attorney for our purposes. Although a non-attorney cannot get attorney fees under Labor Code Section 4903(a) on cases filed after 12/31/91, ADJ3091647 was filed on 10/7/85, according to the EAMS events tab. We agree with Defendant, however, that attorney fees are normally awarded as a

percentage of an award and that any other litigation expenses are typically the cost of doing business. There are various exceptions to that rule, however. Labor Code Section 5710 is probably the most obvious example, for depositions. Labor Code Section 5814.5 is another code section that allows attorney fees on top of the fee one could get as a percentage of an award, when one has to litigate a defendant's unreasonable delay in paying the award. Labor Code Section 5811 is another code section where attorney fees can potentially be awarded where costs are being litigated. And here, Labor Code Section 5813 specifically authorizes the award of attorney fees for another party's bad faith actions. We showed above how Defendant acted in bad faith by violating CCR 9792.10.7, which is sanctionable per CCR Section 10421(b)(4). As such, Applicant is entitled to attorney fees on ADJ3091647 for Mr. Finander's time litigating the issue of the non-compliance with the 11/5/24 IMR determination and the connected issue of sanctions for that non-compliance, over and above any percentage he might be entitled to of any award or C&R that might issue in the future on that case.

We do not know what the appropriate amount of those fees should be at this time, however, because we do not know how much time Mr. Finander actually spent acting as an attorney on that issue. All we know is that he wants a very unreasonable sum of money to reimburse him for various legal research subscriptions to the tune of over $222,000, as of September 2025, according to p. 18 of Applicant's answer. To put that in perspective, a case would need to settle for $1,480,000 to get a fee that size if 15% of the award was approved by the court. That is why we ordered further development of the record on that issue.

Defendant's appeal of the court's order deferring the issue of litigation expenses pending further development of the record is also subject to the removal standard, since it is not a final order. The Commissioners have opined many times that "Removal is an extraordinary remedy rarely exercised by the Appeals Board. (Cortez v. Workers' Comp. Appeals Bd. (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; Kleemann v. Workers' Comp. Appeals Bd. (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also Cortez, supra; Kleemann, supra.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)" Here, Defendant does not adequately explain how significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration from a final order regarding that issue will not be an adequate remedy. On the other hand, if the Commissioners find that sanctions were not warranted in the first place, then the litigation expenses issue might then be moot, as the court found that Applicant would only be entitled to litigation expenses in connection to the issue of sanctions.

And finally, in the conclusion to their petition for reconsideration, Defendant says that the court did not rule on any of the objections made in the multiple depositions.

> We are not sure what to make of this contention. We suspect it to be a typographical error in the form of a cut and paste from a prior appeal in another case that was not removed in the editing process.

(Report, pp. 3-7.)

We agree with the WCJ's above analysis. However, we have additional thoughts regarding Findings of Fact 9 and 10.

Finding of Fact 9 pertains to section 5813 sanctions. Section 5813 states, in pertinent part, that:

> (a) The 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. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars ($2,500) to be transmitted to the General Fund.

Further, WCAB Rule 10421(b) provides a comprehensive, non-exhaustive list of actions that could be subject to sanctions. As applicable here, subdivision (b) states that a party may be subject to sanctions where the party has engaged in:

> ***
>
> (2) Filing a pleading, petition or legal document unless there is some reasonable justification for filing the document.
>
> ***
>
> (4) Failing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure, with the regulations of the Administrative Director, or with any award or order of the Workers' Compensation Appeals Board, including an order of discovery, which is not pending on reconsideration, removal or appellate review and which is not subject to a timely petition for reconsideration, removal or appellate review, unless that failure results from mistake, inadvertence, surprise or excusable neglect.
>
> ***
>
> (6) Bringing a claim, conducting a defense or asserting a position:
>
> (A) That is:
>
> (i) Indisputably without merit;
>
> (ii) Done solely or primarily for the purpose of harassing or

maliciously or injuring any person; and/or

(iii) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation.

***

(7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law…

(8) Asserting a position that misstates or substantially misstates the law, and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

***

(Cal. Code Regs., tit. 8, § 10421(b).)

With respect to the procedural process for sanctions, WCAB Rule 10832 states, in pertinent part, that the Appeals Board may issue a NIT for any proper purpose, including sanctioning a party. (Cal. Code Regs., tit. 8, § 10832(a)(3).) Further, subdivision (c) states that if an objection is filed with the time provided, the WCJ, in their discretion, may sustain the objection, issue an order consistent with the NIT together with an OOD, or set the matter for hearing. (Cal. Code Regs., tit. 8 § 10832(c).)

Here, section 5813 sanctions were raised as an issue prior to trial and litigated at trial alongside numerous other issues. Thus, defendant was provided with notice and opportunity to be heard. Further, per the Minutes of Hearing dated January 30, 2025, defendant agreed to "authorize medication exactly as IMR determined on 11/5/2024[.]" In the same Minutes of Hearing, the WCJ ordered "[d]efendant [to] address/provide [IMR/Zyrtec] within 5 working days." As outlined above, the November 5, 2024 IMR provided approval for prescription of "Zyrtec (Cetirizine) 10mg brand name only[,] take 2 tablets per day with severe allergy #180 refills: 11[.]" Following this determination, applicant apparently received the medication, but only on one occasion. At trial, applicant testified, in pertinent part, as follows:

> In the fall of 2024, Dr. Chandak prescribed Zyrtec for her with 12 refills, Sedgwick denied this request. Applicant then filed an appeal with IMR. Defendant was then ordered to provide the medicine. Except for one time in February of 2025, she did not receive any of the requested medicines. And since then, she has received no more Zyrtec.

> Having to submit these treatment requests affects her pulmonary system and breathing, and she takes emergency medicine to breathe normal again.

(Minutes of Hearing and Summary of Evidence (MOH & SOE), April 9, 2026, p. 6.)

Thus, given defendant's prior agreement, the WCJ's prior order, and applicant's unrebutted testimony, we agree that section 5813 sanctions totaling $1,500.00 with payment to the General Fund are appropriate.

With respect to Finding of Fact 10, which holds defendant liable for payment of 15% penalties under section 5814 for out-of-pocket medication expenses related to Zyrtec, Advair HFA, Ventolin, Flonase, and Albuterol, provided said medications were approved/authorized by defendant, UR, or IMR, we believe that justification for said penalties is lacking.

As explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "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*, at pp. 473, 475.) 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." (*Id.* at p. 475; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22 (Appeals Bd. en banc).) This "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." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Here, although the WCJ has indicated, as per the Labor Code, that defendant is only liable for approved medications, it is not entirely clear which medications require payment. For the same reason, we cannot determine which payments are delayed. As such, we are unable, on this record,

to determine if section 5814 penalties are owed. We will therefore defer the issue of section 5814 penalties (Finding of Fact 10; Order). However, we highlight the fact that to the extent payments for approved medications are untimely, penalties may be owed. We therefore recommend that defendant adjust the section 5814 penalties at the time of payment to avoid wasting further judicial resources.

Accordingly, we deny applicant's Petition, grant defendant's Petition, and affirm the JF&O, except that we defer the issue of penalties under section 5814 (Finding of Fact 10; Order).

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Joint Findings and Orders issued July 8, 2026, is **DENIED**.

**IT IS FURTHER ORDERED** that defendant's Petition for Reconsideration of the Joint Findings and Orders issued July 8, 2026, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Opinion and Decision After Reconsideration of the Appeals Board, that the Joint Findings and Orders issued July 8, 2026 is **AFFIRMED**, **EXCEPT** as **AMENDED** below.

JOINT FINDINGS OF FACT

***

10. The issue of the amount of penalties pursuant to Labor Code section 5814 is deferred.

***

ORDERS

***

IT IS FURTHER ORDERED that Defendant reimburse Applicant for out-of-pocket medication expenses for Zyrtec, Advair HFA, Ventolin, Flonase, and Albuterol documented in Exhibit 25 provided those medications were approved by Defendant, or by their UR, or by IMR within 30 days. Exact amount of the reimbursement is to be adjusted by the parties with jurisdiction reserved to the WCJ over any disputes. The issue of the amount of penalties under Labor Code section 5814 is deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ PAUL F. KELLY, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**October 23, 2026**

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

**MARLENE FINANDER**
**BRIAN FINANDER, non-attorney rep**
**BLACK & ROSE LAW FIRM**

**RL/cm**

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