

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

MICHAEL CROUGH, *Applicant*

vs.

**MCDONNELL DOUGLAS/BOEING; CALIFORNIA INSURANCE GUARANTEE
ASSOCIATION for FREMONT INSURANCE COMPANY, in liquidation, *Defendants***

**Adjudication Numbers: ADJ2403735 (LBO0207587), ADJ4645734 (LBO0170437)
Long Beach District Office**

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

Defendant seeks reconsideration of the Joint Findings of Fact issued on April 8, 2026, wherein the workers' compensation administrative law judge (WCJ) found in ADJ2403735 that (1) defendant is not entitled to assert a permanent disability advance of \$25,045.00; and (2) the issue of whether Labor Code section 5814¹ bars revision of the Award more than five years after the date of injury is moot. The WCJ found in ADJ4645734 that (1) defendant is not entitled to an additional credit of \$18,601.99 beyond the \$13,370.00 that is provided by the Stipulation with Request for Award approved on September 27, 1991; and (2) the issue of whether section 5814 bars revision of the Award more than five years after the date of injury is moot.

Defendant contends that the Joint Findings of Fact (1) violates section 5804; (2) contravenes Rule 10500; and (3) contravenes Insurance Code section 1063 et seq.

We did not receive an Answer.

The WCJ filed an Amended Report and Recommendation on Reconsideration (Report) recommending that the Petition be denied and that sanctions be considered against defendant.

We have considered the allegations of the Petition and the contents of the Report. Based upon our review of the record, and as discussed below, we will grant reconsideration and, as our

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

Decision After Reconsideration, we will affirm the Joint Findings of Fact, except that we will amend to find in ADJ2403735 that (1) defendant is precluded from asserting it is entitled to a credit for permanent disability advances; and (2) the issues of whether section 5813 sanctions, section 5814 penalties, and section 5814.5 attorney's fees should be imposed against defendant are deferred; and we will return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On September 26, 2023, the parties filed a Stipulation with Request for Award in ADJ2403735, providing that applicant was to receive an award of permanent disability benefits in the amount of \$24,045.00, that defendant was "entitled to take credit for any and all permanent disability advances paid up to the date of the award," and that defendant's liability for future medical treatment commences upon written demand by applicant and authorization by defendant. (Stipulation with Request for Award, September 26, 2023, pp. 10, 12.) The WCJ issued an Award based upon the Stipulation with Request for Award. (Award, September 26, 2023.)

On October 17, 2023, defendant filed a Petition for Credit for Overpayment of Permanent Disability in ADJ2403735, alleging that it advanced permanent disability payments between July 18, 1992 and March 15, 2005, amounting to \$34,738.40, that applicant was entitled to only \$24,045.00 of permanent disability benefits under the Stipulation and Award, and that it was entitled to a credit for overpayment of permanent disability benefits in the amount of \$10,693.40. (Petition for Credit for Overpayment of Permanent Disability, October 17, 2023, pp. 1-2.)

On October 8, 2024, the matter proceeded to trial in ADJ2403735 of the following issue:
Whether Defendants are entitled to assert permanent disability advances of \$34,738.40 when this amount was not included in the Stipulation with Request for Award dated 9/26/2023.

(Minutes of Hearing, October 8, 2024, p. 2:23-24.)

The WCJ found defendant not entitled to assert a credit for permanent disability advances of \$34,738.40 as these advances were not included in the Stipulation with Request for Award dated September 26, 2023. (Findings of Fact, November 27, 2024.)

On February 27, 2025, we affirmed the Findings of Fact and amended it to find that the petition for credit overpayment of permanent disability is denied. (Opinion and Order Granting

Petition for Reconsideration and Decision After Reconsideration, February 27, 2025.) Our decision recited the applicable law as follows:

Labor Code section 4909 provides:

Any payment, allowance, or benefit received by the injured employee during the period of his incapacity ... which by the terms of this division was not then due and payable ... shall not, in the absence of any agreement, be an admission of liability for compensation on the part of the employer, but any such payment, allowance, or benefit *may* be taken into account by the appeals board in fixing the amount of the compensation to be paid.

(Lab. Code, § 4909 [italics added].)

Because Labor Code section 4909 uses the term "may," which is not mandatory language, the Appeals Board has the discretion whether to grant or deny credit for overpayments thereunder. (Lab. Code, § 15; *City and County of San Francisco v. Workmen's Comp. Appeals Bd. (Quinn)* (1970) 2 Cal.3d 1001, 1016 [35 Cal.Comp.Cases 390]; *Herrera v. Workmen's Comp. Appeals Bd.* (1969) 71 Cal.2d 254, 258 [34 Cal.Comp.Cases 382].)

In determining whether to allow Labor Code section 4909 credit, the Appeals Board must apply equitable principles. (*Maples v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 827, 837-838 [45 Cal.Comp.Cases 1106].)

Equity favors allowance of a credit if the credit is small and does not cause a significant interruption of benefits. (*Id.*)

Equity does not favor allowance of a credit of overpayment of one benefit against a second benefit that would be destructive of the purpose of the second benefit or where the applicant may be prejudiced by the defendant's actions after receiving an overpayment of benefits in good faith and through no wrongdoing on his or her part. (*Id.*)

WCAB Rule 10555 provides:

(a) When a dispute arises as to a credit for any payments or overpayments of benefits pursuant to Labor Code section 4909, any petition for credit shall include:

- (1) A description of the payments made by the employer;
- (2) A description of the benefits against which the employer seeks a credit; and
- (3) The amount of the claimed credit.

(Cal. Code Regs., tit. 8, § 10555.)

The burden of proof is on the defendant to establish its entitlement to credit. (*Ott v. Workers' Comp. Appeals Bd.* (1981) 118 Cal.App.3d 912, 922 [46

Cal.Comp.Cases 545]; *Quintana v. Contra Costa County* (1982) 47 Cal.Comp.Cases 512 (Appeals Board en banc).)

(*Id.*, pp. 4-5.)

On February 10, 2026, the matter herein proceeded to trial, with the WCJ entering the following into the record.

LET THE MINUTES REFLECT that on 10/8/2024, Case Number ADJ2403735 went on the record. A Decision was rendered by the undersigned and was subject to a Petition for Reconsideration with an opinion being given by the WCAB. Due to the parties being unable to reach an agreement, trial is going forward.

(Minutes of Hearing/Summary of Evidence/Order of Consolidation, February 10, 2026, p. 2:1-3.)

The issues framed for trial were:

IN CASE NO. ADJ2403735 (MF) . . .

1. Whether the defendant is entitled to a permanent disability credit of \$25,045.
2. Whether Labor Code 5814 bars revision of the Award more than five years after the date of injury.

IN CASE NO. ADJ4645734 . . .

1. Whether the defendant is entitled to an additional permanent disability credit of \$18,601.99 beyond the \$13,370 paid on the Stipulation with Request for Award approved on 9/27/1991.
2. Whether Labor Code 5814 bars revision of the Award more than five years after the date of injury.

(*Id.*, p. 3:1-3, 16-19.)

In the Opinion on Decision, the WCJ states:

ADJ4645735

WHETHER THE DEFENDANT IS ENTITLED TO A PERMANENT DISABILITY CREDIT OF \$25,045.00?

. . .

[B]ased upon the credible testimony of the applicant, the case law, and without any evidence to the contrary, it is found that the defendant is not entitled to assert a credit for permanent disability advance in the amount of \$25,045.00 on ADJ2403735.

ADJ4645734

WHETHER THE DEFENDANT IS ENTITLED TO AN ADDITIONAL PERMANENT DISABILITY CREDIT OF \$18,601.99 BEYOND THE \$13,370.00 PAID ON THE STIPULATION WITH REQUEST FOR AWARD APPROVED ON 09/27/1991?

Unlike the case above, there is a clearly defined permanent disability advance stated clearly for all parties to understand and there can be no dispute that the defendant is entitled to a credit of \$13,370.00. This settlement contains the same boilerplate addendum on page 10 but the difference here is that the parties specifically state what the amount of advance is to be. As stated above, the applicant credibly testified that the attorneys told him he would be receiving some monetary settlement in addition to future medical treatment for signing the settlements on the original trial date of 09/26/2023. At trial, the applicant credibly testified he would be receiving approximately \$15,900.00 which is consistent with the settlement documents. Again, the applicant testified that he would not have signed the settlement documents if there he was not going to receive any monetary consideration. The undersigned is confined to the four corners of the document and parties may waive some or all permanent disability advances for other known or unknown considerations and thus the defendant would not be entitled to any additional amounts. Therefore, it is found that the defendant is not entitled to an additional permanent disability credit of \$18,601.99.

ADJ2403735 AND ADJ4645734

WHETHER LABOR CODE §5814 BARS REVISION OF THE AWARD MORE THAN FIVE YEARS AFTER THE DATE OF INURY[fn]3

...

[fn]3 It must be noted that this issue is being read directly into the record as prepared by the parties on the Pretrial Conference filed on 10/20/2025 as well as what was amended, signed, and orally confirmed by the parties on the date of trial of 02/10/2026.

...

The undersigned is unsure and perplexed as to why the defendant would be making an issue out of penalties for their late payment of the Award.

(Opinion on Decision, pp. 1-3.)

In the Report, the WCJ states:

This matter and a companion case had been originally set for trial on September 26, 2023. At one point during the day, the parties had indicated that a settlement had been reached and the parties presented the undersigned with two Stipulation with Request for Awards. The undersigned reviewed the settlement documents along

with the medical reports and based on this review, the undersigned approved the two Stipulation with Request for Awards. On October 17, 2023, defendant filed a Petition for Credit for Permanent Disability Overpayment for ADJ2403735 contending that the defendant should receive credit for permanent disability advances that were not included in the Stipulation with Request for Award. . . . On October 8, 2024, the matter proceeded to trial as no resolution could be reached and on November 27, 2024, the undersigned decided that the Petitioner was not entitled to an omitted permanent disability overpayment and Petitioner filed a Petition for Reconsideration. On February 27, 2025, the WCAB affirmed the decision though amended it to state that the Defendant's Petition for Credit of Overpayment of Permanent Disability is denied. On July 2, 2025 the applicant attorney filed a Declaration of Readiness to Proceed to Expedited Hearing stating the following:

Applicant's stipulation and award agreement directs defendant to pay certain settlement amounts to applicant. Defendant refuses to pay per agreement. WCAB assistance requested.

After several hearings, the two cases proceeded forward to trial on February 10, 2026 on whether the defendant was entitled permanent disability credit of \$25,045.00 on ADJ2403735 and an additional permanent disability credit of \$18,601.99 on ADJ4645734. In addition to the above issues for the specific cases, the Petitioner raised the issue of whether Labor Code §5814 bars revision of the Award more than five years after the date of injury as to both cases.

. . .

It should first be noted that the undersigned believes that these issues had been previously adjudicated and this trial would be barred by collateral estoppel.[fn] Petitioner's first two contentions had been previously raised and adjudicated by the WCAB in the Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration dated February 27, 2025 (Opinion). Despite the belief that these issues have been decided, Petitioner wanted to proceed forward to trial.

. . .

During the second trial, defendant offered the benefits paid report for the two dates of injury and the testimony of the applicant. The applicant credibly testified that both attorneys explained that he would receive some monetary consideration if he signed the settlement documents on the original trial date of September 26, 2023. In addition to this, the applicant testified as to the approximate amount he would be receiving if he signed the documents and that he would not have signed the settlement documents if there was not a monetary component.

. . .

The evidence and testimony show that the parties agreed that the only permanent disability advances Petitioner would be entitled to were listed in the Stipulation with Request for Award listed in ADJ4645734 totaling \$13,370.00.

WHETHER THE JOINT FINDING OF FACT VIOLATES THE STATUTORY MANDATE OF THE ACT – WHICH IMPOSED UPON CIGA THE LIMITATION TO PAY ONLY COVERED CLAIMS FOR THE PRESERVATION OF THE FUND FOR THE BENEFIT OF ALL INSUREDS IN CALIFORNIA

Petitioner contends that the Joint Findings of Fact violates the statutory mandate of the Guarantee Act – which imposed upon CIGA the limitation to pay only covered claims, for the preservation of the fund for the benefit of all insureds in California. Although the undersigned is sympathetic to this issue, this issue is ultimately between the Petitioner and CIGA. The two Stipulations with Request for Award were drafted and prepared by either Petitioner or CIGA and the undersigned is charged with interpreting the settlement documents as drafted.[fn] It appears that Petitioner is arguing that CIGA’s involvement in the case should tip the scales of justice in its favor but the undersigned simply does not feel this is the case. The identity of the defendant should not and does not sway the undersigned to an inequitable outcome based on the evidence presented, does not relieve the Petitioner of its duty to draft a settlement document, and is not a defense for a unilateral mistake.

...

It is recommended that the Petition for Reconsideration be denied and based on the duplicative nature of this trial and subsequent Petition for Reconsideration, the Board should consider whether the conduct of the Petitioner is sanctionable.

(Report, pp. 2-6.)

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. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

- (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 May 13, 2026, and 60 days from the date of transmission is July 12, 2026. The next business day that is 60 days from the date of transmission is July 13, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on July 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 (which was subsequently amended), the Report was served on May 13, 2026, and the case was transmitted to the Appeals Board on May 13, 2026. 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 May 13, 2026.

II.

Before addressing the merits of the Petition, we acknowledge that the pleadings record documents that the issue of whether defendant is entitled to a permanent disability credit in ADJ2403735 was previously determined and rejected as stated in the WCJ’s November 27, 2024 findings, and our February 27, 2025 decision affirmed the WCJ’s determination and explicitly

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states:

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.

made a finding that defendant's petition for credit of overpayment of permanent disability advances were denied. (Minutes of Hearing/Summary of Evidence/Order of Consolidation, February 10, 2026, p. 3:1-3; Findings of Fact, November 27, 2024; Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, February 27, 2025.)

We observe that a party affected by a final order, decision, or award issued by the Appeals Board after reconsideration may apply to the Court of Appeal for a writ of review "for the purpose of inquiring into and determining the lawfulness" of the order, decision, or award and that a writ of review is the only mechanism to attack a final order of the Appeals Board. (See § 5950; *Greitz v. Sivachenko* (1957) 152 Cal.App.2d 849 [22 Cal.Comp.Cases 176]; see also, e.g., *Goodrich v. Industrial Acci. Com.* (1943) 22 Cal.2d 604 [8 Cal.Comp.Cases 177] stating a party who does not prevail at the original hearing and whose petition for a rehearing is denied generally may not raise the matter again at the trial level but must seek relief in the courts.)

For the purpose of determining the propriety of judicial review, a final order includes any order which settles, for purposes of the compensation proceeding, an issue critical to the claim for benefits, whether or not it resolves all the issues in the proceeding or represents a decision on the right to benefits. (*Wal-Mart Stores, Inc. v. Workers' Comp. Appeals Bd.* (2003) 112 Cal.App.4th 1435, 1438, fn. 3 [68 Cal.Comp.Cases 1575]; see also *Kosowski v. Workers' Comp. Appeals. Bd.* (1985) 170 Cal.App.3d 632, 636 [50 Cal.Comp.Cases 427].)

For example, in *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd.*, 218 Cal.App.4th 258 [78 Cal.Comp.Cases 758], a dispute arose as to whether a homeowners policy covered an injury to the insured's personal assistant or whether workers' compensation policies provided coverage. A settlement assigning the homeowners insurer's liability and the workers' compensation insurers' liability resulted in a final award issued by a WCJ. After the award was in effect, the workers' compensation insurers holding most of the liability imposed by the award were dissolved, and CIGA assumed administration of the workers' compensation claim.

CIGA filed a petition to be relieved as the claim administrator and for reimbursement of benefits paid, alleging that it was not bound by the award and the homeowners insurer was a solvent source of other insurance. The petition was denied by a WCJ and CIGA did not seek reconsideration. When CIGA filed a subsequent petition for a change of administrator and reimbursement, a WCJ denied that petition too on the grounds that CIGA had already been denied

the requested relief; and the Appeals Board denied reconsideration. CIGA did not seek judicial review of the Appeals Board's decision.

The Court of Appeal held that CIGA was precluded from pursuing claims that it had expressly raised in previous proceedings and that had been adjudicated adversely to its position. Reasoning that the determinations of the WCJ and the Appeals Board had become final and conclusive when CIGA failed to seek judicial review, the court opined:

The characterization of an order or decision as final and susceptible to judicial review has critical consequences. The failure of an aggrieved party to seek judicial review of a final order of the WCAB bars later challenge to the propriety of the order or decision before either the WCAB or the court. (*Maranian, supra*, 81 Cal.App.4th at p. 1076; see *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182 [260 Cal.Rptr. 76].) The purpose of this rule is to facilitate early disposition of core questions, and promote the public policy favoring expeditious and inexpensive resolution of workers' compensation claims. (*Maranian*, at p. 1078.)

(*State Farm General Ins. Co., supra*, at p. 268.)

Here, as in *State Farm General Ins. Co.*, defendant asserted a claim which was denied by the WCJ, denied on reconsideration, and not made subject to judicial review. It follows that the denial of defendant's petition for credit in this case is a final and conclusive determination and defendant is precluded from asserting the credit issue.

Accordingly, we will amend the Joint Findings of Fact to find that defendant is precluded from pursuing a credit for permanent disability advances in ADJ2403735.

Section 5813 authorizes the WCJ to order a party or attorney to pay reasonable expenses incurred by another party as a result of "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (§ 5813.) We note that section 5813 is designed to protect against litigation abuses before the Appeals Board. (*Duncan v. Workers Comp. Appeals Bd. (Silva)* (2008) 166 Cal. App. 4th 294, 302.) "[S]ection 5813 was enacted to give WCJ's and the WCAB sanctions power to help them manage their calendars and provide for the expeditious processing of workers' compensation cases." (*Id.*)

Section 5814 authorizes the WCJ to impose penalties when payment of compensation has been unreasonably refused of up to 25 percent of the amount of the payment unreasonably refused or \$10,000.00, whichever is less. (§ 5814.) We note that penalties under section 5814 should be assessed by the WCJ 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. (*Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 (Appeals Bd. en banc).)

Section 5814.5 provides that where payment of an award of compensation has been unreasonably refused, the WCJ shall award reasonable attorney's fees incurred in enforcing the award in addition to the imposition of section 5814 penalties. (§ 5814.5.)

However, before the WCJ may impose sanctions, the parties are entitled to notice and an opportunity to be heard. (See, e.g., Cal. Code Regs., tit. 8, § 10421(a).) "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonable calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (*Fortich v. Workers' Comp. Appeals Bd.* (1991) 223 Cal.App.3d 1449 [56 Cal.Comp.Cases 381].) Nevertheless, "[t]he 'opportunity to be heard,' in the context of a hearing on the issue of sanctions, does not [necessarily] mean the opportunity to present oral testimony." (*Seykora v. Superior Court* (1991) 232 Cal.App.3d 1075, 1082, 283.) Rather, "the scope of a hearing on . . . sanctions is within the trial court's discretion." (*Lavine v. Hospital of the Good Samaritan* (1985) 169 Cal.App.3d 1019, 1028; accord: *Sevkora, supra*, 232 Cal.App.3d at p. 1082.)

We have explained that the issue of whether defendant is entitled to a credit in ADJ2403735 was previously adjudicated by the WCJ and by our decision to affirm the WCJ's finding and amend it to explicitly deny credit. Defendant subsequently refused to pay amounts owed to applicant under the award and purported to justify its refusal on the grounds that it was still entitled to take a credit, with the result that applicant found it necessary to seek an expedited hearing and the WCJ held a trial while stating for the record that a decision had already been rendered on the issue. (See Report, p. 2; Minutes of Hearing/Summary of Evidence/Order of Consolidation, February 10, 2026, p. 2:1-3.)

Given that the record in ADJ2403735 is that defendant refused to pay a portion of the award on the grounds that it was entitled to a credit which had already been denied, and given that the WCJ deemed it necessary to retry the credit issue based upon defendant's apparently frivolous position, we are persuaded that the WCJ should develop the record as to whether section 5813 sanctions, section 5814 penalties, and section 5814.5 attorney's fees are warranted. (Report, p. 2; Minutes of Hearing/Summary of Evidence/Order of Consolidation, February 10, 2026, p. 2:1-3.)

Accordingly, we will amend the Joint Findings of Fact to find that the issues of whether section 5813 sanctions, section 5814 penalties, and section 5814.5 attorney's fees should be imposed against defendant are deferred.

Turning to the merits of the Petition in ADJ4645734, we evaluate defendant's contention that the Joint Findings of Fact violates section 5804. Specifically, defendant argues that the issue of whether section 5804 applies to bar modification of the award was raised for trial but the WCJ decided the applicability of section 5814 instead.

Here, as the WCJ states in the Opinion on Decision, the parties stated in the Pretrial Conference Statement and orally confirmed at trial that defendant contended that section 5814 bars revision of the award. (Opinion on Decision, pp. 2-3.)

Because the issue of whether section 5804 applies to bar amendment of the award was not raised for trial and defendant did not object to trial of the section 5814 issue, the applicability of section 5804 was waived. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (1978) 82 Cal.App.3d 39 [43 Cal.Comp.Cases 661]; *U.S. Auto Stores v. Workmen's Comp. Appeals Bd. (Brenner)* (1971) 4 Cal.3d 469 [36 Cal.Comp.Cases 173]; *Cuevas v. Workers' Comp. Appeals Bd.* (2005) 70 Cal.Comp.Cases 479 (writ den.); § 5904.)

Accordingly, we are unable to discern support for defendant's contention that the Joint Findings of Fact violates section 5804.

We next address defendant's contention that the Joint Findings of Fact contravenes Rule 10500, which provides in pertinent part:

(a) No workers' compensation judge and no district office of the Workers' Compensation Appeals Board shall require the parties to use a form other than that prescribed and approved by the Appeals Board.

(b) Each of the following documents shall be on a form prescribed and approved by the Appeals Board:

...

(6) A Compromise and Release agreement;

(7) Stipulations with Request for Award;

...

(d) Any form for proceedings before the Workers' Compensation Appeals Board created by the Division of Workers' Compensation shall be presumed to have been prescribed and approved by the Appeals Board unless the Appeals Board issues an order or a formal written statement to the contrary.

(Cal. Code Regs., tit. 8, § 10500.)

In this regard, defendant argues that because the form for Stipulations with Request for Awards promulgated under Rule 10500 does not include a list of credits to be taken for permanent disability advances, it should be read to “automatically” allow all asserted credits for such advances. (Petition, p. 8.)

However, as we explained in our February 27, 2025 decision in ADJ2403735, allowance of credit depends not upon the form used for memorializing settlement, but on application of substantive law:

[The Appeals Board has the discretion whether to grant or deny credit for overpayments thereunder. (Lab. Code, § 15; *City and County of San Francisco v. Workmen's Comp. Appeals Bd. (Quinn)* (1970) 2 Cal.3d 1001, 1016 [35 Cal.Comp.Cases 390]; *Herrera v. Workmen's Comp. Appeals Bd.* (1969) 71 Cal.2d 254, 258 [34 Cal.Comp.Cases 382].)

In determining whether to allow Labor Code section 4909 credit, the Appeals Board must apply equitable principles. (*Maples v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 827, 837-838 [45 Cal.Comp.Cases 1106].)

Equity favors allowance of a credit if the credit is small and does not cause a significant interruption of benefits. (*Id.*)

Equity does not favor allowance of a credit of overpayment of one benefit against a second benefit that would be destructive of the purpose of the second benefit or where the applicant may be prejudiced by the defendant's actions after receiving an overpayment of benefits in good faith and through no wrongdoing on his or her part. (*Id.*)

(Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, February 27, 2025, pp. 4-5.)

Hence we conclude that defendant’s contention that the Joint Findings of Fact contravenes Rule 10500 is without merit.

As to defendant’s contention that the Joint Findings of Fact contravenes Insurance Code section 1063 et seq, we concur with the WCJ’s reasoning that defendant’s argument that the policy underlying Insurance Code section 1063 has no bearing on the legal analysis in this case. (Report, p. 5.)

Accordingly, we conclude that defendant’s contention that the Joint Findings of Fact contravenes Insurance Code section 1063 et seq is without merit.

Accordingly, we will grant reconsideration and, as our Decision After Reconsideration, we will affirm the Joint Findings of Fact, except that we will amend to find in ADJ2403735 that (1) defendant is precluded from asserting it is entitled to a credit for permanent disability advances; and (2) the issues of whether section 5813 sanctions, section 5814 penalties, and section 5814.5 attorney's fees should be imposed against defendant are deferred; and we will return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Joint Findings of Fact issued on April 8, 2026 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Joint Findings of Fact issued on April 8, 2026 is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT(ADJ2403735)

1. Defendant is precluded from asserting it is entitled to a credit for permanent disability advances.

3. The issues of whether section 5813 sanctions, section 5814 penalties, and section 5814.5 attorney's fees should be imposed against defendant are deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 11, 2026

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

**MICHAEL CROUGH
FLOYD SKEREN MANUKIAN LANGEVIN, LLP
REAL & HERNANDEZ, LLP, ATTORNEYS AT LAW**

SRO/*kl*

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