WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SCOTT FOSTER, ***Applicant***

vs.

PERFORMANCE HOLDINGS, INC.;
PENNSYLVANIA MANUFACTURERS ASSOCIATION INSURANCE COMPANY
administered by PMA COMPANIES, ***Defendants***

Adjudication Number: ADJ13379668
Van Nuys District Office

OPINION AND ORDER DENYING PETITIONS FOR RECONSIDERATION

Applicant, in pro per, and applicant's former attorney, each on their own behalf, seek reconsideration herein. We have considered the allegations of the Petitions for Reconsideration and the contents of the Reports and Recommendation on Petition for Reconsideration (Reports) and the Opinion on Decision, issued by the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Reports and Opinion on Decision, all of which we adopt and incorporate, we will deny the Petitions for Reconsideration.

I.

We note that former Labor Code[1] 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] All further statutory references are to the Labor Code, unless otherwise noted.

(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 June 2, 2026 and 60 days from the date of transmission is Saturday, August 1, 2026. The next business day that is 60 days from the date of transmission is Monday, August 3, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).) This decision is issued by or on Monday, August 3, 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 and Recommendation shall be notice of transmission.

Here, according to the proofs of service for the Reports and Recommendation by the WCJ, the Reports were served on May 21, 2026 and May 28, 2029, and the case was transmitted to the Appeals Board on June 2, 2026. Service of the Reports and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Reports did not provide accurate notice of transmission under section 5909(b)(2) because service of the Reports did not provide actual notice to the parties as to the commencement of the 60-day period on June 2, 2026.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter 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 June 2, 2026.

Accordingly, we deny the Petitions for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petitions for Reconsideration are **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 3, 2026

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

SCOTT FOSTER
LAW FIRM OF ROWEN, GURVEY & WIN
COLANTONI COLLINS MARREN PHILLIPS & TULK

PAG/cm

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 PETIDON FOR RECONSIDERATION

I
INTRODUCTION AND FACTS

1.	Order	04/08/2026
2.	Identity of Petitioner	Applicant
3.	Verification	No
4.	Timeliness	Petition is timely (partially)
5.	Petition for Reconsideration Filed	05/03/2026
6.	Petitioner's Contentions:	

a. By the order, decision or award made and filed by the Workers' Compensation Administrative Law Judge, the WCJ acted without or in excess of its powers;

b. The evidence does not justify the findings of fact;

c. The findings of fact do not support the order, decision or award; and

d. Petitioner has discovered new evidence material to him. Which he could not, with reasonable diligence have discovered and produced prior to the hearing.

Applicant's Petition for Reconsideration relates to the Court's Order clarifying opinion on decision and otherwise denying petition to rescind, alter and amend findings and order and for new trial (EAMS Doc ID 80220364), served April 8, 2026.

On February 26, 2026 (first available in EAMS on March 11, 2026) applicant Mr. Foster filed a Petition to rescind, alter, and amend the Court's March 26, 2024, Findings and Order. He concurrently moved for a new trial, for re-assignment of the WCJ, and for transfer of venue.

In brief, the original underlying matter before the Court concerned the division of attorney fees Ordered withheld as part of the March 4, 2022, Order Approving Compromise and Release (EAMS doc ID# 75247041). Following extensive, bitter litigation, the Court issued its March 26,2024 Findings & Order, which rested upon the characterization of the withheld fee as an approved applicant's attorney's fee, and applicant's knowing failure to object thereto until the Order became final. This determination was upheld[1] by the WCAB in its earlier June 14, 2024, Opinion and Order denying Reconsideration.

[1] Opinion and Order Denying Reconsideration, at pgs 6 and 11.

However, the parties had additionally raised the issue of sanctions against each other, and in support of his contentions that Mr. Gurvey never negotiated a settlement in the gross amount of $465,000, Mr. Foster had introduced[2] what purported to be a strangely formatted e-mail chain between himself and defense counsel Sahel Wasseluk, wherein Mr. Foster allegedly asked Ms. Wasseluk if defendant had ever actually offered to resolve his case for $465,000.00, and Ms. Wasseluk allegedly responded in a single word e-mail back, "No." This e-mail chain was the only documentary evidence that purported to cloud the question of whether Mr. Foster had entered into an agreement for the same gross amount as that allegedly negotiated by Mr. Gurvey. Furthermore, as the Court explained, the document raised a number of red flags that Mr. Foster never bothered to explain in his original Petition for Reconsideration; Mr. Foster even acknowledges in his Petition to Rescind that " ... it was quite understandable for the Workers' Compensation Judge to question the authenticity of the email string of Exhibit 10 at the time he reviewed all of the evidence presented at trial in preparing his decision ... " In his original April 15, 2024 Petition for Reconsideration, Mr. Foster made no effort to address the Court's concerns and simply accused[3] the Court of making an "outrageous" "personal attack" against his reputation.

Following the WCAB's June 14, 2024 decision on Reconsideration, lien claimant reactivated the issue of sanctions for hearing. As the authenticity of the e-mail chain was in question, the Court Ordered[4] that defendant produce the originals. Defendant produced[5] these documents on *November 6, 2024.*

Subsequent thereto, the matter came back before the Court for three conferences on January 28, 2025, July 28, 2025[6], and December 15, 2025. The matter was set for Trial on penalties and the sanctions issue, to be heard by the undersigned on March 11, 2026. Despite having been served[7] with the Ordered production on November 6, 2024, for more than 15 months, applicant Mr. Foster took no action seeking change of venue, reassignment/disqualification, or a new trial on the underlying fee division issue.

[2] Applicant's Exhibit "10"
[3] 4/15/24 Petition for Reconsideration at 9:1-12 (EAMS doc ID 77849628)
[4] EAMS Doc Id 78504707
[5] EAMS Doc Id 54 790460
[6] A prior scheduled hearing was continued due to illness
[7] POS is in EAMS as EAMS Doc Id 54790461

II
DISCUSSION

A.
Applicant's Petition is Unsigned and Unverified

8 C.C.R. 10940(c) requires that a Petition for Reconsideration "shall be verified upon oath in the manner required for verified pleadings in courts of record." The appeals board has discretion to dismiss such Petitions for failure to file a verification. See e.g. Safeway Stores v. Workers Compensation Appeals Bd. of California & Phillip Carter, 47 Cal. Comp. Cases 455 (Cal. App. 1st Dist. May 18, 1982). The Petition filed herein is neither signed nor verified under oath and is therefore subject to dismissal.

B.
Applicant's Petition is Untimely as it relates to the April 6, 2026 Order of PWCJ Burge

Labor Code §5903 requires that a Petition for Reconsideration be filed "at any time within 20 days after the service of any final order, decision, or award ... " As it relates to the April 6, 2026 Order of PWCJ Burge denying transfer of venue and re-assignment, this Order was served on all parties listed on the official address record on April 6, 2026. Given twenty days plus an additional five for mailing, the deadline to file for Reconsideration of this Order would have been Friday, May 1, 2026. Applicant's Petition is dated May 3, 2026. As to PWCJ Burge's April 6, 2026 Order, this Petition is therefore untimely and should be dismissed.

Nonetheless, applicant Mr. Foster is mistaken; PWCJ Burge correctly described the matter as "off-calendar". Furthermore, to the extent that the Petition sought reassignment to another WCJ, it neither complied with 8 C.C.R. § 10788, nor 8 C.C.R. § 10960.

C.
The Court's decisions regarding the release of fee and applicant's credibility did not turn on the authenticity of Exhibit 10

Leaving aside the many procedural issues with applicant's instant Petition, the Court has now thrice explained that the attorney fee was awarded in full to Mr. Gurvey's office because Mr. Foster is neither an attorney, nor did he formally object to the Order Approving the Compromise and

Release which explicitly characterized the sum in controversy as "applicant's attorney's fee". This decision was upheld by the WCAB. Eliminating all other bases for awarding the fee, this reason alone decides the issue. A new trial could not change this outcome.

In both its original decision and in multiple Reports filed with the WCAB, the Court has also exhaustively set forth the history of Mr. Foster's behavior as it relates to the instant litigation, of which the presentation of Exhibit 10 constitutes only one small portion. Over the vociferous protests of lien claimant, the Court afforded Mr. Foster a *trial de nova* after he rested his case without presenting any witness testimony. Then, despite his complete failure to abide the requirements of Labor Code §5502(d)(3), in the interest of justice, the Court still allowed Mr. Foster's exhibits into evidence over lien claimant's objections. Mr. Foster proceeded in pro per, until he wasn't, having retained an attorney to represent him, until she didn't, and all the while attempted to capitalize on his ever-changing represented/unrepresented status in the manner that he believed was most advantageous to him, at that given moment.

Mr. Foster could have introduced additional credible documentary evidence to support his contentions, but he did not. He could have presented defense counsel as a witness, but he did not. He could have explained in his original Petition for Reconsideration that although his exhibit looked suspicious, it was actually authentic and formatted in its presented manner for a specific reason, but he did not do so and instead chose to attack the Court rather than address its "quite understandable" concerns. Mr. Foster did not take any of these actions; instead, he petitioned for a new trial and the third attempted disqualification[8] of the undersigned, this time more than a year following the defense production of the suspicious documents.

Nonetheless, at Mr. Foster's request, the Court issued an Order which stated that to the extent that the Court's Opinion and Report and Recommendation on Reconsideration suggests that Mr. Foster altered or fabricated Exhibit 10, the Court retracted those portions of its Opinion and Report. Although the situation surrounding Exhibit IO was one of Mr. Foster's own making, the Court understands Mr. Foster's concerns and attempted to address them fairly.

But this does not change the fact that the Court's decision regarding division of fees is *Res Judicata* and did not turn on the authenticity of Exhibit I 0, and contrary to his assertions in the instant Petition, neither does this Exhibit even prove his contentions regarding earlier versions of his settlement. The authenticity of the Exhibit was relevant to lien claimant's request for sanctions,

[8] For the third time also failing to comply with 8 C.C.R. 10960.

which is why that issue was deferred for further proceedings, but as lien claimant no longer seeks sanctions against Mr. Foster, this is no longer relevant. If this development would have affected the outcome of the original trial, in the continued interest of justice, the Court would have rescinded its decision *sua sponte.* It does not.

The Court bent over backwards to afford Mr. Foster appropriate due process of law, and Mr. Foster made full use of those opportunities and was allowed to be heard, through multiple appeals to the WCAB. Mr. Foster does not have new evidence; he has the same evidence, and now he prays for a third opportunity to present it. In this instance, the third time is not the charm; Mr. Foster is not entitled to a third trial.

IV
RECOMMENDATION

For the reasons stated above, it 1s respectfully recommended that applicant's Petition for Reconsideration be DENIED.

DATE: 5/21/2026

Adam D Graff

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I
INTRODUCTION AND FACTS

1. Findings and Order Served	4/21/2026
2. Identity of Petitioner	Lien Claimant (former AA)
3. Verification	Yes
4. Timeliness	Petition is timely
5. Petition for Reconsiderations Filed	5/15/2026
6. Petition's Contentions:	

a. The WCJ's findings are not based on the relevant law;

b. The evidence does not justify the findings of facts;

c. The relevant law has not been applied to the facts

This matter previously came before this Court regarding the division of attorney fees between applicant Scott Foster, and his former attorney, Alan Gurvey, of the Law Offices of Rowen, Gurvey & Win. To briefly recap the relevant details, applicant's underlying claim was resolved by Compromise and Release dated March 4, 2022, in the gross amount of $465,000, with an approved attorney's fee of $69,750.

On March 26, 2024, the Court served its Findings and Order that Mr. Gurvey was entitled to the entirety of the approved attorney's fee. Mr. Foster petitioned for Reconsideration, and this was denied by Order of the WCAB on June 14, 2024. According to both Mr. Gurvey and Defendant, as set forth in their respective penalty petitions and response thereto, defendant paid the attorney fee to Mr. Gurvey, with an additional amount included as interest. However, this was paid on August 1,2024[1], more than 30 days after the WCAB Order Denying Reconsideration. Again, as the parties aver in the pleadings, defendant waited to issue payment until after the time to file a Petition for Writ of Review had expired.

In his petition, Mr. Gurvey contended that interest should have accrued from the original

[1] Stipulation #1 as set forth on the Minutes of Hearing/Summary of Evidence provides multiple dates, all of which use the year 2025. This appears to be a scrivener's error, as the year in question was actually 2024.

March 4, 2022 Order Approving Compromise and Release, and that defendant's failure to have paid said interest is sanctionable pursuant to Labor Code §5813 and subjects defendant to penalties pursuant to Labor Code §5814. Defendant denied these allegations.

The Court issued its Findings of Fact and Orders on April 21, 2026. In pertinent part, the Court found that Labor Code §5800 interest on the attorney fee owed to the Law Offices of Rowen, Gurvey, & Win began to accrue as of the March 26, 2024 decision Ordering its full disbursement. This is because as the fee was previously Ordered withheld, it did not become "due and payable" until March 26, 2024, the date of the Court's decision on the fee division. The Court further found that the Law Offices of Rowen, Gurvey & Win was a lien claimant as of the November 5, 2024 filing of its Petition for Penalties, Fees, and Sanctions, and that as it no longer represents Mr. Foster, it therefore lacked standing to pursue §5814 penalties on its own behalf. In any event, the Court found that defendant's conduct did not warrant the imposition of §5813 sanctions.

Petitioner contends that the interest should have been payable from the March 4, 2022 OACR, as applicant Mr. Foster never had the legal right to a share of the fee, that the Court should have punished defendant for its intentional decision to delay payment of the fee, and that Petitioner should have been entitled to additional fees as the result of defendant's delayed payment.

II
DISCUSSION

A.
Defendant's delay in payment necessitated the payment of additional interest

Petitioner contends that the Court's decision results in defendant receiving a "free ride to pay an award late without any repercussions." This is not accurate. As the Court stated in its decision, defendant was obligated to pay interest pursuant to Labor Code §5800 as of the date of the Court's March 26, 2024 decision on division of fees. On a fee of $69,750.00, this is annualized interest of $6,975, for a daily rate of $19.11, expressly payable to the Law Offices of Rowen, Gurvey & Win. By delaying payment of the awarded attorney fee, defendant incurred the obligation to pay additional interest that it otherwise would not have been required to pay.

This is not a "free ride" -128 days of interest on an award of $69,750 is worth $2,446.08, again, payable to lien claimant. This is a roughly 3.5% increase of the entire awarded fee. Furthermore, defendant did not challenge the Court's decision awarding the fee; the Labor Code §5800 interest was incurred as the result of Mr. Foster's appeal. Although defendant had no control over this event, the law charges defendant with payment of interest for its entire duration, to the benefit of lien claimant. Defendant's additional delay thereafter resulted in additional costs.

B.
Lien claimant cannot assert claims for §5814 penalties following termination of representation

As the Court stated in its decision, it is settled law that all penalties pursuant to Labor Code §5814, including those related to payment of an awarded attorney fee, are payable to the applicant. *See e.g.* Sycamore Pharmacy. Inc. v. WCAB (Reynoso), (1997) 62 CCC 1322 (writ denied); Van Dyk. California Men's Colony, 2017 Cal. Wrk. Comp. P.D. LEXIS 51, Flores y. Chualar Canyon Ranch Supply. 2017 Cal. Wrk. Comp. P.D. LEXIS 440; Hargreaves v. Southwest Airlines, 2025 Cal. Wrk. Comp. P.D. LEXIS 98.

Furthermore, a lien claimant lacks standing to pursue §5814 penalties on its own behalf. *See* Ayala v. County of Los Angeles/King Drew Med. Ctr., 2014 Cal. Wrk. Comp. P.D. LEXIS 45. Petitioner's citation and analogy to Labor Code §4903.2, while interesting, is inapposite to the case at bar, as lien claimant is former counsel and not a medical provider.

In its original November 5, 2024 petition for penalties and sanctions, lien claimant specifically requested that "25% of the delayed attorney fee up to the maximum $10,000.00 be ordered paid to applicant's former attorney as a Labor Code Section 5814 penalty." (Petition at 2:23-24). Lien claimant offered no case authority in support of this request, nor does it offer any to the WCAB.

Whether or not the facts at bar might have given rise to certain §5814 penalties was not the question before the Court. The Court was asked to determine whether lien claimant's November 5, 2024 petition for penalties and sanctions should be granted. As lien claimant's petition expressly prayed that the Court impose §5814 penalties against defendant and award same directly to lien claimant, the Court concluded that it should not.

Neither can it be said that lien claimant's actions resulted in the enforcement of the award. Labor Code §5814.5 provides:

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

Here, as averred in its verified responsive pleading, defendant openly admitted to lien claimant that it was waiting to issue payment in order to see if applicant in pro per would file a writ challenging the Court's award of the entire fee to lien claimant. Once that time expired, defendant released the funds to lien claimant, with interest. It cannot be said that lien claimant's enforcement efforts were a condition precedent to defendant's payment of the fee, and thus, no additional fees should be payable as the result of those efforts.

C.

The Award was not due and payable from the date of the Order Approving

Petitioner seeks to distinguish the instant case from that of Christian v. Ring Sec. Agency, 2022 Cal. Wrk. Comp. P.D. LEXIS 128, arguing that in that case, the finality of any of the attorneys' interest was yet to be determined. While this is true, it is also true that in both Christian and the instant case, defendant was Ordered to withhold the potential fee pending a further Order of the Court. The Courts did not additionally Order defendants to place the funds in interest-bearing accounts for the attorneys' benefit; defendants were simply obligated to withhold the funds.

Notwithstanding that as a matter of law, applicant Mr. Foster was not entitled to make a claim against the approved attorney fee, the parties fashioned a compromise and release agreement that specifically set forth that the applicant's attorney's fee was "to be withheld by defendants until signed agreement reached by prior AA/pro per applicant and/or issuance of court order." In approving the agreement as drafted, WCJ Pollak Ordered that the approved fee was "to be withheld by the Defendant pending written agreement between Applicant and Applicant's attorneys or further order of the court." No party formally objected to the Order Approving.

Lest defendant violate the Court's Order regarding withholding the fee, defendant had no choice but to await an agreement or further Court Order before disbursing the funds. As no agreement was reached, following trial, defendant received that Court Order, and this was the triggering event that made the fee become due and payable. While lien claimant argues that social policy should warrant some form of additional punitive action against defendant, on the facts of the instant case, the Court did not find that defendant engaged in sanctionable conduct. Under the facts at bar, the Court similarly does not see the equity in charging defendant interest for the duration of bitter and protracted litigation between two other parties against whom defendant played no role in the incitement of animosity.

IV

RECOMMENDATION

For the reasons stated above, it 1s respectfully recommended that lien claimant's Petition for Reconsideration be DENIED.

DATE: 5/29/2026

Adam D. Graff

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

BACKGROUND:

This matter previously came before this Court regarding the division of attorney fees between applicant Scott Foster, and his former attorney, Alan Gurvey, of the law office of Rowen Gurvey and Win. To briefly recap the relevant details, applicant's underlying claim was resolved by Compromise and Release dated March 4, 2022, in the gross amount of $465,000, with an approved attorney's fee of $69,750. This section is reproduced below:

> **LESS APPROVED APPLICANT'S ATTORNEY'S FEE** **$ 69,750.00**
> **to be withheld by the Defendant pending written agreement between Applicant and Applicant's attorneys or further order of the court**

On March 26, 2024, the Court served its Findings and Order that Mr. Gurvey was entitled to the entirety of the approved attorney's fee. Mr. Foster Petitioned for Reconsideration, and this was denied by Order of the WCAB on June 14, 2024. According to both Mr. Gurvey and Defendant, as set forth in their respective penalty petitions and response thereto, defendant paid the attorney fee to Mr. Gurvey, with an additional amount included as interest. However, this was paid on August 1, 2024[1], more than 30 days after the WCAB Order Denying Reconsideration. Again, as the parties aver in the pleadings, defendant waited to issue payment until after the time to file a Petition for Writ of Review had expired.

Mr. Gurvey contends that interest should have accrued from the original March 4, 2022 Order Approving Compromise and Release, and that defendant's failure to have paid said interest is sanctionable pursuant to Labor Code §5813 and subjects defendant to penalties pursuant to Labor Code §5814. Defendant denies these allegations.

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1 Stipulation #1 as set forth on the Minutes of Hearing/Summary of Evidence provides multiple dates, all of which use the year 2025. This appears to be a scrivener's error, as the year in question was actually 2024.

INTEREST ON ATTORNEY FEE

> Interest on benefits/fees awarded is governed by Labor Code §5800:
> "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." (emphasis* added).

The relevant facts in the instant matter are remarkably similar to those presented in the case of Christian v. Ring Sec. Agency, 2022 Cal. Wrk. Comp. P.D. LEXIS 128. In that case, three different attorneys had represented applicant Mr. Christian over the pendency of his case. The final attorney negotiated a Compromise and Release in the amount of $400,000, with $60,000 set aside as an attorney fee. This was approved by Order dated February 10, 2020. The Order Approving stated that the $60,000 attorney fee was "to be held in trust until further written agreement between current and prior applicant attorneys of record or further order of the court without recourse against these settling defendants."

The matter proceeded to lien trial, to include the issue of division of attorneys' fees, and the division of fees was decided by F&A. Defendant issued payment of the attorney fees three days following the F&A, but it did not include any interest. Mr. Redula claimed interest dating back to the date of the Order Approving the Compromise and Release and later filed a Petition for Penalties for the allegedly unreasonable refusal to pay the interest. This proceeded to a trial on penalties.

Following the penalty trial, the WCJ awarded the three days interest from the date of the F&A until payment was made, plus §5814 penalties for failure to pay the 3 days of interest, plus §5814.5 fees to applicant's attorney. Applicant and Defendant both petitioned for Reconsideration, with applicant again arguing that the interest should have been due from the date of the OACR, and defendant arguing that penalties should not have been imposed.

The WCAB denied applicant's petition and adopted this portion of the WCJ's report:

> "By the terms of the C&R, the attorney's fees were not due and payable until either a written agreement among the attorneys or further order of the court. The order to pay Mr. Redula and the other attorneys did not occur until 2/22/21, when it became

> due and payable. Interest does not run until payment is due and payable, not when the C&R was approved on 2/20/20. Per Labor Code § 5800, " ... 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."*
>
> Interest was thus payable from the date of the Order issued on 2/22/21 until paid on 2/25/21."

At the same time, the WCAB granted defendant's petition and reversed the award of penalties and §5814.5 fees, as it found that defendant's withholding of interest was not unreasonable, as it had demonstrated genuine doubt as to its liability.

In accordance with this guidance from the WCAB, this Court similarly notes that the original Order Approving directed that the attorney fee was to be withheld by defendant pending a written agreement or further order of the court. There was no agreement; the Court decided the division of fees by way of its Findings and Opinion following trial on the division of attorney fees. Thus, the fee became due and payable to Mr. Gurvey as of March 26, 2024 service of the Findings and Order, at which point, interest began to accrue.

The Court finds that §5800 interest began to accrue on Mr. Gurvey's $69,750.00 attorney fee as of March 26, 2024. Per the corrected stipulation of the parties, payment was issued on August 1, 2024. Thus, to the extent that defendant has not paid the entirety of that interest, such is Ordered payable to the law office of Rowen Gurvey and Win, with credit for all sums previously paid in satisfaction thereof. The precise amount due and payable to the law office of Rowen Gurvey and Win is to be determined by and between the parties, with jurisdiction reserved over any dispute.

PENALTIES/SANCTIONS/FEES

By way of his Petition, former counsel Rowen Gurvey and Win "requests that 25% of the delayed attorney fee up to the maximum $10,000.00 be ordered paid to applicant's former attorney as a Labor Code Section 5814 penalty." Former counsel further requests Labor Code §5814.5 fees in connection therewith.

It is settled law[2] that all penalties pursuant to Labor Code §5814, including those related to payment of an awarded attorney fee, are payable to the applicant. This is because §5814 concerns denials or delays in payment of "compensation", which Labor Code §3207 defines as "benefits conferred upon an injured employee". At the present time, and as of the November 4, 2024 date of his Petition, Mr. Gurvey is and was a lien claimant. A lien claimant lacks standing to pursue §5814 penalties on its own behalf.[3] Furthermore, lien claimant provided no authority to the Court in support of its position that interest on the attorney fee was payable as of the date of the Order Approving, nor could the Court locate any such authority following its own research. The persuasive authority located[4] by the Court found that following an Order Approving that orders an attorney fee to be held in trust, the §5800 interest accrues as of the date of a later agreement or F&A. This Court agrees.

Similarly, the record contains no evidence that defendant acted in bad faith such that the Court should impose sanctions pursuant to §5 813. The legal uncertainty of this situation is evidenced by the disparate positions taken by lien claimant and defendant, neither of which are identical to the findings of the Court. In consideration of this and defendant's prior voluntary payment of interest, the record does not support a finding that defendant acted in bad faith. As such, the Court declines to impose sanctions against defendant.

Accordingly, as to the relief requested by the office of Rowen, Gurvey & Win by way of its November 5, 2024 Petition for Penalties, Fees, and Sanctions, this Petition is DENIED.

Date: 4/21/2026

Adam D. Graff
Workers' Compensation Administrative Law Judge

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2 *See Sycamore Pharmacy, Inc. v. WCAB (Reynoso)* (1997) 62 CCC 1322 (writ denied); *Van Dyk v. California Men's Colony,* 2017 Cal. Wrk. Comp. P.D. LEXIS 51; *Flores v. Chualar Canyon Ranch Supply,* 2017 Cal. Wrk. Comp. P.D. LEXIS 440; *Hargreaves v. Southwest Airlines,* 2025 Cal. Wrk. Comp. P.D. LEXIS 98.

3 *See Ayala v. County of Los Angeles/King Drew Med. Ctr.,* 2014 Cal. Wrk. Comp. P.D. LEXIS 45

4 *Christian v. Ring Sec. Agency,* 2022 Cal. Wrk. Comp. P.D. LEXIS 128