WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

OLISAEMEKA EZE, *Applicant*

vs.

FEDEX GROUND PACKAGE SYSTEM, INC., permissibly self-insured, administered by SEDGWICK CMS, *Defendants*

Adjudication Number: ADJ15619594
Santa Rosa District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the November 26, 2024 Findings, Award, and Orders (FA&O) wherein the workers' compensation administrative law judge (WCJ) ordered, in relevant part, that defendant provide the Court with applicant's full unredacted claims file for an in-camera review, pay $250 in sanctions to the General Fund pursuant to Labor Code[1] section 5813 for violation of a January 16, 2024 court order, and pay a 25% penalty to applicant pursuant to section 5814 for unreasonable delay in the reimbursement of medical mileage. (FA&O, p. 3.)

Defendant contends that pursuant to Evidence Code sections 915, 952, and 954, the WCJ is not entitled to the full unredacted claims file due to attorney-client and attorney work-product privilege. (Petition for Reconsideration (Petition), p. 3.) Defendant further contends that they are unaware of how the January 16, 2024 court order was violated and argues that award of the section 5813 sanctions and section 5814 penalties are improper as there was no unreasonable delay in the reimbursement of medical mileage to applicant. (Petition, p. 2.)

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted solely to amend the FA&O to reflect that only the non-privileged claims file will be provided to the WCJ for an in-camera review.

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

We have considered the Petition for Reconsideration, the Answer, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will treat the Petition as one for Reconsideration, grant the Petition, and affirm the FA&O, except that we will amend it to reflect that the non-privileged claims file be provided to the WCJ for an in-camera review.

FACTS

Applicant, while employed by defendant as an operations coordinator, sustained a cumulative work injury ending on August 25, 2021 to the psyche, including sleep disorder, anxiety, and mental exhaustion.

The parties proceeded with litigation, and during the discovery process reached an impasse on several issues, including provision by defendant of the complete unredacted claims file and reimbursement of medical mileage to applicant.

Per a December 7, 2023 email from applicant to defendant, applicant sought medical mileage reimbursement in the amount of $88.16 plus a 25% section 5814 penalty for a total amount due of $119.73 for medical travel from February 23, 2023 through December 7, 2023 with Drs. Giovannoli and Nelson and SleepFit. (Exhibit E144.)

On January 16, 2024, the parties attended a Mandatory Settlement Conference (MSC) wherein the WCJ ordered, in relevant part, that defendant's attorney "consult with his client regarding the outstanding mileage reimbursement requests previously submitted by [applicant] before the next Mandatory Settlement Conference." (Supplement to Minutes of Hearing, January 16, 2024.) It was noted that failure by any party to abide by the orders "could result in penalties and/or sanctions." (*Ibid*.)

A subsequent hearing was set for March 12, 2024, but was continued to May 29, 2024 at defendant's request. (Minutes of Hearing, March 11, 2024.)

On July 17, 2024, the parties proceeded to trial on various issues, including the issue of provision by defendant of the complete unredacted claims file and reimbursement of medical mileage to applicant. There was no evidence in the record indicating that any attempts were made by defendant to address reimbursement of medical mileage prior to the July 17, 2024 trial.

On November 26, 2024, the WCJ issued a Findings, Award, and Order indicating, in relevant part, that applicant is entitled to reimbursement of medical mileage in the amount of $119.73, inclusive of a 25% penalty pursuant to section 5814 for unreasonable delay; that

defendant provide to the WCJ, applicant's full unredacted claims file for an in-camera review within 30 days of service of the FA&O, and as to those documents alleged to be privileged, a privilege log to be reviewed by the WCJ who would issue a subsequent order indicating which items are protected by attorney-client privilege and/or work-product doctrine; and that defendant pay section 5813 sanctions to the General Fund in the amount of $250 for violation of the January 16, 2024 court order.

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 January 7, 2025, and 60 days from the date of transmission is March 8, 2025, which is a Saturday. The next business day that is 60 days from the date of transmission is March 10, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision was issued by or on March 10, 2025, so that we have timely acted on the petition as required by section 5909(a).

[2] 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 constitute 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 January 7, 2025, and the case was transmitted to the Appeals Board on January 7, 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 January 7, 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 [43Cal.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. 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

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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.

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 or not 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 WCJ's decision includes findings regarding payment of penalties to applicant and payment of sanctions. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal. Defendant challenges both the final orders as to payment of penalties and sanctions and the interlocutory finding/order regarding provision of the claims file. Thus, with respect to the issue of the interlocutory order, we will apply the removal standard to our review of that issue. (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, based on the WCJ's analysis of the issue, and as recommended in the Report, we are persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

Therefore, we will grant the Petition as one for Reconsideration, and we will affirm the WCJ's final order as to payment of penalties, but we will amend the finding as to the claims file.

III.

Turning now to the merits of the Petition, Evidence Code section 915(a) states in relevant part that "the presiding officer may not require disclosure of information claimed to be privileged under this division or attorney work product under subdivision (a) of Section 2018.030 of the Code of Civil Procedure in order to rule on the claim of privilege." Section 2018.030(a) of the Code of Civil Procedure indicates that an attorney work product is a writing which "reflects an attorney's impressions, conclusions, opinions, or legal research or theories" and is "not discoverable under any circumstances." (Cal. Code Civ. Proc., § 2018.030(a).)

Evidence Code section 954 similarly states, in relevant part, that:

> … the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:
>
> (a) The holder of the privilege;
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> (b) A person who is authorized to claim the privilege by the holder of the privilege; or
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> (c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

(Cal. Evid. Code, § 954.)

Pursuant to Evidence Code section 952, the term "confidential communication" pertains to "information transmitted between a client and his or her lawyer in the course of that relationship

and in confidence … and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship."

In *Regents of University of California v. Workers' Comp. Appeals Bd. (Lappi)* (2014) 226 Cal.App.4th 1530, the court held that Evidence Code statutes concerning privilege apply to workers' compensation proceedings. The court in *Lappi* found that the Appeals Board erred when it required the defendant in that case to submit allegedly privileged materials to a special master for a determination on their privilege. To rectify this error, the court annulled the order and directed the Appeals Board to determine the discovery dispute without review of the allegedly privileged materials. (*Lappi*, *supra*, at p. 1537.)

In the present case, the WCJ expressly ordered defendant to submit the entire unredacted claims file and held that, as to those documents alleged to be privileged, a privilege log was to be prepared and filed by defendant which would be then reviewed by the WCJ alongside the privileged materials for determination by the WCJ as to which items were protected by attorney-client privilege and/or the work-product doctrine. In accordance with Evidence Code section 915, section 2018.030(a) of the Code of Civil Procedure, and considering the similarities between the current matter and *Lappi*, we must conclude that as to the portion of the November 26, 2024 FA&O ordering in-camera review of the entire unredacted claims file, the FA&O exceeds the WCJ's authority and is in violation of the above statutes concerning attorney client and work product privilege.

IV.

Defendant further contends that the FA&O did not identify which January 16, 2024 court order was violated and how it was violated. (Petition, p. 2.) A review of the WCJ's January 16, 2024 order clearly indicates that defendant's attorney was to "consult with his client regarding the outstanding mileage reimbursement requests previously submitted." (Supplement to Minutes of Hearing, January 16, 2024.) The WCJ warned that failure to do so "could result in penalties and/or sanctions." (*Ibid*.) Section 5813 states, in relevant part, that:

> (a) The workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not

to exceed two thousand five hundred dollars ($2,500) to be transmitted to the General Fund.

(Lab. Code, § 5813(a).)

WCAB Rule 10421(b) provides a comprehensive but non-exclusive list of actions that may be subject to sanctions. As applicable here, subdivision (b)(4) states that a party may be subject to sanctions where the party has failed to "comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure . . . or with any award or order of the Workers' Compensation Appeals Board, including an order of discovery, which is not pending on reconsideration, removal or appellate review and which is not subject to a timely petition for reconsideration, removal or appellate review. . ." (Cal. Code Regs., tit. 8, § 10421(b)(4).)

Sanctions under section 5813 are designed to punish litigation abuses and to provide the court with a tool for curbing improper legal tactics and controlling their calendars. (*Duncan v. Workers' Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294, 302.) Accordingly, sanctions are similar to penalties under section 5814 in that they are designed to have both remedial and penal aspects. (See *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 (Appeals Bd. en banc).)

Upon review of the record, we agree with the WCJ that there is no evidence defendant attempted to resolve applicant's request for medical mileage reimbursement, submitted by applicant to defendant on December 7, 2023 and then again on January 1, 2024, despite numerous opportunities to do so, including a court order on January 16, 2024 and further hearings held on May 29, 2024 and July 17, 2024. (Exhibit E144.) As such, we affirm the WCJ's decision to order payment of $250 in sanctions to the General Fund pursuant to section 5813.

Defendant also alleges that there was no unreasonable delay in the provision of medical mileage reimbursement to applicant warranting section 5814 penalties. Section 5814(a) states that:

> 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.

In *Ramirez*, we emphasized that section 5814 affords a WCJ discretion in determining the penalty which should be assessed, with a primary view towards the goals of encouraging the prompt payment of benefits by making delays costly on defendants, and of ameliorating the effects of any delays on the injured worker. To that end, in *Ramirez*, we listed several factors to be considered in assessing a section 5814 penalty. The factors listed in *Ramirez* are: (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, instead, 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 case, given the relatively miniscule amount of money owed in medical mileage ($88.16), only a maximum penalty would be consistent with the statute's primary goal of encouraging the prompt payment of benefits. A lesser penalty also would not adequately compensate applicant for the delay. Here, the delay was over seven months from the date of the initial December 7, 2023 request for medical mileage reimbursement. This delay occurred despite a January 16, 2024 Order from the WCJ for defendant to "consult with his client regarding the outstanding mileage reimbursement requests previously submitted by [applicant]." (Supplement to Minutes of Hearing, January 16, 2024.) Further, defendant failed to submit any materials which evidence mitigation of the *Ramirez* factors. We must therefore agree with the WCJ that the maximum 25% penalty under section 5814 is appropriate considering the facts herein.

Accordingly, we grant defendant's Petition and affirm the FA&O except that we will amend it to reflect that only the non-privileged claims file be provided to the WCJ for an in-camera review.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the November 26, 2024 Findings, Award, and Orders is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 26, 2024 Findings, Award, and Orders is **AFFIRMED**, **EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Olisaemeka Eze, born [], while employed as an operations coordinator by defendant, FedEx Ground Package System, Incorporated, during the cumulative trauma period through August 25, 2021, sustained injury arising out of and in the course of employment to stress/psyche, sleep disorder, anxiety and mental exhaustion.
2. At the time of injury, defendant was permissibly self-insured.
3. Applicant is entitled to reimbursement of medical mileage in the amount of $119.73, inclusive of the 25% penalty pursuant to Labor Code section 5814 for an unreasonable delay, to be paid by the defendant within 30 days of service herein.
4. Applicant's request for the production of other FedEx employee files is denied and defendant's objection is sustained.
5. Defendant is ordered to provide the Court with applicant's nonprivileged claim file for an in-camera review within 30 days of service herein.
6. Applicant's request for sanctions pursuant to Labor Code section 5813 is granted in the amount of $250 for violating a court order of January 16, 2024.
7. This is the improper forum and procedure to determine administrative penalties pursuant to Labor Code §5814.6 and CCR §10112.3.
8. All other issues are deferred with jurisdiction reserved.

AWARD

1. The applicant is entitled to reimbursement of medical mileage in the amount of $119.73, inclusive of the 25% penalty pursuant to Labor Code section 5814 for an unreasonable delay, to be paid by the defendant within 30 days of service herein.

ORDERS

1. Defendant shall provide the Court with applicant's non-privileged claims file for an in-camera review within 30 days of service herein.
2. Monetary sanctions shall be paid no later than 25 days from the service hereof, by mailing a check or money order payable to the Workers' Compensation Appeals Board, Tax ID No. 94-3160882. The check shall reference the name of the applicant herein as well as the case number, and mailed to:

Workers' Compensation Appeals Board
Office of Commissioners
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Attn: Julie Podbereski

3. Defendant's objections to Applicant's Exhibits E119, E126, and E130 are overruled, as it pertains more to the weight of the evidence than their admissibility.
4. Applicant's objections to Defendant's Exhibits MMM and NNN are overruled.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

I DISSENT (See Dissenting Opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 10, 2025

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

OLISAEMEKA EZE
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN

RL/bp

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

DISSENTING OPINION OF COMMISSIONER JOSÉ RAZO

I respectfully dissent. I would have granted the Petition for Reconsideration to rescind and substitute the November 26, 2024 Findings, Award, and Orders to reflect that sanctions pursuant to section 5813 and penalties pursuant to section 5814 are inappropriate herein.

As discussed above, section 5813 states, in relevant part, that:

> (a) The workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars ($2,500) to be transmitted to the General Fund.

(Lab. Code, § 5813(a).)

Section 5814(a) states that:

> 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).)

In the instant matter, applicant's medical mileage reimbursement was previously submitted to defendant on December 7, 2023. (Exhibit E144.) A quick review of the December 7, 2023 email from applicant to defendant reveals that the request was not submitted via the usual Medical Mileage Reimbursement Form, but rather, via the email itself, which included an informal listing of dates seen by Dr. Giovannoli, Dr. Nelson, and SleepFit and applicant's own calculations of mileage due. (*Ibid*.) Defendant argues that the delay was not unreasonable as it resulted from applicant's own failure to provide "evidence to substantiate dates and travel distance." (Petition, p. 4.) I would tend to agree. Although it is true that defendant offered "into evidence some of the very same medical records it is claiming it lacks," it is also true that applicant failed to provide the information necessary for reimbursement, including, but not limited to, the starting and ending

addresses for the medical visits. (Report, p. 6.) It is well known that physicians and treatment centers oftentimes have multiple offices and locations and applicants at times travel from addresses not known to defendant. For clarity and efficiency, it is therefore imperative that any requests for medical mileage reimbursement include all the requisite information. Accordingly, I do not believe that a section 5813 penalty is warranted as I do not find that defendant unreasonably delayed payment of medical mileage reimbursement.

The WCJ also orders a section 5813 sanction in the amount of $250 pursuant to defendant's alleged violation of a January 16, 2024 Order. I find it important to note, however, that on January 16, 2024, the WCJ did not order defendant to issue *payment* of medical mileage to applicant, but rather, that the defense attorney merely "*consult* with his client regarding the outstanding mileage reimbursement requests previously submitted by [applicant]." (Supplement to Minutes of Hearing, January 16, 2024, emphasis added.) Given that defendant was unable to process the reimbursement due to the missing information noted above, it was not necessary for the defense attorney to consult with his client. Although a reminder to applicant regarding use of the Medical Mileage Form and best practices would have been appreciated, it is ultimately the responsibility of applicant, not defendant, to submit a proper mileage reimbursement request.

In light of the foregoing, I would grant the Petition for Reconsideration to rescind and substitute the November 26, 2024 Findings, Award, and Orders to reflect that sanctions pursuant to section 5813 and penalties pursuant to section 5814 are inappropriate herein. I otherwise agree with the majority decision above.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 10, 2025

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

OLISAEMEKA EZE
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN

RL/bp

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