

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

GREGG RADER, *Applicant*

vs.

TICKETMASTER CORPORATION, care of ROBERT MONROE;
STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ7138762
Van Nuys District Office

**OPINION AND DECISION
AFTER RECONSIDERATION**

(Significant Panel Decision)

Pursuant to our authority, we designate this decision as a Significant Panel Decision. (Cal. Code Regs., tit. 8, § 10325(b); see Lab. Code, §§ 5300, 5301, 5302.)¹

We previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Applicant seeks reconsideration of the December 17, 2024 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a regional manager from November 12, 1991, to November 12, 1992, sustained industrial injury to his psyche and in the form of emotional stress. The WCJ found that the Workers' Compensation Appeals Board (WCAB) lacks jurisdiction to amend the applicant's prior Award of permanent disability, and that applicant has not proven that additional indemnity payments are due beyond what is specified in the Award.

¹ Significant panel decisions are not binding precedent in workers' compensation proceedings; however, they are intended to augment the body of binding appellate court and en banc decisions and, therefore, a panel decision is not deemed "significant" unless, among other things: (1) it involves an issue of general interest to the workers' compensation community, especially a new or recurring issue about which there is little or no published case law; and (2) all Appeals Board members have reviewed the decision and agree that it is significant. (See *Elliott v. Workers' Comp. Appeals Bd.* (2010) 182 Cal.App.4th 355, 361, fn. 3 [75 Cal.Comp.Cases 81]; *Larch v. Workers' Comp. Appeals Bd.* (1999) 64 Cal.Comp.Cases 1098, 1099-1100 (writ den.); *WCAB Releases Significant Panel Decisions for Publication* (News Brief, August 1997) 25 Cal. Workers' Comp. Rptr. 197.)

Applicant contends that the WCAB has jurisdiction over its prior awards pursuant to Labor Code² section 5803, and that the aggregate reductions in his weekly permanent disability payments exceed the amount of attorney fees awarded based on the Award of January 19, 2011.

We have received an Answer from defendant State Compensation Insurance Fund (SCIF). The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the December 17, 2024 F&O, and substitute new Findings of Fact that the WCAB retains ongoing jurisdiction over the award of attorney's fees pursuant to section 5803, and that because defendant has taken credit from applicant's weekly payment of permanent indemnity in an amount equivalent to the dollar amount of commuted attorney's fees, applicant is thereafter entitled to the full amount of his award without further reduction for attorney's fees. We will order defendant to reimburse applicant for all amounts withheld following satisfaction of the full amount of attorney's fees originally awarded plus statutory interest. However, because we also conclude that defendant entertained genuine legal doubt as to its liability for the benefits in question, we will deny applicant's petition for penalties and attorney's fees under sections 5814 and 5814.5.

FACTS

Applicant sustained industrial injury to the psyche and in the form of emotional stress while employed by Ticketmaster Corporation on November 12, 1992 (ADJ7568718) and from November 12, 1991 to November 12, 1992 (ADJ7138762).

On November 19, 2011, a WCJ approved the parties' Stipulations with Request for Award and awarded 100 percent permanent and total disability. (Award, dated January 19, 2011.) Therein, applicant's attorney requested a fee of \$39,444.71, based on applicant's life expectancy. The WCJ approved the attorney fee request and ordered that the amount of attorney fees be commuted from weekly indemnity payments by uniform weekly reduction. Accordingly, while applicant's nominal weekly permanent disability rate was \$336.00, defendant reduced each payment by \$50.40, yielding a net weekly payment of \$285.60. (Exhibit A, Printout of Benefits, dated February 14, 2024.)

² All further references are to the Labor Code unless otherwise noted.

Applicant contends that the amount commuted from his permanent disability award has been fully satisfied, and that his weekly permanent disability indemnity should return to the nominal rate of \$336.00 without reduction for additional attorney fees. Applicant's calculations begin with the gross amount of attorney's fees of \$39,444.71, divided by the weekly commutation amount of \$50.40. Applicant adds the resulting 782.63 weeks to the initial date of payment of June 6, 2008, resulting in the date of June 5, 2023 as "the date when the commutation of attorneys fees stops." (Petition, at p. 3:15.) Applicant further contends that he is entitled to statutory interest per section 5800 on any sums improperly withheld and to penalties pursuant to section 5814 and attorney's fees pursuant to section 5814.5 for defendant's unreasonable delay in the payment of the disputed benefits. (*Id.* at p. 5:1.)

Defendant's Answer responds that applicant's Award is silent as to the end date of commutation and any inference otherwise is improper. (Answer, at p. 3:15.) SCIF further contends that the WCAB lacks jurisdiction to alter or amend the Award at this juncture pursuant to section 5804. (*Id.* at p. 4:6.)

The WCJ's Report acknowledges that a certain level of imprecision is inherent to any estimate of life expectancy, and that "the gross amount of the weekly reductions has now exceeded the amount paid out ... But this is ok ... This is what is supposed to happen. One of the two parties inevitably ends up on the financial 'wrong side' of the estimate. Luckily for applicant, in his case, this means he has beaten his projected life expectancy." (Report, at p. 5.) In addition, the WCJ observes that "[p]ursuant to Labor Code § 5804, applicant's attempt to undo the rate reduction at this juncture is many years outside of the permissible period ... [t]he Court lacks jurisdiction to amend the Award, and so found." (*Ibid.*)

DISCUSSION

I.

In order to address the substantive issues advanced in applicant's Petition, we must first determine whether we have jurisdiction over this dispute.

Pursuant to section 5300, the WCAB has exclusive jurisdiction to adjudicate the "recovery of compensation, or concerning any right or liability arising out of or incidental thereto" of injuries that "arise out of and in the course" of employment," and that "[c]ompensation includes medical treatment, temporary disability indemnity, permanent disability indemnity, SJDB vouchers, and

death benefits ... In other words, the WCAB maintains exclusive jurisdiction pursuant to the California Constitution and section 5300 to adjudicate workers' compensation disputes." (*Dennis v. State of California* (2020) 85 Cal.Comp.Cases 28 [2020 Cal. Wrk. Comp. LEXIS 1] (Appeals Board en banc).) The Appeals Board has continuing jurisdiction over all its orders, decisions, and awards made and entered. (Lab. Code, § 5803.) The Appeals Board may rescind, alter, or amend any order, decision, or award, for good cause. (*Ibid.*)

However, section 5804 provides that "[n]o award of compensation shall be rescinded, altered, or amended after five years from the date of the injury." As explained by our Supreme Court, the WCAB "is empowered with continuing jurisdictional authority over all of its orders, decisions and awards ... However, this power is not unlimited ... The WCAB's authority under section 5803 to enforce its awards, including ancillary proceedings involving commutation, penalty assessment and the like, is not to be confused with its limited jurisdiction to alter prior awards by benefit augmentation at a later date. The latter action is subject to the provisions of sections 5410 and 5804." (*Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 297 [56 Cal.Comp.Cases 476].) Thus, in contrast to the limitations imposed by the statute on the Appeals Board to augment previously awarded benefits or to *set aside* an entire award, the Appeals Board continues to have jurisdiction after five years to *enforce* its awards. (*Barnes v. Workers' Comp. Appeals Bd.* (2000) 23 Cal.4th 679, 687 [65 Cal.Comp.Cases 780].) That is, the WCAB's jurisdiction to *enforce* an award extends beyond section 5804's five-year limitations period because an order ascertaining and fixing the exact amount of liability does not rescind, alter or amend any prior award in violation of section 5804. (*Id.*)

In *Garcia v. Industrial Acci. Com.* (1958) 162 Cal.App.2d 761, the Court of Appeal concluded that the "award of compensation to the employee is not altered or amended within the intended meaning of sections 5803 and 5804 by the allowance of the attorneys' lien after the five-year period." (*Id.* at p. 767.) In *Garcia*, new attorneys substituted in more than five years after the date of injury to assist the injured worker in resisting a petition to reopen the case by defendant Subsequent Injuries Fund (now Subsequent Injuries Benefits Trust Fund). (*Id.* at pp. 762-763.) The *Garcia* court reasoned, "[t]he imposition of the attorneys' lien after the five-year period would only amount to a *reallocation or redistribution* of the funds to be paid under the original award of compensation, i.e., the award of compensation is the same, only its payments are ultimately redirected by the imposition of a charge upon the award as security for the reasonable fee allowed

by the commission for legal services performed on behalf of the employee by his attorneys.” (*Id.* at p. 767, italics added.) Thus, the court determined that the underlying award of compensation remained the same even if a lien for attorney’s fees was allowed. (*Id.* at p. 767.)

Pursuant to the above authorities, the Appeals Board retains the jurisdiction under section 5803 to make collateral changes to an award so long as the merits of the basic decision determining the worker’s right to benefits are not altered, and the amount of benefits remains unchanged. (*Garcia, supra*, 162 Cal.App.2d 761, 767; see also *Hodge v. Workers’ Comp. Appeals Bd.* (1981) 123 Cal.App.3d 501, 509 [46 Cal.Comp.Cases 1034].) Here, applicant contends that defendant has taken credit for attorney’s fees from his weekly payment of permanent disability indemnity in an amount that met and now exceeds the original dollar amount of attorney’s fees awarded. While defendant contends that it is entitled to continue to reduce the weekly payment of indemnity in perpetuity in the amount specified for weekly reduction pursuant to the original stipulated award, there is no dispute presented that would otherwise alter or amend applicant’s underlying award of permanent and total disability. Irrespective of our determination with respect to the allocation of attorney’s fees, our decision will not alter or amend applicant’s underlying award of permanent and total disability. Accordingly, we conclude that we retain ongoing jurisdiction over our prior award pursuant to section 5803. (*Barnes, supra*, 23 Cal.4th 679, 687; *Garcia, supra*, 162 Cal.App.2d 761, 767.)

II.

Applicant contends that the aggregate amounts credited by defendant from his weekly permanent disability rate pursuant to the commutation now exceed the amount of attorney’s fees specified and approved in the award. Applicant submits that the exhaustion of commutation credit entitles him to his full permanent and total disability rate of \$336.00 per week.

Section 4903 provides that the “appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined,” including “[a] reasonable attorney’s fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursements in connection therewith.” (Lab. Code, § 4903(a).)

In *City of Foster City v. Workers’ Compensation Appeals Bd.* (*Sanchez*) (2001) 66 Cal.Comp.Cases 742, 747-744 (writ den.), we discussed the considerations relevant to the

calculation and payment of attorney's fees in cases involving the award of lifetime benefits to the employee:

[A] lien for attorney's fees may be allowed against compensation "thereafter payable" or "to be paid," i.e., future weekly payments, by commuting sufficient amounts from those future weekly payment so as to make a lump sum payment to the lien claimant. This is usually done by commuting sufficient "final payments" of permanent disability indemnity to satisfy the lien (Calif. Worker's Comp. Practice, 4th Ed., Calif. Continuing Education of the Bar, 2000, Section 15.91, p. 976), but only when there is a fixed number of weeks of permanent disability payable to the applicant so as to reduce the number of weeks of permanent disability indemnity payments from the actual "far end" or final weekly payments of the award.

However, a commutation from the far end of a lifetime award appears to be a fee over and above compensation benefits, because theoretically, there is no particular end to a lifetime award from which to effect a commutation. Therefore, the Board has long held that in cases of a life pension the proper method for commuting fees is to commute them through the lifetime award using appropriate actuarial tables. (*Goler v. W. & J. Sloan Company* (1979) 44 Cal.Comp.Cases 1065 (en banc WCAB opinion); writ denied at 45 Cal.Comp.Cases 58.) Commutation through the award effectively pro-rates the attorneys' fee over the life of the award by the use of actuarial methods and life expectancy tables, which are easily calculated by the professional staff of the Disability Evaluation Bureau. Such commutation reduces the applicant's benefits by only a few dollars per week as of a specific date, and is consistent with section 4904.1's requirement that lien claimants shall in no way affect the commencement of immediate payments on any balance of the award to the injured worker where an installment payment for the disability has been determined.

Furthermore, commutation is specifically provided for by Labor Code section 5100 which provides that the Board may commute compensation payable to a lump sum and order it to be paid forthwith if such commutation is necessary for the protection of the person entitled thereto or for the best interest of the applicant. In so doing the Board is required to consider the applicant's ability to live without periodic indemnity payments and whether or not commutation will avoid inequity and not otherwise cause undue expense or hardship to the applicant.

(*Sanchez, supra*, at pp. 747-744.)

On January 19, 2011, a WCJ issued an award in favor of applicant for permanent and total disability commencing June 6, 2008, payable in the weekly amount of \$336.00 for applicant's lifetime, with further notation that the rate is to be "reduced to [\$]285.60 after commutation of

attorney fees.” (Stipulations with Request for Award, approved January 19, 2011, at p. 1.) Attorney’s fees are addressed in Paragraph six, which provides that “[a]pplicant’s attorney requests a fee of \$39,444.71,” with fees “to be commuted laterally off the life expectancy....” (*Id.* at p. 2.) The Award contemplates a fixed attorney’s fee in the amount of \$39,444.71 and provides that the fees will be commuted as per Paragraph six.

Thus, while applicant’s nominal entitlement to weekly benefits was \$336.00 per week, defendant would reduce that amount by \$50.40, resulting in a net weekly indemnity payment of \$336.00 less \$50.40, or \$285.60. Consequently, defendant has paid biweekly installments of permanent disability in the amount \$285.60 x 2, or \$571.20. (See Ex. A, Printout of Benefits, dated February 14, 2024.)

Applicant asserts that a weekly credit of \$50.40 would satisfy the total amount of attorney fees awarded in 782.63 weeks ($\$39,444.71/\$50.40 = 782.63$ weeks). (Petition, at p. 2:9.) Pursuant to applicant’s calculations, 782.63 weeks from the stipulated commencement of permanent disability on June 6, 2008, was June 6, 2023. (*Id.* at p. 2:10.) Because defendant received full credit for the attorney’s fees originally commuted pursuant to the 2011 Award as of June 6, 2023, applicant contends that all indemnity paid thereafter must be paid at the full permanent disability rate of \$336.00 per week, without reduction for additional attorney fees.

Defendant responds that the 2011 award does not provide for any “automatic reversion on the payout rate,” nor does it specify “any period of commutation.” (Answer, at p. 2:21.)

We begin our analysis with the observation that a WCJ must evaluate the adequacy of a proposed settlement at the time it is submitted for review and approval. (Lab. Code, § 5001; Cal. Code Regs., tit. 8, § 10700(b).) The court of appeal in *Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291 [83 Cal.Comp.Cases 1014] discussed the importance of the adequacy determination as follows:

In addition, to safeguard injured workers from agreeing to unfair or unwise settlements, Labor Code section 5001 provides that no settlement is valid unless the Workers’ Compensation Appeals Board or a workers’ compensation referee approves the settlement. (*Steller v. Sears, Roebuck & Co.* (2010) 189 Cal.App.4th 175, 180 [116 Cal. Rptr. 3d 824].) The board or referee must inquire into the fairness and adequacy of a settlement and may set the matter for hearing to take evidence when necessary to determine whether to approve the settlement. (*Id.* at p. 181; Cal. Code Regs., tit. 8, §§ 10870, 10882.) “These safeguards against improvident releases place a workmen’s compensation release upon a higher plane than a private contractual release; it is a judgment, with ‘the same

force and effect as an award made after a full hearing.’ [Citation.]” (*Johnson v. Workmen’s Comp. App. Bd.* (1970) 2 Cal.3d 964, 973 [88 Cal.Rptr. 202, 471 P.2d 1002]; see also Steller, at p. 181.)

(*Id.* at pp. 301-302.)

As part of the evaluation of adequacy, the WCJ must determine the reasonableness of a request for attorney’s fees and then determine whether the requested fees should be commuted laterally from future payments of indemnity in order to produce a lump sum.

The evaluation of attorney’s fees requires the WCJ in the first instance to assess the “responsibility assumed by the attorney, the care exercised in representing the applicant, the time involved, and the results obtained.” (Lab. Code, § 4906(d).)

Thereafter, and pursuant to section 5100, the WCJ must determine whether to commute compensation payable as a lump sum and order it to be paid forthwith “if such commutation is necessary for the protection of the person entitled thereto or for the best interest of the applicant.” (Lab. Code, § 5100.) Considerations attendant to a commutation of attorney’s fees include the applicant’s ability to live with reduced periodic payments, or without periodic indemnity payments entirely, and whether or not commutation will avoid inequity and not otherwise cause undue expense or hardship to the applicant. (*Ibid.*; *Hulse v. Workers’ Comp. Appeals Bd.* (1976) 63 Cal.App.3d 221, 226 [41 Cal.Comp.Cases 691].)

Additional considerations which may bear on a WCJ’s determination include finality of the award and attracting competent legal representation in workers’ compensation matters. “[C]ommutation to pay attorneys’ fees is routine in workers’ compensation matters, since it simplifies matters for all parties...so that at least that part of the case can come to a final conclusion.” (*Karr-Reddell v. Christopherson Homes* (July 25, 2013, ADJ3563222 (SRO 0126894) [2013 Cal. Wrk. Comp. P.D. LEXIS 316].) Moreover, payment of a single lump sum of attorney’s fees ensures that attorneys are fully paid for their services, even if an applicant dies earlier than expected based on their life expectancy. That is, confidence that attorney’s fees will be fully paid helps assure that “competent attorneys will agree to represent industrially injured employees.” (*Lawrence Drasin & Associates v. Workers’ Comp. Appeals Bd. (Pilkenton)* (1992) 3 Cal.App.4th 1564 [57 Cal.Comp.Cases 142, 147]; *Robert S. Beloud, Inc. v. Workers’ Comp. Appeals Bd. (Leinweber)* (1975) 50 Cal.App.3d 729, 737 [40 Cal.Comp.Cases 505, 510].)

Here, the WCJ determined that the amount of attorney’s fees requested in the 2011 Stipulations with Request for Award was reasonable and approved the fees in the amount of

\$39,444.71. (Stipulations with Request for Award, at p. 2, ¶ 6; Award, dated January 19, 2011, at ¶ (B).) Thus, the amount of attorney's fees to be commuted was *fixed* at \$39,444.71, with the order of commutation providing for a small credit from applicant's future weekly indemnity payments, not in perpetuity, but in amount equivalent to the approved attorney's fees. Consequently, while the Award provides for lifetime permanent disability payable to the applicant (Lab. Code, § 4659(b)), the lateral commutation of attorney's fees is limited to the amount of attorney's fees approved by the WCJ in the first instance. Once defendant has deducted an amount commensurate with the specified commuted attorney's fees, no further deduction from applicant's weekly indemnity payment is necessary or appropriate.

Our determination in this regard comports with the WCJ's required analysis of the adequacy of a proposed settlement. Here, the WCJ determined the requested attorney's fees in the amount of \$39,444.71 to be reasonable and ordered a commutation limited to that amount pursuant to the WCJ's overall evaluation of the adequacy of the proposed settlement. However, it is not clear that the settlement would remain fundamentally adequate were defendant allowed to continue to impose a reduction on indemnity payments well beyond the amount of attorney's fees provided in the proposed settlement. (Lab. Code, § 5001; *Camacho, supra*, 24 Cal.App.5th 291.) Moreover, we believe that a commutation that provides for an indefinite reduction in the benefits paid to a permanently disabled employee beyond the actual fees awarded is incompatible with the mandate of section 5100 that commutations avoid inequity and undue expense or hardship to the applicant. (See, e.g., *Hulse v. Workers' Comp. Appeals Bd.* (1976) 63 Cal.App.3d 221, 226 [41 Cal.Comp.Cases 691].) Finally, our determination to limit the commutation of attorney's fees to the dollar figure assessed as reasonable at the time of the settlement comports with our obligation to liberally construe the applicable statutory and regulatory constraints with the purpose of extending their benefits for the protection of persons injured in the course of their employment. (Lab. Code, § 3202.)

Accordingly, we conclude that the lateral commutation of attorney's fees from an award of lifetime benefits is limited to the specified amount of attorney's fees approved by the WCJ or the Appeals Board in the first instance. Once defendant has deducted an aggregate amount commensurate with the specified commuted attorney's fees, no further deduction from applicant's weekly indemnity payment is appropriate or permissible.

III.

Applicant contends defendant's deduction of the weekly commutation amount of \$50.40 following satisfaction of the full amount of attorney's fees is an unreasonable delay in the provision of benefits. Applicant seeks the imposition of penalties pursuant to section 5814, attorney's fees pursuant to section 5814.5, and statutory interest on sums improperly withheld pursuant to section 5800.

In support thereof, applicant contends that he advised defendant of the improperly withheld benefits in a letter dated December 5, 2023, and that defendant's letter of January 11, 2024 acknowledges receipt of his letter. (Petition, at p. 5:13; Ex. B, Letter to Applicant's Counsel, dated January 11, 2024.)

Section 5814 provides:

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.

(Lab. Code, § 5814(a).)

Section 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.

(Lab. Code, § 5814.5.)

However, as our Supreme Court has held in *Kerley v. Workers' Comp. Appeals Bd.* (1971) 4 Cal.3d 223 [36 Cal.Comp.Cases 152], a penalty is payable only “[w]hen payment of compensation has been *unreasonably* delayed or refused.” (Italics 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.” (*Id.* at p. 230.)

Here, and following our review of the entire record, we are persuaded that defendant has established genuine legal doubt as to its liability for monies that it continued to withhold pursuant

to the attorney's fee commutation described in the 2011 Award. Defendant's legal doubt is evident in its letter to applicant's counsel dated January 11, 2024, wherein it advanced the legal assertion that the commutation extended in perpetuity absent any specific agreement to the contrary. (Ex. B, Letter to Applicant's Counsel, dated January 11, 2024.) Defendant's position in this respect is further reflected in its trial briefing and in its Answer. Moreover, given the WCJ's thoughtful analysis and ultimate conclusions supporting defendant's position, the record clearly sets forth genuine legal doubt as to defendant's liability for the monies withheld pursuant to the original commutation calculations. Accordingly, defendant has met its burden of establishing genuine legal doubt as to its liability in this regard, and we decline to award penalties under section 5814, or attorney's fees under section 5814.5.

However, statutory interest under section 5800 remains applicable to monies withheld after the full amount attorney's fees had been satisfied by defendant's biweekly deductions from applicant's baseline permanent total disability award.

In summary, because our inquiry is limited to the allocation of attorney's fees, and because applicant does not seek to alter or amend the underlying award of permanent disability, our jurisdiction is not otherwise abrogated by section 5804. Rather, our ability to hear and decide the instant matter falls under the Appeals Board's continuing jurisdiction to enforce its orders and awards under section 5803. We further conclude that the lateral commutation of attorney's fees from an award of lifetime benefits is limited to the specified amount of attorney's fees approved by the WCJ in the first instance. Once defendant has deducted an aggregate amount commensurate with the specified and awarded attorney's fees, no further deduction from applicant's weekly indemnity payment is appropriate or permissible. Finally, we conclude that defendant entertained genuine legal doubt as to its liability for the monies withheld beyond the gross amount of attorney's fees specified in the Award, pursuant to the commutation calculations therein, and on that basis decline to award penalties under section 5814 or attorney's fees under section 5814.5.

Accordingly, we will rescind the December 17, 2024 F&O and substitute new Findings of Fact that the WCAB retains ongoing jurisdiction over the award of attorney's fees in this matter pursuant to section 5803, and that because defendant has taken credit from applicant's weekly payment of permanent indemnity in an amount equivalent to the attorney's fees awarded by the WCJ, applicant is thereafter entitled to the full amount of his award without further reduction for attorney's fees. We will order defendant to reimburse applicant for all amounts withheld following

satisfaction of the full amount of attorney's fees originally awarded plus statutory interest. However, because we also conclude that defendant entertained genuine legal doubt as to its liability for the benefits in question, we will deny applicant's petition for penalties and attorney's fees under sections 5814 and 5814.5.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the December 17, 2024 Findings and Order is **RESCINDED** and that the following be **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. The Workers' Compensation Appeals Board retains the jurisdiction to hear and decide this matter, pursuant to its authority to enforce its prior decisions under Labor Code section 5803.
2. The weekly commutation of \$50.40 from applicant's permanent and total disability award extends only until the gross amount of awarded attorney's fees of \$39,444.71 has been satisfied. Thereafter, applicant is entitled to his permanent and total disability rate of \$336.00 without reduction for commuted attorney's fees.
3. Defendant has established genuine legal doubt as to its liability for the amount of monies withheld pursuant to the 2011 commutation calculations.

ORDERS

- a. Defendant shall reimburse applicant for all monies withheld pursuant to the commutation of attorney's fees following satisfaction of the full amount of attorney's fees originally awarded, plus statutory interest. Jurisdiction is reserved to the WCJ in the event of further dispute.
- b. Applicant's petition for penalties and attorney's fees pursuant to Labor Code sections 5814 and 5814.5 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 8, 2026

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

GREGG RADER
GOLDSCHMID, SILVER & SPINDEL
STATE COMPENSATION INSURANCE FUND

SAR/abs

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