WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JONATHAN LAOZI LI, ***Applicant***

vs.

AMERICAN TIRE DEPOT ATV dba AMERICAN TIRE DEPOT; ZURICH NORTH AMERICA, ***Defendants***

Adjudication Number: ADJ8290263
Anaheim District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the February 10, 2025 Findings and Order (F&O) wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that "defendant unreasonably delayed or refused to provide the applicant with medical treatment in accordance with the award for future medical treatment dated 08/18/2020" and deferred for further development of the record the issues of the cost of medical treatment delayed or refused and penalties and attorney's fees pursuant to Labor Code[1] sections 5814 and 5814.5.

Defendant contends that the WCJ "relies primarily on the Applicant's testimony, which was self-serving and not corroborated by medical reports or provider statements." (Petition for Reconsideration (Petition), p. 4.) Defendant also contends that written authorization was provided to Big Island Pain Center and that any "jurisdictional challenges and provider refusals" were outside of its control" thereby rendering penalties and attorney's fees under sections 5814 and 5814.5 unjustified. (*Ibid*.)

We have not received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

We have considered the Petition and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition.

FACTS

Applicant, while employed by defendant on January 7, 2011 as a store manager, sustained an injury arising out of and in the course of employment (AOE/COE) to his neck, low back, and psyche.

On May 13, 2020, applicant settled his claim by way of a Stipulations with Request for Award (Stipulations). Pursuant to paragraph nine of the Stipulations, applicant was to treat with a doctor of his choice within defendant's medical provider network (MPN) for ongoing future medical.[2]

Shortly before settlement, applicant moved from California to Hawaii, where he currently resides.

On September 8, 2023, applicant filed a Declaration of Readiness to Proceed (DOR) to a mandatory settlement conference alleging that applicant had not received medical treatment and that defendant had cancelled nurse case management.

On November 13, 2023 a mandatory settlement conference was held wherein the WCJ issued an interim order indicating that defendant is to coordinate an initial evaluation with Big Island Pain Center and waive the need for Requests for Authorizations (RFAs) and California rules and regulations specific to treatment authorization requests. (Minutes of Hearing, November 13, 2023.)

On September 13, 2024, applicant filed a petition seeking penalties and attorney's fees pursuant to sections 5814 and 5814.5 for unreasonable delay or refusal of medical treatment. Applicant alleged that defendant failed to coordinate an initial evaluation with Big Island Pain Center and failed to authorize Dr. Matthew Longacre as his primary treating physician. (Petition for Penalties, September 13, 2024, p. 2.) Big Island Pain Center and Dr. Longacre were apparently listed within defendant's MPN.

On September 17, 2024, a DOR was filed regarding potential settlement of future medical in light of the challenges surrounding treatment. The mandatory settlement conference was held

[2] An Order Suspending Action was issued on June 6, 2020, and an amended Stipulations was submitted and Award issued on August 17, 2020. The amended Stipulations did not alter any prior agreements with respect to medical treatment.

on October 14, 2024, and the matter was set for a trial on December 3, 2024. The trial was continued to January 14, 2025 at defendant's request.

On January 14, 2025, a trial was held on the issue of unreasonable delay or refusal of medical treatment and corresponding penalties and attorney's fees under sections 5814 and 5814.5.

On February 10, 2025, the WCJ issued a F&O which held, in relevant part, that "defendant unreasonably delayed or refused to provide the applicant with medical treatment in accordance with the award for future medical treatment dated 08/18/2020[.]" The WCJ deferred for further development of the record the issues of the cost of medical treatment delayed or refused and the amount penalties to be imposed and attorney's fees paid under sections 5814 and 5814.5.

DISCUSSION

I.

Preliminarily, former 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) 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.
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> (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 under the Events tab 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 5, 2025, and 60 days from the date of transmission is May 4, 2025, which is a Sunday. The next

business day that is 60 days from the date of transmission is Monday, May 5, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision was issued by or on May 5, 2025, 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 shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on March 5, 2025, and the case was transmitted to the Appeals Board on March 5, 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 section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 5, 2025.

II.

We also find it relevant here to discuss the distinction between a petition for reconsideration and a petition for removal. A petition for reconsideration is taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order is defined as one that determines "any substantive right or liability of those involved in the case" or a "threshold" issue fundamental to a claim for benefits. (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v.*

[3] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Workers' Comp. Appeals Bd. (Gaona) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, at 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'"]; *Rymer*, *supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer*, *supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, and other similar issues.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Bd. en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board 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. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the February 10, 2025 F&O includes threshold findings as well as findings on interlocutory issues. Defendant seeks reconsideration of the WCJ's finding that defendant unreasonably delayed or refused to provide the applicant with medical treatment. Defendant also seeks reconsideration of the WCJ's order of deferral of the cost of medical treatment delayed or refused and penalties and attorney's fees pursuant to sections 5814 and 5814.5. These are all interlocutory issues. As such, we apply the removal standard for our review. (See *Gaona, supra*.)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd*. (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, with respect to the finding of unreasonable delay or refusal to provide the applicant with medical treatment and the order of deferral of the cost of medical treatment delayed or refused and corresponding penalties and attorney's fees pursuant to sections 5814 and 5814.5, we are not persuaded that significant prejudice or irreparable harm would result if removal was denied and/or that reconsideration would not be an adequate remedy.

III.

Notwithstanding the above, we find it important to note that section 4600(a) requires the employer to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury or be subject to liability for reasonable medical expenses incurred. Pursuant to section 4600(a):

> Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.
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> (Lab. Code, § 4600(a).)

The Supreme Court has discussed the consequences of an employer's refusal to provide medical treatment:

> "[T]he employer is given initial authority to control the course of the injured employee's medical care. Section 4600 requires more than a passive willingness on the part of the employer to respond to a demand or request for medical aid. This section requires some degree of active effort to bring to the injured employee the necessary relief. Upon notice of the injury, the employer must specifically instruct the employee what to do and whom to see, and if the employer fails or refuses to do so, then he loses the right to control the

> employee's medical care and becomes liable for the reasonable value of self-procured medical treatment."

(*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 165 [48 Cal.Comp.Cases 566], (internal citations omitted).)

In the instant matter, based upon applicant's testimony, the passage of time since applicant's last date of treatment through defendant (over three years), and defendant's lack of rebuttal evidence, we agree with the WCJ that defendant unreasonably delayed or refused medical treatment. Per applicant's testimony, treatment was stopped in "late 2021" after the parties settled the claim via an August 18, 2020 Stipulations with Request for Award and "Medicare became aware that Zurich was supposed to be paying the bills." (Minutes Hearing and Summary of Evidence (MOH & SOE), January 14, 2025, p. 4.) Applicant further testified that despite discussions with Zurich's claims adjuster and multiple attempts at securing treatment with numerous providers, he was unable to secure a provider and "did not receive anything from Zurich regarding treatment until he was authorized by [Zurich] to see Dr. Mohamed." (*Id*. at p. 8.) Defendant argues that a November 28, 2023 authorization letter was provided to Big Island Medical Clinic. (Exhibit B.) Nothing in the letter, however, indicates that Big Island Medical Clinic is exempt from RFAs and California workers' compensation rules and regulations concerning requests for treatment. As noted above, in his November 13, 2023 interim order, the WCJ ordered defendant to waive RFAs and all requirements under California rules and regulations for treatment authorization requests due to prior instances wherein applicant was dropped from care due to a provider's inability or unwillingness to abide by California workers' compensation rules and regulations surrounding treatment requests.

Defendant further contends that the WCJ's reliance on applicant's testimony is misguided as the testimony was "self-serving and not corroborated by medical reports or provider statements." (Petition, p. 4.) Pursuant to *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500], however, credibility determinations of the WCJ, as the trier of fact, are entitled to great weight based upon the WCJ's opportunity to observe the demeanor of the witnesses and weigh the witnesses' statements in connection with their manner on the stand. Credibility determinations are not to be disturbed except where there is contrary evidence of considerable substantiality. (*Id*.) Unfortunately, no such evidence was provided here. As such, we

find that based upon applicant's testimony and defendant's lack of rebuttal evidence, defendant unreasonably delayed or refused medical treatment.

In the event an employer is found to have unreasonably delayed or refused medical treatment, the injured worker may seek penalties under section 5814 and attorney's fees "incurred in enforcing the payment of compensation awarded" under section 5814.5. (Lab. Code, § 5814.5.) Pursuant to section 5814(a):

> (a) 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
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> (Lab. Code, § 5814(a).)

In *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 (Appeals Bd. en banc), the Appeals Board emphasized that section 5814 affords the WCJ discretion in determining the penalty to be assessed, with a primary goal of encouraging prompt payment of benefits and ameliorating the effect of delays on the injured worker. In *Ramirez*, we listed several factors to be considered in assessing a section 5814 penalty. They include: (1) evidence of the amount of the payment delayed; (2) evidence of the length of the delay; (3) evidence of whether the delay was inadvertent and promptly corrected; (4) evidence of whether there was a history of delayed payments or whether the delay was a solitary instance of human error; (5) evidence of whether there was any statutory, regulatory, or other requirement (e.g., an order or a stipulation of the parties) providing that payment was to be made within a specified number of days; (6) evidence of whether the delay was due to the realities of the business of processing claims for benefits or the legitimate needs of administering workers' compensation insurance; (7) evidence of whether there was institutional neglect by the defendant, such as whether the defendant provided a sufficient number of adjusters to handle the workload, provided sufficient training to its staff, or otherwise configured its office or business practices in a way that made errors unlikely or improbable; (8) evidence of whether the employee contributed to the delay by failing to promptly notify the defendant of it; and (9) evidence of the effect of the delay on the injured employee. (*Ramirez*, supra, 73 Cal.Comp.Cases at pp.1329-1330.)

In the instant matter, the parties have not yet submitted evidence of the cost of the medical treatment delayed or refused. In his February 10, 2025 Findings and Order and Opinion on

Decision (F&O and OOD), the WCJ deferred the issue of the cost of medical treatment unreasonable delayed or refused and the amount of the corresponding penalty and ordered the parties to meet and confer so that they might "try and resolve" on their own the cost of the medical treatment delayed or refused and come to an agreement on the penalty due under section 5814. (F&O and OOD, p. 16.) In light of the fact that the cost of the medical treatment delayed or refused is currently unknown, application of the *Ramirez* factors is premature.

Accordingly, defendant's Petition is denied, and the matter is returned to the trial level for further actions consistent with this opinion. Once the WCJ issues a new decision, any newly aggrieved party may file for reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the February 10, 2025 Findings and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 5, 2025

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

JONATHAN LAOZI LI
DIXON & DALEY, LLP
STOCKWELL, HARRIS, WOOLVERTON & FOX

RL/kl

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