

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

JAMES WOLTER, *Applicant*

vs.

**CHRISTOPHER JOHN WEITZ; HUDSON INSURANCE COMPANY, Adjusted By LWP
CLAIMS; DC CONSTRUCTION COMPANY; NAN MELTZER DESIGN BUILD, INC.,
*Defendants***

**Adjudication Number: ADJ10684591
Oxnard District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Defendant Hudson Insurance Company seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings, Award and Orders July 14, 2025, wherein it was found that, while employed on November 15, 2015 as a carpenter, applicant sustained industrial injury to the low back, psyche and in the form of hernia.¹ It was found that applicant's injury caused temporary total disability from November 18, 2016 to February 12, 2017 and from February 1, 2019 to November 8, 2020. It was also found that applicant was entitled to Labor Code section 5814 penalties in the amount of \$2,236.70 with regard to the first period of temporary total disability, of \$10,000 with regard to the second period of temporary total disability, and of \$6,561.25 with regard to delayed permanent disability indemnity advances, although the issue of permanent disability has not yet been tried. In determining the temporary disability indemnity and 5814 penalty due, it was found that applicant's average weekly wage was \$1,100 per week, producing a temporary disability indemnity rate of \$733.33 per week. It was also found that applicant is entitled to additional qualified medical evaluator panels in orthopedics and psyche, but not in internal medicine.

¹ Applicant also apparently claims injury in the forms of "lower left impingement," "infection," "cyst," and "abscess." These body parts have not yet been adjudicated.

Defendant contends that the WCJ erred (1) finding applicant's average weekly wage was \$1,100 per week, (2) finding applicant entitled to 104 weeks of temporary total disability, arguing that it does not credit defendant for an intervening period of temporary partial disability, (3) finding applicant entitled to Labor Code section 5814 penalties, arguing that it should not be penalized for delays by its insured before it was given notice of applicant's claim, arguing that applicant's petitions for penalties were filed more than two years after the underlying compensation was due in violation of Labor Code section 5814(g), and arguing that the WCJ erred in issuing multiple penalties for the delay of temporary disability in violation of the \$10,000 maximum penalty. Defendant also argues that there was no good cause for the WCJ to order an additional qualified medical evaluator panel in psychiatry.²

We have not received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report). In the Report, the WCJ concedes error on the issue that the 104 weeks of temporary disability should include the intervening period of temporary partial disability between the two periods of temporary total disability. As the WCJ writes in the Report, "Petitioner is correct that the 104 weeks should include the applicant's TPD period. The undersigned judge recommends that reconsideration be granted on this issue, so that the findings be amended to reflect the correct period and amounts owed." (Report at p. 5.)

As explained below, in order for the WCJ to reanalyze this issue and the other related issues regarding average weekly wage, temporary disability, and Labor Code section 5814 penalties raised in defendant's Petition, we will grant reconsideration and amend the WCJ's decision to defer the issues of temporary disability and Labor Code section 5814 penalties. We will deny relief with regard to the contention that the WCJ did not have good cause to order a new qualified medical evaluation panel in psychiatry.³

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:

² Defendant also identified some alleged computational errors regarding temporary disability indemnity and penalties. Since we are deferring both of these issues, we need not discuss these alleged computational errors.

³ Commissioner Sweeney, who was on the panel that issued a previous decision in this matter on November 18, 2022, no longer serves on the Appeals Board. Commissioner Joseph V. Capurro was appointed in her place.

(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 August 29, 2025 and 60 days from the date of transmission is Tuesday, October 28, 2025. This decision is issued by or on October 28, 2025, 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 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, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on August 29, 2025, and the case was transmitted to the Appeals Board on August 29, 2025. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 29, 2025.

Turning to the merits, with regard to defendant's contention that the WCJ should have not issued an order for an additional qualified medical evaluator panel in psychiatry, we note that a decision issued by the WCAB may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. Although the decision here contains findings that are final (industrial injury, temporary disability, and Labor Code section 5814 penalties), the findings regarding the additional QME panels are not final. Since orders pertaining to discovery are not final orders, these issues are subject to the removal standard rather than the reconsideration standard. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658 [81 Cal.Comp.Cases 1122].) The removal standard requires "significant prejudice" or "irreparable harm." (Cal. Code Regs, tit. 8, § 10955, subd. (a).) We find that this standard has not been met with regard to the order for an additional panel in psychiatry, as defendant will be able to present all applicable defenses and will be able to question any reporting physician.

However, we will otherwise grant reconsideration and defer the issues of average weekly wage, temporary disability, and Labor Code section 5814 penalties. In addition to the issue of the period of temporary partial disability, the parties and the WCJ should reanalyze the issues of average weekly wage and Labor Code section 5814 penalties.

With regard to the issue of average weekly wage, a calculation of applicant's wages must be made and the WCJ should explain, with reference to Labor Code section 4453(c), how the average weekly wage was determined. To the extent that defendant asks the applicant clarifying questions on this or any other issue at an evidentiary hearing, unless a valid legal reason exists for objecting to questions on cross-examination, applicant must answer any relevant questions posed to him.

With regard to the issue of Labor Code section 5814 penalties, the parties and the WCJ should further examine the issue of whether an insurer may be penalized for the acts of its insured prior to receiving notice of the claim. (See generally *DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382 [58 Cal.Comp.Cases 286] [UEF claims]; *Carver v. Workers' Comp. Appeals Bd.* (1990) 217 Cal.App.3d 1539 [55 Cal.Comp.Cases 36].) To the extent that a carrier may be legally penalized, the WCJ should consider the application of section 5814's commandment that, "In any proceeding under this section, the appeals board shall use its discretion to accomplish a

fair balance and substantial justice between the parties” in determining whether to impose a penalty or in determining the amount of the penalty. In determining the amount of any penalty, the WCJ should specifically identify the exact delayed compensation and perform the analysis mandated by *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 (Appeals Board en banc). We note that in the Report, the WCJ did not address the defendant’s argument that the WCJ improperly imposed separate sanctions above the \$10,000 limit on the separate periods of temporary disability. The WCJ should also reanalyze the applicability of Labor Code section 5814(g). In the Report, the WCJ states, “that pursuant to L.C. § 4650, the TTD benefits were not actually due until the claim was accepted by defendant in September of 2021.” (Report at p. 9.) In the further proceedings, if still relevant, the WCJ should quote the relevant provisions of section 4650 and how it relates to the issues herein. If compensation was not yet due, that should form part of the analysis of whether to impose section 5814 penalties.

The above is not intended to be an exhaustive list of the issues requiring re-examination. We express no opinion on the ultimate resolution of any issue in this matter.

For the foregoing reasons,

IT IS ORDERED that Defendant’s Petition for Reconsideration of the Findings, Award and Orders July 14, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Findings, Award and Orders July 14, 2025 is **AMENDED** as follows:

FINDINGS OF FACT

1. James Wolter, age 38 on the date of injury, while employed November 15, 2016, as a carpenter, at Malibu, California, by Christopher Weitz, whose workers’ compensation insurance carrier was Hudson Insurance, adjusted by LWP Claims, sustained injury arising out of and occurring in the course of employment to his low back, hernia, and psyche, claims to have sustained lower left impingement, infection, cyst, and abscess.
2. The issue of average weekly earnings is deferred, with jurisdiction deferred.
3. The issue of temporary disability is deferred, with jurisdiction deferred.
4. The applicant is entitled to a replacement Panel QME in orthopedics.

5. The applicant is not entitled to a replacement Panel QME in internal.
6. The applicant is entitled to an additional Panel QME in psyche.
7. The issue of Labor Code section 5814 penalties is deferred, with jurisdiction deferred.
8. The defendant is not entitled to credit of the \$3,500.00 paid by UEBTF at this time, until discovery has been finalized, and the applicant's PD has been finalized.

AWARD

AWARD IS MADE in favor of JAMES WOLTER against HUDSON INSURANCE COMPANY of:

- a. Replacement panel pursuant to finding #4.
- b. Additional panel pursuant to finding #6.

ORDERS FOR PANEL QMES:

Pursuant to the above findings, the Medical Unit is ordered to replace the applicant's orthopedic Panel QME, Dr. Ghodadra. Additionally, the Medical Unit is ordered to issue an additional Panel in psychiatry.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMISSIONER

/s/ JOSEPH V. CAPURRO, COMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 28, 2025

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

**JAMES WOLTER
HAIGHT, BROWN & BONESTEEL**

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*