

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

BRITZI SANTOS, *Applicant*

vs.

**COUNTY OF LOS ANGELES,
PSI administered by SEDGWICK,
*Defendants***

**Adjudication Numbers: ADJ15467076, ADJ15467088
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

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

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR.

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 29, 2024

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

**BRITZI SANTOS
ENGLAND PONTICELLO LAW FIRM
KOSZDIN FIELDS LAW FIRM**

LN/pm

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

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

I. INTRODUCTION

Minutes of Hearing	November 21, 2023
Findings and Order	February 7, 2024
Identity of Petitioner	Defendant
Verification	Yes
Timeliness	Petition is timely
Petition for Reconsideration	March 1, 2024
Proof of Service	Yes

II. FACTS AND PROCEDURAL HISTORY

Applicant, a now 66-year-old female, sustained an admitted injury causing COVID-19 during her employment for the Los Angeles County Sheriff's Department as a painter on January 4, 2021. It is uncontroverted that the court issued an Order and Award, based on a joint stipulation of the parties, June 9, 2023 (EAMS ID# 76823393) that superseded an earlier stipulation and order issued by the Court on May 10, 2023 (EAMS ID#76792162).

Applicant filed a Declaration of Readiness to Proceed (DOR) on June 29, 2023 claiming that Defendant failed to comply with the stipulation and order dated June 9, 2024 (there is a duplicate of the order dated June 8, 2024 see page 5, App Ex. 1).

On November 21, 2023, the Parties appeared before the undersigned on the issues of (1) Whether the defendant complied with the [duplicate] orders dated June 8, 2023 and June 9, 2023, (2) Whether the applicant is entitled to penalties, interest, attorney's fees, and costs if the Award and Order was not complied with, and (3) Whether the defendant is entitled to credit for TD

payments allegedly made per County Code Section 6.20.070 made prior to the date of the Order(s) of June 8, 2023 and June 9, 2023.

The undersigned issued Findings and Orders and an Opinion on Decision on February 7, 2023, in favor of the Applicant on all issues, namely that (1) The defendant has failed to comply with the Stipulation & Order dated June 8, 2023 and (duplicate) Order dated June 9, 2023, (2) The applicant is entitled to penalties, interest, attorney's fees, and costs because the Stipulation and Order was not complied with, and (3) The defendant is not entitled to credit for TD payments allegedly made per County Code Section 6.20.070 and allegedly made prior to the dates of the Orders of June 8, 2023 and June 9, 2023. Thereafter, Defendants filed the instant Petition for Reconsideration on March 1, 2024.

Defendant's Petition for Reconsideration is based on the following grounds:

1. That by the order, decision, or award made and filed by the appeals board or a workers' compensation judge, the appeals board acted without or in excess of its powers,
2. The evidence does not justify the findings of fact; and
3. The findings of fact do not support the order, decision or award.

Defendant, petitioner, argues that (1) the order was not based on substantial evidence, (2) the applicant did not meet their burden of proof, (3) there is no basis to award Labor Code section 5814 penalties, and (4) that the court erred in denying the defendant's claim of credit allegedly paid based on the Los Angeles County Code.

III. DISCUSSION

"If the facts are against you, argue the law. If the law is against you, argue the facts. If the law and the facts are against you, pound the table and yell like hell."

— **Carl Sandburg**

In the instant case, petitioners, defendants, spend five pages of the sixteen-page petition for reconsideration discussing unnecessary and legally insignificant history of the case. The facts can be summed up in one sentence without the need to spill the ink the petitioners do here: The parties entered into a stipulation that became a final order of the court and it was not paid. There was no removal filed, no petition to correct a mistake, nothing. Defendant's simply failed to pay and then, at trial on their failure to comply with the stipulation / order, claim a credit which, assuming arguendo was valid, was not claimed nor reserved in the joint stipulation / order. The petitioners are grasping at straws and trying to make a very simple issue complex. There is no allegation of fraud,

mutual mistake, unilateral mistake, mistake of fact, estoppel, or any other reason to back out of the stipulation of the parties that they drafted and the court signed as a final order. Defendants want to make the simple, complicated. There was a stipulation and order. They did not comply. Petitioners now say they are excused from performing and the court erred in penalizing the non-performance. The law and precedent interposes.

A.
A Stipulation of the Parties Will be Given Great Weight

The nature and effect of a stipulation was described at length by the Court of Appeal in *County of Sacramento v. WCAB (Weatherall)*. *County of Sacramento v. WCAB (Weatherall)* (2000) 65 CCC 1. A stipulation is "[a]n agreement between opposing counsel ... ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action." (*Id.*) It serves "to obviate need for proof or to narrow range of litigable issues" in a legal proceeding. (*Id.* at 3, 3 citing Black's Law Dict. (6th ed. 1990) p. 1415, col. a). "A stipulation maylawfully include or limit issues or defenses to be tried, whether or not such issues or defenses are pleaded. (*Id.* at 4.)

The *Weatherall* case established the significant rule that, once stipulations are entered into, they stand as established regardless of evidence presented that might contradict them. The point of a stipulation is to obviate the need for proof. It's rightfully difficult to have a stipulation set aside. So if the parties stipulate to facts, the Workers' Compensation Judge (WCJ) frequently will rely on the stipulations of the parties in formulating his or her decision. Moreover, even if good cause is shown, the appeals board is not obligated to reject the stipulation; it is within the discretion of the WCJ to do so. (*Weatherall* at 5.)

If the parties' stipulation is accompanied by a WCJ's language that the stipulation is "so ordered" or "so awarded," as happened in the instant case, the stipulation becomes more than just an agreement between parties — it is transformed into an order of the appeals board. In *Huston v. WCAB*, ((1979) 44 CCC 798), the Court of Appeal explained that such a stipulation is a fully executed agreement and must be enforced. That court held that a defendant could not be released from a stipulation to pay temporary disability indemnity without a showing of good cause when the WCJ also specifically entered an order that the defendant pick up temporary disability benefits. The court stated, "To give enforcement to the stipulation it must be treated as if it were a formal findings and award issued by the appeals board." (*Id.* at 805).

In the instant case, the defendant petitioners, claim that they should be given a credit against the award/order that they entered into via stipulation based on a Los Angeles County municipal code that deals with gifts from fellow employees in the event of sickness or other leave from work. Assuming, arguendo, that this code somehow trumped the California Labor Code, they could have provided for the alleged credit in the stipulation. They also could have sought reconsideration after the stipulation was converted to an award / order. What they cannot do is what they did; sat on their hands and not comply forcing the applicant, respondent, to force enforcement via the court. To now complain that they should not be penalized by paying costs, interest, and attorney's fees is the epitome of *chutzpah*.

B.
No Lawful Reason For Non-Compliance With the Court Order

Defendants, petitioners, argue in their Petition for Reconsideration that they should not be compelled to comply with the (duplicate) orders dated June 8, 2023 and June 9, 2023 because (1) the order was not based on substantial evidence, (2) the applicant did not meet their burden of proof, (3) there is no basis to award Labor Code section 5814 penalties, and (4) that the court erred in denying the defendant's claim of credit allegedly paid based on the Los Angeles County Code.

1. The Order Was Based On Substantial Evidence

The "order" that is the subject of the instant petition is the "Findings of Fact & Order" issued February 7, 2024 (EAMS ID#77622676). The argument that the order was not based on substantial evidence fails because the order is literally based on the stipulation of the parties. The stipulation became an order and the time to appeal the order has long expired. No fraud in the inducement is alleged. Counsel for defendant conceded at trial that they had not paid and were unable to cogently articulate any reason why except for citing the inapplicable Los Angeles County Code.

2. The Applicant Met Their Burden of Proof

The Applicant does not have to prove that they did not receive benefits. The employer must prove they did. In the instant case, they have failed to prove they complied with the court's order. The burden of proof when seeking an California Labor Code section 5814 penalty is initially on the applicant to present a prima-facie case that a delay in benefits has occurred. When a delay is shown by the applicant, the burden of proof shifts to the employer to show good cause for the

delay. (*Ramirez v. WCAB* (1970) 35 CCC 383; *Waters v. WCAB* (2000) 65 CCC 484; *Kamel v. West Cliff Medical* (2001) 66 CCC 1521 (appeals board *en banc*)). The employer must provide a satisfactory explanation of reasonable delay to avoid the statutory penalty. (*Berry v. WCAB* (1969) 34 CCC 507.) In the instant case, defendants have failed to do so. Their spurious argument is they should be entitled to a credit that they failed to reserve in their stipulation that became the June 8th and June 9, 2023 award/order. The defendants were afforded due process with notice and an opportunity to be heard. They were unable to articulate any good cause for the failure to comply.

3. There is a Basis to Award Labor Code Section 5814 Penalties

The defendants entered into a stipulation, it was signed / ordered by the undersigned judge. The defendants failed to pay. It is really that simple. No good cause was shown for the failure to pay despite being given notice and an opportunity to be heard. Therefore, Labor Code section 5814 penalties are appropriate. When payment of compensation has been unreasonably delayed or refused, a penalty may be imposed. (*Safeway Stores, Inc. v. WCAB (Pointer)* (1980) 45 CCC 410.) In the instant case, compensation was unreasonably delayed and refused and has required applicant's attorney to file a DOR, attend an MSC, attend at trial, file a trial brief, and now answer this petition for reconsideration all for the purposes of having defendant comply with a joint stipulation that became a final order. The undersigned exercised discretion and ordered defendants to pay a penalty of approximately 20% and found that to be appropriate to accomplish a fair balance and substantial justice between the parties. The undersigned also exercised discretion and reduced the attorney's fees and costs sought by applicant's attorney incurred in enforcing the award and order that was unreasonably delayed and refused from \$7,562.50 to \$5,000.00.

4. The Court Properly Denied Defendant's Claim for Credit

The employer has the burden of proving that payments made were considered an advance on workers' compensation benefits. A failure to meet this burden will result in the appeals board denying credit. (See *Butelo v. Leighton and Associates*, 2010 Cal. Wrk. Comp. P.D. LEXIS 523). An employer asserting credit for payments from a benefits plan should be careful to introduce the plan into evidence and present evidence regarding the funding of the plan, the circumstances of payment and the conduct of the parties. (*Yonemitsu v. Pacific Bell Telephone Co.*, 2016 Cal. Wrk. Comp. P.D. LEXIS 363.) The problem for defendants, here, is that no claim for credit was made at the time of the

stipulation and order. It was raised for the first time at MSC after the order was not complied with. An employer attempting to claim credit for payments made under a benefits plan must timely raise the issue. In one case, the defense pointed out that it had paid benefits under the federal ERISA statutes, which pre-empt state law, and that therefore superseded the WCJ's findings and award. But this argument failed, as there was no reason the defense should not have raised the issue of credit in a timely manner. (*Alessi v. Raybestos-Manhattan, Inc.* (1981) 46 CCC 1366.) In the instant case, Defendants raised the issue of credits only after entering into a stipulation and after it became a final order and not until they were forced to a MSC on the sole issue of enforcement.

RECOMMENDATION

For the reasons stated above, it is respectfully requested that Defendant's Petition for Reconsideration be denied.

Date: March 15, 2024

HON. TROY SLATEN
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE