

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

**JOSE MEJIA, *Applicant***

**vs.**

**JB CRITCHLEY, INC.; AMERICAN CLAIMS MANAGEMENT, *Defendants***

**Adjudication Number: ADJ8558358  
Fresno District Office**

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

Defendant seeks reconsideration of the June 10, 2025 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a semi-truck driver/laborer on August 4, 2010, sustained industrial injury to his cervical spine, thoracic spine, lumbar spine, headaches, hearing loss, psyche, hypertension, high blood pressure, heart-left ventricular hypertrophy, chest pain, medication effects, sleep, dysphasia, failed spine surgery, and adjacent segment disease. The WCJ found in relevant part that pursuant to Labor Code<sup>1</sup> section 5904, defendant may not raise for the first time a dispute as to the permanent total disability rate that was not raised at the time of trial or upon Petition for Reconsideration. The WCJ also determined that defendant failed in their burden of proof that there are sufficient grounds to set aside stipulation of the parties as to wages, more than five years after the date of injury. The WCJ awarded penalties pursuant to section 5814 and attorney fees pursuant to section 5814.5.

Defendant contends that applicant's award of disability should reflect his earnings as a seasonal employee. Defendant further contends that the question of the length and duration of applicant's employment was never decided or reached in the prior decision and that any prior stipulations regarding findings as to wages should be set aside due to extrinsic mistake. Finally,

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<sup>1</sup> All further references are to the Labor Code unless otherwise noted.

defendant avers that it entertained genuine doubt as to its liability for benefits herein, precluding the imposition of penalties and associated attorney's fees.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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 discussed below, we will grant defendant's petition, rescind the Findings and Award, and substitute new Findings of Fact that defendant failed to raise the issue of average weekly rate or the permanent and total disability rate in prior trial level and appellate proceedings, and that the findings regarding earnings and disability rates was final on October 2, 2024, after defendant exhausted its right to appeal. We will therefore affirm and restate the WCJ's award of both section 5814 penalties as well as the award of attorney's fees.

## **FACTS**

The WCJ's Report sets forth the relevant factual history as follows:

On December 28, 2022, trial was held before WCJ Lee. Stipulations which were read into the record from the joint Pre-trial Conference Statement included:

3. At the time of injury, the employee's earnings were \$1,200.00 per week, warranting indemnity rate of \$800 for temporary disability, and \$270.00 for permanent disability.

Issues presented for trial included, among others, temporary disability period, permanent and stationary date, permanent disability, apportionment and whether the applicant was permanently and totally disabled. (Minutes of Hearing/Summary of Evidence, 12/28/22, EAMS ID. 76328455, pg. 2-3.) No issues were raised regarding temporary or permanent disability rates and neither party presented any evidence regarding applicant's earnings.

On March 16, 2023, Judge Lee issued a Findings of Fact, Award & Opinion on Decision wherein the judge set forth the stipulations of the parties as recited in the Minutes of Hearing/Summary of Evidence, including the stipulation as to earnings, TD and PD rates. The Findings of Fact included a finding that the Stipulations of the parties are accepted as fact. In addition, Judge Lee found that the applicant was totally and permanently disabled. The judge awarded permanent total disability and ordered the parties to submit a commutation request to the Disability Evaluation Unit to establish fees based upon the facts

herein. (Exh. 3, Findings of Fact, Award & Opinion on Decision, 3/16/23, EAMS ID 76534679)

On April 10, 2023, Defendant filed a Petition for Reconsideration wherein the Questions Presented were set forth as:

1. Whether the finding and award of permanent total disability is supported by substantial evidence inasmuch as it relies on the vocational reporting of Steve Ramirez?
2. Whether the award of permanent disability, even if based on the vocational reporting of Steve Ramirez, should be subject to apportionment? (Petition for Reconsideration, 4/10/23, EAMS 45876271, pg. 5)

On November 9, 2023, the WCAB issued its Opinion and Decision After Reconsideration wherein the WCAB affirmed the F&A. Nowhere in either the Petition for Reconsideration or in the Decision After Reconsideration is there any mention of applicant's earnings or the permanent total disability rate. (Exh. 5, Opinion and Decision After Reconsideration, 11/9/23, EAMS 77346893)

Defendant filed for Writ of Review with the Court of Appeal and for Review by the California Supreme Court, both of which were denied. (Exh. 6 & 7) Following which, the parties entered into discussions as to total amounts of retroactive benefits owed. Defendant secured an analysis and ratings consultation, which utilized an Average Weekly Earning (AWE) of \$1200 and a PTO rate of \$800. (Exh. 9, B&B AMA analysis and ratings consultation) On October 16, 2024, defendant e-mailed applicant's attorney a proposed breakdown of the amounts owed utilizing the same AWE and PTD rate. (Exh. 10, E-mails, 10/16/24 & 10/17/24)

On October 21, 2024, defendant raised for the first time that due to applicant's seasonal employment his TD rate should be \$391.66 rather than the \$800 as stipulated to at trial and provided a wage statement. (Exh. 11, E-mail, 10/21/24) When defendant failed to provide payment in the full amount of the Award, Applicant's attorney filed a Petition for Increased Benefits and Attorney Fees Pursuant to L.C. 5814 and 5814.5. (Exh. 1, Petition for Increased Benefits and Attorney fees, 11/4/24, EAMS 54731552.)

Defendant filed a Petition to Set Aside Findings and Award. (Exh. G, Defense Petition to Set Aside Findings and Award, 11/11/24, EAMS 54850548.) On April 9, 2025, the parties proceeded to trial on the issues of

1. Attorney fees
2. Applicant's attorney's petition for increased benefits and attorney fees, pursuant to Labor Code Section 5814 and Labor Code Section 5814.5

3. Applicant's Attorney's request for WCJ to take judicial notice of findings of fact, award and opinion on decision submitted by WCJ Lee on 3/16/23
4. Permanent total disability rate dispute, whether Applicant was a seasonal employee, and if so, what is the impact on permanent total disability.
5. Defendant's petition to set aside prior stipulations and findings of Applicant's average weekly earnings and permanent total disability rate.

On June 10, 2025, the undersigned found that pursuant to Labor Code section 5904, defendant was precluded from disputing the average weekly wage previously stipulated to by the parties when the dispute was not raised on prior Petition for Reconsideration and that defendant could not raise for the first time a dispute as to the permanent total disability rate that was not raised at the time of trial or upon Petition for Reconsideration. It was further found that defendant failed in their burden of proof that there was sufficient grounds to set aside stipulations of the parties as to wages, more than five years after the date of injury. It was found that defendant unreasonably delayed in payment of an award that was final following denial of review by the Supreme Court of California and penalties were awarded of ten (10) percent of any accrued and unpaid benefits or \$10,000 whichever is less. Applicant's attorney was awarded fees incurred in enforcing the prior award in the amount of \$5,100.00. It is from these findings and awards that defendant seeks reconsideration.

(Report, at pp. 2-4.)

Defendant's Petition contends that applicant was a seasonal employee and that the current award "is based on an average weekly wage not supported by any evidence and not reflective of the applicant's loss of earnings, even assuming a total loss of earning capacity." (Petition, at p. 8:16.) Defendant also asserts that the "the question of the length and duration of applicant's employment was never decided or reached in the prior decision," and that "[i]f the issue of seasonal employment was never actually litigated or determined in the original proceedings, then that issue remains an open issue." (*Id.* at p. 10:9.) In addition, defendant asserts its wage stipulation should be set aside for extrinsic mistake, and that its genuine doubt as to its liability for benefits precludes the imposition of penalties and attorney's fees. (*Id.* at p. 11:6.)

Applicant's Answer observes that the parties previously stipulated to applicant's average weekly wages, and that pursuant to section 5904, defendant waived all objections, irregularities and illegalities concerning the matter upon which reconsideration was sought. (Answer, at p. 3:18.) Applicant asserts that any mistake as to wages was unilateral, and that defendant's unreasonable failure to pay the final award of disability merits both penalties and the award of attorney's fees.

The WCJ's Report observes that the issue of applicant's earnings and corresponding disability rates was previously determined as part of the March 16, 2023 award, and following defendant's exhaustion of appellate review, the issue may not be revisited. (Report, at pp. 5-6.) The WCJ further observes that section 5502(d)(3) "requires parties to list issues to be determined at the time of the Mandatory Settlement Conference (MSC)," and that case law provides that a failure to timely raise those issues results in their waiver. (Report, at pp. 6-7.)

## DISCUSSION

### I.

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.
  - (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 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 July 22, 2025, and 60 days from the date of transmission is Saturday, September 20, 2025. The next business day that is 60 days from the date of transmission is Monday, September 22, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on September 22, 2025, so that we have timely acted on the petition as required by section 5909(a).

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<sup>2</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

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 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 July 22, 2025, and the case was transmitted to the Appeals Board on July 22, 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 July 22, 2025.

## II.

These supplemental proceedings follow the issuance of the WCJ's March 16, 2023 Findings of Fact and Award. Therein, the WCJ determined that pursuant to the parties' stipulations, the employee's earning at the time of injury were \$1,200.00 per week, warranting weekly indemnity rates of \$800.00 for temporary disability, and \$270.00 for permanent disability. (Finding of Fact and Award, dated March 16, 2023, Stipulation No. 3.)

There is no dispute that the parties stipulated to applicant's earning of \$1,200.00 per week. The November 22, 2022 pre-trial conference statement reflects a joint stipulation that at the time of injury, the employee's earnings were \$1,200 per week warranting indemnity rates of \$800.00 for temporary disability and \$270.00 for permanent disability. (Pre-Trial Conference Statement, dated November 22, 2022, at p. 2.) As the WCJ correctly points out in her Report, the manifest purpose of trial stipulations is "to expedite trials and hearings and their use in workers' compensation cases should be encouraged." (*Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 791 [52 Cal.Comp.Cases 419].) The Court of Appeal has further observed:

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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.

[T]he trial stipulation was entered in accordance with the mandatory settlement conference, which is designed to circumscribe the issues for trial and thereby expedite compensation to the worker. For this reason, in the compensation arena, the mandatory settlement conference is serious business. “Ten days before the settlement conference, the parties are to file a conference statement noting the specific issues, listing exhibits and disclosing witnesses. Evidence not disclosed is not admissible unless the proponent of the evidence can demonstrate that it was not available or could not be discovered with due diligence prior to the conference. (Labor Code Sec. 5502(d)(3)[Deering’s]). ... Orders and rulings may also be made regarding admission of evidence and discovery matters including admission of offers of proof and stipulations of testimony.”

(*County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* 77 Cal.App.4th 1114, 1120 [65 Cal.Comp.Cases 1, 5].)

Here, the WCJ read the parties’ stipulations into the record at the time of trial, and the record reflects no objection by defendant to the stipulation, either as to the amount of weekly wages or the method by which the amount was calculated. (Minutes of Hearing and Summary of Evidence, dated December 28, 2022, at p. 2:10.)

Thereafter, the WCJ entered the parties’ stipulations, including the wage stipulation, into the March 16, 2023 Findings of Fact and Award. Based on the stipulations of the parties, the Award provided for Permanent and Total Disability “as provided in the Finding of Fact #1-#2 set forth above.” (Award, Nos. 1 & 2.)

Section 5702 provides:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award *based upon such stipulation*, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

(Lab. Code, § 5702, italics added.)

The WCAB is thus authorized to reject the stipulation of the parties and to determine the underlying issues by directing investigation or in supplemental proceedings. However, the WCAB is also specifically authorized to “make its findings and award based on such stipulation.”

Here, the WCJ exercised the authority granted under section 5702 to review and accept the clear and repeated stipulation of the parties regarding the amount of applicant’s earnings at the time of injury. Following a comprehensive review of the medical, vocational, and medical-legal reporting, along with a careful and deliberate weighing of the testimonial evidence, the WCJ issued

an award of permanent and total disability at the rates stipulated to by the parties. (Findings of Fact and Award, dated March 16, 2023, Finding Nos. 1, 2(f), 3; Award Nos. 1 & 2.)

Following the issuance of the Award, defendant exercised its right to seek review of the decision before the WCAB, and later the Court of Appeal and the California Supreme Court. In each instance defendant offered no challenge to applicant's earnings as stipulated by the parties and accepted by the WCJ. And in each instance, defendant's petitions for reconsideration or review were denied, with the Supreme Court issuing its denial on October 2, 2024. (Order Denying Petition for Review, dated October 2, 2024.)

Once a review petition is denied by our Supreme Court, "the judgment of the trial court is final for all purposes." (*North Beverly Park Homeowners Assn. v. Bisno* (2007) 147 Cal.App.4th 762, 769 [54 Cal.Rptr.3d 644]; see also 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 838, pp. 902–903.)

Here, the parties have stipulated that applicant's earnings at the time of injury were \$1,200.00 per week. The WCJ has appropriately entered those stipulations in the trial record and accepted and relied upon the stipulations in the resulting Findings of Fact and Award. Defendant has exercised and exhausted its right to seek appellate review of the decision, which is now final. On the record before us, we conclude that the award of workers' compensation benefits based on the accepted stipulations of the parties is final as to all parties concerned. Accordingly, we discern no basis to revisit the issue of applicant's earnings.

We acknowledge the WCJ's thoughtful discussion of section 5904, and the applicability of statutory waiver in this matter. (Report, at pp. 6-7.) However, in this instance we need not reach a discussion of waiver under section 5904 because the underlying award of permanent and total disability at the rates stipulated to by the parties and approved by the WCJ and included in his findings of fact is final for all purposes.

Accordingly, we will grant defendant's petition for the limited purpose of clarifying the Findings and Award to reflect that defendant's appeals of the underlying award are now exhausted, and the WCJ's decision is final and binding as to all parties.

Defendant's Petition further contends its stipulation to applicant's wages should be set aside due to extrinsic mistake. Defendant contends that the stipulation is inconsistent with the facts of applicant's employment and may not form the basis of a decision. (Petition, at p. 11:8.) The WCJ's Report responds:



Defendant contends that the stipulation and finding as to wages should be set aside due to extrinsic mistake. As noted in defendant's Petition, once the WCAB's jurisdiction lapses, "an award may be set aside only upon a showing of fraud or mistake of the kind generally referred to as 'extrinsic' fraud or mistake." (*Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170.) Extrinsic mistake occurs when there is an excusable neglect by a party to appear and present their claim or defense. (*Kulchar v. Kulchar* (1969) 1 Cal. 3d 467, 471.) To determine whether a case involves extrinsic fraud or mistake, "it is necessary to examine the facts in the light of the policy that a party who failed to assemble all his evidence at the trial should not be privileged to relitigate a case, as well as the policy permitting a party to seek relief from a judgment entered in a proceeding in which he was deprived of a fair opportunity fully to present his case. (*Id.* at 473.)

In order to establish that an award should be set aside based on extrinsic fraud or mistake, a party must demonstrate that the fraud or mistake could not reasonably have been discovered prior to the entry of judgement, articulate a satisfactory excuse for not presenting a claim or defense in the original action and show that they were deprived of a fair opportunity to fully present their case. A mutual mistake that might be sufficient to set aside a contract or one party's unilateral mistake are not sufficient to set aside a final judgement. (*Id.* at 472)

In this case, there has been no evidence presented to show that the mistake could not have, with due diligence, reasonably been discovered prior to the entry of judgement. The defendant has presented no evidence to suggest that they did not have access to the information that the applicant was a seasonal worker prior to the MSC or that they were unable to obtain earnings information from the employer.

(Report, at p. 8.)

We agree with the WCJ's analysis and conclude that the record does not support the extrinsic fraud or mistake that would otherwise warrant setting aside defendant's stipulation.

Finally, defendant argues that penalties and attorney's fees for the unreasonable delay in payment of benefits are unwarranted because defendant had genuine doubt as to its legal liability for the benefits in question. (Petition, at p. 18:5.) The WCJ's Report responds:

The amount of the payment delayed was significant, totaling approximately \$350,689.92 unpaid benefits owed to applicant. (\$574,298.33 previously agreed upon minus \$223,608.41 actually paid) Additionally, there was \$165,094.20 in unpaid applicant's attorney fees (\$324,780.67 previously agreed upon minus \$159,686.47 actually paid). (Exh. 1, Applicant's Petition for Increased Benefits, EAMS 54731551, 11/4/24, pg. 4.)

The length of the delay is considerable since the award became final upon denial of review by the California Supreme Court on October 2, 2024, and remains unpaid. (Exh. 7, Supreme Court Order petition for review denied, EAMS 78475965, 10/2/24.)

The delay was an intentional, solitary incident unrelated to any claims processing or legitimate business needs. The delayed payment was following a judicial award that would generally allow for payment to be made within 30 days of the decision becoming final.

(Report, at p. 11.)

We agree with the WCJ's weighing of the considerations appurtenant to the question of unreasonable delay under section 5814 and attorney's fees under section 5814.5. We therefore decline to disturb the WCJ's findings of penalties and associated attorney's fees.

In summary, the parties have stipulated to applicant's wages at the time of injury, and the WCJ has accepted those stipulations and issued a corresponding Award of disability. While defendant sought review of that decision, the courts have uniformly denied review, and the decision was final for all purposes of October 2, 2024. Defendant has not established good cause to set aside its stipulation regarding wages as a result of fraud or extrinsic mistake, and we decline to disturb the WCJ's award of penalties and attorney's fees. We grant reconsideration for the limited purpose of clarifying that finality of the underlying decision precludes the instant challenge to the stipulated wages relied upon by the WCJ in entering the Award.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of June 10, 2025, is **GRANTED**.

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award dated June 10, 2025, is **RESCINDED** with the following **SUBSTITUTED** therefor:

### **FINDINGS OF FACT**

1. Defendant failed to raise the issue of average weekly rate or the permanent and total disability rate in the previous Petition for Reconsideration, Petition for Writ of Review, or Petition for Review.
2. The finding that applicant's average weekly wage was \$1,200.00, warranting a temporary disability rate of \$800.00 and a permanent disability rate of \$270.00 was final on October 2, 2024, after defendant exhausted its right to appeal.
3. Defendant has unreasonably failed to pay an award that was final following denial of review by Supreme Court of California on October 2, 2024.
4. Any accrued and unpaid benefits shall be increased by ten (10) percent or \$10,000 whichever is less.
5. Pursuant to Labor Code section 5814.5, applicant's attorney is entitled to attorney fees incurred in enforcing the prior award in the amount of \$5,100.00.

## **AWARD**

AWARD IS MADE in favor of Jose Mejia against JB Critchley, Inc., permissibly self-insured, as follows:

- a. Any accrued and unpaid benefits due pursuant to Award dated March 16, 2023 plus 10 percent interest.
- b. Penalties as set forth in Finding of Fact No. 4.
- c. Reasonable attorney fees as set forth in Finding of Fact No. 5.

## **WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**September 22, 2025**

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

**JOSE MEJIA  
VALDEZ & VALDEZ  
BRADFORD & BARTHEL**

**SAR/abs**

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