

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

TERESA CHAVEZ, *Applicant*

vs.

ZODIAC SEAT SHELLS; TRAVELERS INSURANCE COMPANY, *Defendants*

**Adjudication Numbers: ADJ10808344, ADJ11217002, ADJ11216967
Santa Luis Obispo District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of our Decision After Reconsideration of March 5, 2026, wherein it was found that “The issue of whether applicant has suffered a compensable consequence injury to the right shoulder is deferred,” “The record fails to establish that defendant unreasonably delayed authorization of treatment of the right shoulder,” and that “Applicant is not entitled to a 25% penalty on all medical treatment to the right shoulder.” In so finding, we reversed a workers’ compensation administrative law judge’s (WCJ) Findings and Award of May 13, 2022 wherein it was found that “Applicant has suffered a compensable consequence injury to the right shoulder and is entitled to future medical treatment to cure or relieve the effects of the injury,” that “Defendants unreasonably delayed the evaluation of the right shoulder which led to an unreasonable delay in the provision of treatment to the right shoulder,” and that applicant was entitled to 25% Labor Code section 5814 penalty “on all medical treatment to the right shoulder provided to the date of this Order.”¹

¹ There are three cases in the caption of the WCJ’s decision and the applicant’s Petition for Reconsideration. In case ADJ11216967, it was found in a June 12, 2019 Findings and Award that while employed as an assembler during a cumulative period ending February 1, 2018, applicant sustained industrial injury to the hands, fingers and respiratory system causing permanent disability of 48% and the need for further medical treatment. In case ADJ10808344, it was found in the June 12, 2019 Findings and Award that while employed on December 5, 2013, applicant sustained industrial injury to her respiratory system causing no disability but causing the need for further medical treatment. In case ADJ11217002, it was found in the June 12, 2019 Findings and Award that while employed on July 21, 2015 applicant sustained industrial injury to her fingers causing no disability but causing the need for further medical treatment. On November 20, 2019, applicant filed a Petition to Reopen with the caption listing all three cases (despite the fact that more than five years had by then elapsed since sustaining injury in ADJ10808344). The Petition to Reopen

Applicant contends that we erred in not finding her entitled to a Labor Code section 5814 penalty. We have not received an answer.

We will deny the applicant's Petition.

Preliminarily, we note that former Labor Code 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, Labor Code 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 Labor Code 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 March 16, 2026 and 60 days from the date of transmission is May 15, 2026. This decision is issued by or on May 15, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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

alleges that "sustained injury to her right shoulder as a secondary consequence." Although it is not entirely clear which injury alleged caused the need for medical treatment to the right shoulder, since the Petition to Reopen references the 48% permanent disability award, it appears that the Petition to Reopen and the instant penalty issue relate solely to case ADJ11216967.

Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, since applicant seeks review of an Appeals Board decision, we did not receive a Report and Recommendation by a workers' compensation administrative law judge. However, an Order containing notice of transmission was served by the district office on March 16, 2026, which is the same day as the transmission of the case to the Appeals Board on March 16, 2026. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1), and consequently they had actual notice as to the commencement of the 60-day period on March 16, 2026.

Turning to the merits, Labor Code section 5814(a) states:

When **payment of compensation** has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the payment unreasonably delayed or refused shall be increased up to 25 percent or up to ten thousand dollars (\$10,000), whichever is less. In any proceeding under this section, the appeals board shall use its discretion to accomplish a fair balance and substantial justice between the parties.

(Emphasis added.)

In our Opinion and Decision of March 5, 2026, we deferred the issue of whether applicant was entitled to medical treatment to the right shoulder. Thus, there was no finding that applicant is entitled to any compensation with regard to the right shoulder. Since there is no finding of any entitlement for compensation and since we explained that the only evidence of the need for right shoulder treatment to the right shoulder was not substantial, there is no basis for a Labor Code section 5814 penalty to be assessed. There has not yet been a finding that applicant is entitled to any compensation with regard to the right shoulder, so the payment of compensation has not been unreasonably delayed or refused. Additionally, since we found in our prior decision that any finding of entitlement to treatment of the right shoulder was based on non-substantial evidence and that the medical record needed further development on this issue, there is clearly doubt regarding liability. As we stated in our en banc opinion in *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324, 1331 (Appeals Bd. en banc), “[S]ection 5814(a) ... provides that a penalty is payable only ‘[w]hen payment of compensation has been *unreasonably* delayed or refused.’ (Emphasis added.) A delay or a refusal to pay is 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].)’

Additionally, we note that with regard to medical treatment decisions, where, as here, applicant was already receiving medical treatment for his injury, any requests for medical treatment are subject to utilization review pursuant to Labor Code section 4610. To the extent that the defendant is disputing industrial causation, utilization review is delayed until the defendant’s liability becomes final. (Lab. Code, § 4610, subs. (l) and (m).)

Thus, Labor Code section 5814 is not the correct statutory vehicle to address any failure to properly investigate which has not resulted in an unreasonable delay or refusal regarding the “payment of compensation.” We note that the WCJ declined to impose section 5813 sanctions on defendant in his May 13, 2022 decision and we were not asked to revisit that finding.

We therefore deny the applicant’s Petition.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of our Decision After Reconsideration of March 5, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIOENR

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 15, 2026

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

**TERESA CHAVEZ
LAURA CHAPMAN & ASSOCIATES
HERRERAS & FORSHER, LLP
CABALLERO COLLECTIONS**

DW/oo

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