

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

EILEEN MOSQUEDA, *Applicant*

vs.

**UNEMPLOYMENT INSURANCE APPEALS BOARD, legally uninsured, administered by
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ19292947
San Jose District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Cost petitioner, Robyn Pearl Psy.D., seeks reconsideration of the Findings and Order (F&O) that was issued by the workers' compensation administrative law judge (WCJ) on January 7, 2026.

In that F&O, the WCJ found, in relevant part, that after panel qualified medical evaluator (QME), Dr. Pearl, objected to defendant's failure to issue payment within sixty days, defendant issued a late payment without penalty and interest on March 12, 2025, and after the cost petitioner filed their petition on April 2, 2025, defendant paid penalty and interest on May 12, 2025. The WCJ further found that defendant did not engage in bad faith actions or tactics under WCAB Rule 10786(i)(1) (Cal. Code Regs., tit. 8, § 10786(i)(1)) and is therefore not liable for the cost petitioner's reasonable attorney's fees, costs nor sanctions under Labor Code section 5813¹ and WCAB Rule 10421 (Cal. Code Regs., tit. 8, § 10421). The WCJ ordered cost petitioner take nothing on its request for attorney's fees and costs.

Cost petitioner contends, in pertinent part, that 1) the WCJ committed legal error by measuring section 4622's sixty-day period from when the claims examiner saw the bill on March 11, 2025, rather than when the employer received it on December 16, 2024; 2) there is a lack of substantial evidence to support finding that the bill was not unreasonably paid under section

¹ All section references are to the Labor Code, unless otherwise indicated.

4622(a), despite an undisputed eighty-six day delay without issuing payment or an Explanation of Review (EOR); and 3) the WCJ erred in finding defendant did not engage in bad faith actions or tactics, thereby denying cost petitioner attorney's fees and sanctions under section 5813, WCAB Rule 10421, and WCAB Rule 10786.

We have received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition and the Answer, and the contents of the WCJ's Report. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and for the reasons discussed below, we will deny the petition for reconsideration.

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 February 12, 2026, and 60 days from the date of transmission is Monday, April 13, 2026. This decision is issued by or on Monday, April 13, 2026, 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 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 February 12, 2026, and the case was transmitted to the Appeals Board on February 12, 2026. Service of the Report and transmission of the cases 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 February 12, 2026.

II.

In addition to the analysis set forth in the WCJ's Report, we observe the following.

WCAB Rule 10786 (Cal. Code Regs., tit. 8, § 10786) sets forth the framework for a determination of a medical-legal dispute. With respect to the issue raised here, costs and sanctions, subdivision (i)(1) states that:

If the Workers' Compensation Appeals Board determines that, *as a result of bad faith actions or tactics*, a defendant failed to comply with the requirements, timelines and procedures set forth in Labor Code sections 4622, 4603.3 and 4603.6 and the related Rules of the Administrative Director, *the defendant shall be liable for the medical-legal provider's reasonable attorney's fees and costs and for sanctions under Labor Code section 5813 and rule 10421*. The amount of the attorney's fees, costs and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after October 23, 2013, the monetary sanctions shall not be less than \$500.00. These attorney's fees, costs and monetary sanctions shall be in addition to any penalties and interest that may be payable under Labor Code section 4622 or other applicable provisions of law, and in addition to any lien filing fee, lien activation

fee or IBR fee that, by statute, the defendant might be obligated to reimburse to the medical-legal provider.

(Cal. Code Regs., tit. 8, § 10786(i)(1), emphasis added.)

The Appeals Board is authorized to impose sanctions, costs and attorney's fees under section 5813, against a person who engages in "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813.) 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.)

Also relevant is WCAB Rule 10421, subdivision (b), which authorizes sanctions for a party who has committed "[b]ad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay including actions or tactics that result from willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit." (Cal. Code Regs., tit. 8, § 10421(b).)

Here, the WCJ found that defendant did not engage in bad faith actions or tactics to warrant sanctions, attorney's fees, and/or costs under WCAB Rule 10786(i)(1), WCAB Rule 10421, and section 5813. We agree. Although it is undisputed that defendant did not timely issue payment of the bill, defendant issued penalty and interest of the bill on May 12, 2025, shortly after the handling claims examiner consulted the issue with his supervisor and legal department. (Minutes of Hearing/Summary of Evidence (MOH/SOE, November 3, 2025, at p. 5.) There is no evidence in the record that the mishandling by defendant, even if negligent, rose to the level of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay that are contemplated by section 5813.

Moreover, we concur with the WCJ's credibility determinations of defendant's witnesses. We have given the WCJ's credibility determination(s) great weight because the WCJ had the opportunity to observe the demeanor of the witness(es). (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) When a WCJ's findings are supported by solid, credible evidence, they are to be accorded great weight by the Board and rejected only on the basis of contrary evidence of considerable substantiality. (*Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.*

(1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246 [54 Cal.Comp.Cases 349].)

In the instant case, we are persuaded that the WCJ's findings are supported by solid, credible evidence. As our independent review of the entire evidentiary record did not reveal "contrary evidence of considerable substantiality" to support cost petitioner's arguments that defendant engaged in bad faith actions or tactics, we decline to disturb the WCJ's findings.

Accordingly, cost petitioner's Petition is denied.

For the foregoing reasons,

IT IS ORDERED that cost petitioner's Petition for Reconsideration of the WCJ's decision issued on January 7, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 10, 2026

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

**STATE COMPENSATION INSURANCE FUND
FREEBURG LAW APC**

JL/es

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

AND

NOTICE OF TRANSMISSION TO THE APPEALS BOARD

I.

INTRODUCTION

1. Applicant's Occupation : Management Services Tech
Date of Injury : CT 4/15/2020 – 5/16/2024
Parts of Body Injured : Circulatory system and stress
2. Identity of Petitioner : **Cost Petitioner** filed the Petition.
Timeliness: The petition was timely filed on 02/02/2026.
Verification: The Petition was verified.
3. Date of Issuance of Order : 1/07/2026
4. **Petitioner's contentions:** Petitioner contends that 1) the evidence does not justify the findings of fact; 2) the findings of fact do not support the order, decision, or award; and 3) the WCJ, by virtue of the Award and Decision, acted in excess of her powers. Specifically, cost petitioner contends that a) the WCJ committed legal error by measuring the Labor Code section 4622 60-day period from when the claims examiner saw the bill on 3/11/2025, rather than when the employer received it on 12/16/2024; b) whether substantial evidence supports finding the bill was not "unreasonable unpaid" under section 4622(a), despite an undisputed 86-day delay without payment or EOR; c) whether the WCJ erred in finding of no bad faith, and denial [of] attorney's fees and sanctions under sections 5813, 10421, and 10786, given defendant's repeated section 4622 violations and hearing date payment of penalty and interest.
- Defendant has not filed an Answer.

II.

FACTS

Applicant, EILEEN MOSQUEDA, while employed during the period 4/15/2020 through 5/16/2024, as a Management Services Tech, in San Jose, California, by the Employment Development Department, lawfully uninsured and adjusted by State Compensation Insurance Fund (State Fund), claims to have sustained injury arising out of and in the course of his employment to her circulatory system and stress.

On 9/19/2024, claims examiner Reginald Eldridge sent a cover letter to Dr. Robyn Pearl Psy.D. for the scheduled QME evaluation of 10/02/2024. (Cost petitioner's Exhibit 1)

On 12/13/2024, Dr. Pearl sent her report with billing and proof of service to State Fund. (Cost petitioner's Exhibit 2)

On 12/16/2024, per USPS tracking, State Fund received Dr. Pearl's report and billing. (Cost petitioner's Exhibit 3)

On 2/20/2025, Dr. Pearl sent her objection and final demand for full payment, plus penalty and interest, to State Fund, attention Reginald Eldridge. (Cost petitioner's Exhibit 4)

On 2/24/2025, State Fund received Dr. Pearl's billing, with the 2/20/2025 objection and final demand for payment. (Defendant's Exhibit A)

On 3/12/2025, State Fund issued a check to Dr. Pearl in the amount of \$19,428.17 for Medical-Legal Evaluation and Explanation of Review. (Joint Exhibit 1)

On 5/12/2025, State Fund issued a check to Dr. Pearl in the amount of \$2,263.25 for interest and penalty and Explanation of Review. (Joint Exhibit 2)

At trial, the parties stipulated that the case in chief resolved by Compromise and Release settlement, with the Order approving Compromise and Release dated 6/20/2025. The parties also stipulated that after Dr. Pearl objected to defendant's failure to issue an EOR/payment within 60 days, State Fund issued the late payment without penalty and interest to QME Robyn Pearl on 3/12/2025. And, that after the non-IBR petition was filed on 4/2/2025, State Fund paid the penalty and interest on 5/12/2025, the day of the initial Status Conference.¹

As defendant has already paid the penalty and interest due to cost petitioner (Petitioner) pursuant to Labor Code section 4622, the sole issue for trial is whether petitioner is entitled to attorney's fees under 8 CCR 10786(i)(1). Petitioner contends defendant acted in bad faith actions and tactics, warranting attorneys fees, costs and sanctions. The undersigned found no evidence of bad faith on the part of defendant requiring imposition of sanctions and allowing attorney's fees and costs. Petitioner seeks reconsideration of the undersigned's Findings and Order.

III.

DISCUSSION

Petitioner contends that the undersigned committed legal error by measuring the 60-day period under section 4622 from when the claims examiner saw the bill on 3/11/2025, rather than when the employer received it on 12/16/2024. Petitioner further contends that the undersigned found that Petitioner's bill was not "unreasonably paid," which cannot be reconciled with the timing requirements

¹ 11/03/2025 MOH/SOE, p. 2: 11-17.

of section 4622(a) ². However, the undersigned made no finding regarding the 60-day period nor of the reasonableness of defendant's delay for payment of the medical-legal bill, as defendant paid the penalty and interest pursuant to section 4622 on 5/12/2025.

As discussed above, the only issue for trial was whether Petitioner is entitled to attorney's fees and costs under 8 Cal. Code Reg. § 10786(i)(1) or for sanctions under Labor Code § 5813 and 8 Cal. Code Reg. § 10421. Petitioner contends the undersigned "erred in finding of no bad faith, and denial [of] attorney's fees and sanctions under sections 5813, 10421, and 10786, given defendant's repeated section 4622 violations and hearing date payment of penalty and interest." Petitioner contends that defendant's failure to issue an initial EOR, failure to respond to petitioner's LC 4622 objection, and waiting to pay the penalty and interest until the 5/12/2025 hearing date requires a finding of bad faith on the part of defendant, warranting sanctions and attorney fees.

Petitioner's request for attorney's fees and sanctions is based on the premise that if defendant contests liability or is late in paying a medical legal cost, and/or penalty and interest, sanctions must be imposed. However, Rule 10786(i)(1) requires a determination by the Workers' Compensation Appeals Board (WCAB) that defendant's failure to comply with the requirements, timelines and procedures set forth in Labor Code sections 4622, 4603.3 and 4603.6 and the related Rules of the Administrative Director were done in bad faith. Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the WCAB, or that are done for an improper motive or are indisputably without merit³. Thus, in order for the WCAB to award attorney's fees, costs, or sanctions pursuant to Labor Code section 5813 or Rule 10421, there must be an underlying finding of bad faith actions or tactics on a part of a party.⁴ Here, there was no such finding.

As explained in the undersigned's Opinion, in this instance, although defendant received the bill on 12/16/2024, the documentary and testimonial evidence suggests the medical-legal bill at issue was marked as a duplicate, which may have delayed receipt of the bill by the claims adjuster. Both claims examiners credibly testified at trial that they first received notice of the bill on 3/11/2025, and

² Labor Code section 4622, provides, in part, that an employer has 60 days after the receipt of each separate written billing and report to either issue payment or object to the billing. If payment is not made within this period, or only a partial payment is made and ultimately it is determined that additional payment is due, that portion of the billed sum will be increased by 10 percent plus interest at the rate of 7 percent per annum, retroactive to the date the employer received the bill and the report. (Cal. Code Regs., tit. 8, § 10421.)

³ Cal. Code Regs., tit. 8, § 10421.

⁴ *Sanders v. Permanente*, 2020 Cal. Wrk. Comp. P.D. LEXIS 47, *4-5 (Board Panel Decision).

both confirmed that they had no record of having received notice of the bill prior to that date. The bill was promptly paid on 3/12/2025, negating a finding that defendant's actions were frivolous or solely intended to cause unnecessary delay.

Petitioner further asserts that defendant's failure to voluntarily pay the penalty and interest is bad faith. However, Adjuster Eldridge testified that the objection was received by State Fund on 2/14/2025, but that he was not aware of it. The Petition, filed on 4/02/2025, did go directly to him, which prompted him to consult with the legal department and his supervisor. He testified that the legal department needed to consider and negotiate another bill for deposition fees along with the petition for penalty and interest before he could issue payment for the penalty and interest. Payment for penalty and interest issued on 5/12/2025, the day of the Status Conference. (11/03/2025 MOH/SOE, p. 6: 1-16.) As claims adjuster Eldridge first received notice of the bill on 3/11/2025, the undersigned found it reasonable for the adjuster to delay payment of the penalty and interest until he had an opportunity to confer with the legal department and his supervisor prior to issuing payment. The undersigned found no evidence of bad faith or frivolous actions on the part of defendant for the delay of payment of the penalty and interest.

It is undisputed that defendant's payment of the bill was untimely, as State Fund received the bill on 12/16/2024. That the adjuster's first notice of receipt of the bill occurred on 3/11/2025, does not absolve defendant of the imposition of penalty and interest pursuant to Labor Code Section 4622. However, defendant paid the bill the day after the adjuster received notice, and after initially contesting whether penalty and interest were due, defendant issued payment on the day of the 5/12/2025 Status Conference. As previously indicated, the undersigned found no evidence of bad faith on the part of defendant.

The undersigned's explicit finding of no bad faith actions or tactics cannot support an award of attorney's fees and costs under 8 Cal. Code Reg. § 10786(i)(1) nor an imposition of sanctions under Labor Code § 5813 and 8 Cal. Code Reg. § 10421. Petitioner's claim for attorney's fees, costs and sanctions is without merit.

IV.

RECOMMENDATION

Based on the foregoing, it is respectfully recommended that the Petition for Reconsideration be denied.

NOTICE OF TRANSMISSION:

Pursuant to Labor Code, Section 5909, the parties and the appeals board are hereby notified that this matter has been transmitted to the appeals board on date set out below.

DATE: 02/12/2026

NORMA L. ACOSTA
WORKERS' COMPENSATION JUDGE