

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3  
4 **JOSEPH FINGLETON,**

5 *Applicant,*

6  
7 **vs.**

8 **CITY OF LOS ANGELES;  
9 CAMBRIDGE INTEGRATED SERVICES,**

10 *Defendants.*

**Case No. VNO 218884  
VNO 218885**

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

11  
12 Lien Claimant, Legal Service Bureau for and on behalf of Blue Cross of California  
13 (petitioner), seeks reconsideration of the "Opinion on Decision and Award on Penalty"  
14 (Findings and Order) issued December 20, 2000. In that decision, a workers'  
15 compensation administrative law judge (WCJ) found as follows:

16 "No evidence was submitted to support a finding of  
17 contempt, and none is made.

18 "No evidence was submitted to support a finding of costs.  
19 Furthermore, each side's claim for costs offsets the other.

20 "Accordingly, no cost award is justified.

21 "Defendant paid the prior \$450.00 penalty late. Accordingly,  
22 they are liable for an additional penalty of \$495.00 (\$450.00  
23 on the original Findings and Award, and \$45.00 on the  
\$450.00 paid late.)

24 The WCJ ordered that defendant pay the sum of \$495.00 to petitioner.

25 Petitioner contends (1) that the WCJ erred in failing to award a third 10% penalty  
26 based on defendant's failure under Labor Code section 4650 to "self-impose" an  
27 additional 10% penalty for its failure to pay the October 6, 2000 10% penalty, and (2) that

1 the WCJ erred in finding that an award of costs and attorney's fee against defendant is  
2 not justified in the present matter. Defendant has answered requesting costs and fees,  
3 presumably under Labor Code section 5813.

4 After reviewing the record, and for the reasons set forth below, the Board will  
5 grant reconsideration, rescind the Findings and Order, and return this matter to the WCJ  
6 for further proceedings and decision.

7 In the present matter, it appears from the record that an Order Approving  
8 Compromise and Release (OAC&R) issued on April 10, 1995, wherein the parties'  
9 proposed Compromise and Release agreement (C&R) was approved. The parties' C&R  
10 settled only the future medical treatment portion of the case in the sum of \$7,500.00.  
11 Paragraph six (6) of the C&R indicated that defendant was responsible for payment of the  
12 "medical-legal" lien claims. Thereafter, it appears that a Stipulation and Order Allowing  
13 Liens issued on June 20, 2000, wherein petitioner's lien claim apparently in the sum of  
14 \$8,164.90 for self-procured medical treatment was settled in the sum of \$4,500.00.  
15 Apparently, payment of the June 20, 2000 Stipulation was delayed, and a Findings and  
16 Order issued on October 6, 2000 awarding petitioner a 10% penalty in the sum of \$450.00.

17 On or about November 15, 2000, petitioner filed a Declaration of Readiness to  
18 Proceed (DOR), alleging that defendant had failed to pay the 10% penalty awarded on  
19 October 6, 2000. In its DOR, petitioner requested "penalties, interest, costs, sanctions and  
20 [a] contempt [order] against defendant."

21 The parties appeared before the WCJ on December 12, 2000. The Minutes of  
22 Hearing reflect under "Other/Comments," the following: "No trial date selected. See  
23 attached Notes." The attached hand-written notes of the WCJ appear to reflect that the  
24 matter was originally set for a Mandatory Settlement Conference (MSC) on December 12,  
25 2000. However, petitioner persuaded "some clerk" to send a notice of trial instead of an  
26 MSC notice. Thus, no "stipulations, issues, list of witnesses, and statement of evidence"  
27 were listed. The WCJ further indicates that at the "trial," petitioner submitted a trial brief

1 as a statement of stipulations and issues," and "it was accepted as such, but the parties  
2 did not select a trial date." The WCJ concluded his notes by indicating that he "still  
3 want[s] an MSC or conference, without any modification to [his] notices or more  
4 procedures." Thereafter, and without further proceedings, the present decision issued on  
5 December 20, 2000. In the Answer to the Petition for Reconsideration, defendant argues  
6 that the trial brief submitted by petitioner on December 12, 2000 is inadmissible as not  
7 filed 10 days prior to the "trial."

8 The record reflects that at the December 12, 2000 proceedings, and as noted by the  
9 WCJ in his hand-written notes and in his Report, no stipulations were taken, no issues  
10 were raised, no evidence was admitted, and no testimony was taken. It appears to the  
11 Board that petitioner requested Labor Code section 5814 penalties based on defendant's  
12 failure to pay the June 20, 2000 original settlement of the lien, and the first Labor Code  
13 section 5814 penalty award of October 6, 2000. Petitioner also requested a third penalty  
14 under Labor Code section 4650 for defendant's failure to "self-impose" an additional 10%  
15 penalty for its delay in payment of the October 6, 2000 10% penalty.

16 Labor Code section 5814 provides that when the payment or furnishing of any  
17 compensation benefit has been "unreasonably delayed or refused" the award is increased  
18 by 10%. The only satisfactory excuse for delay in payment before or after an award is a  
19 genuine doubt from a medical or legal standpoint as to the liability for benefit, and the  
20 burden is on the defendant to show substantial evidence of the basis for doubt. (*Kerley v.*  
21 *Workers' Comps. Appeals Bd.* (1971) 4 Cal.App.3d 223, 230 [36 Cal.Comp.Cases 152, 157].)  
22 Labor Code section 4650 provides for an automatic 10% increase in compensation if a  
23 disability indemnity (permanent or temporary disability indemnity) is late. (*State v.*  
24 *Workers' Comp. Appeals Bd. (Ellison)* (1996) 44 Cal.App.4<sup>th</sup> 128 [61 Cal.Comp.Cases 325].)  
25 Labor Code section 4603.2(b) provides that a medical bill must be paid within 60 days of  
26 its receipt or the bill must be objected to in writing within 30 days of its receipt. "Any  
27 properly documented amount not paid within the 60-day period shall be increased by 10

1 percent, together with interest at the same rate as judgments in civil actions retroactive to  
2 the date of receipt of the bill." Certain exceptions are applicable. (Lab. Code, 4603.2(b).)

3 Here, the Board notes that the automatic 10% penalty under Labor Code section  
4 4650 is inapplicable to the present matter as that penalty applies only to delays in  
5 payment of temporary or permanent disability indemnity. Moreover, although generally,  
6 a Labor Code section 5814 penalty is payable to the applicant (*French Hospital Health Plan*  
7 *v. Workers' Comp. Appeals Bd. (Bethlehem Steel Corp.)* (1986) 51 Cal.Comp.Cases 548 (writ  
8 denied), *Vogh v. Workmen's Comp. Appeals Bd.* (1968) 264 Cal.App.2<sup>nd</sup> 724, 728]), under  
9 certain circumstances such as in this case, the penalty is payable to the lien claimant.  
10 Furthermore, when a C&R is involved, a penalty for unreasonable delay of a specific class  
11 of benefit may apply to the entire class of benefit, whether paid before or after the C&R  
12 was approved. (*Neel v. Workers' Compensation Appeals Board* (1998) 67 Cal.App.4th 847 [63  
13 Cal.Comp.Cases 1344], *Soto v. Workers' Compensation Appeals Board* (1996) 46 Cal.App.4th  
14 1356 [61 Cal.Comp.Cases 578].) Thus, a determination must be made as to whether the  
15 penalties herein apply to all medical treatment provided to the applicant.

16 However, in the present matter, and without a record, the Board is unable to  
17 address the parties' arguments in their pleadings.

18 Moreover, both petitioner and defendant request "costs and attorney's fees."  
19 Insofar as the parties are requesting sanctions under Labor Code section 5813, the Board  
20 notes that this is a 1989 date of injury, and Labor Code section 5813 sanctions apply only  
21 in cases of injuries occurring on or after January 1, 1994. (See, *Green-Rhoads v. Gran Teasley*  
22 (1997) 62 Cal.Comp.Cases 943 (WCAB panel); *Paradise v. State Comp. Ins. Fund* (1997) 25  
23 Cal. Workers' Comp. Rpt. 50; *Ward v. State of California/California Youth Authority* (1996) 24  
24 Cal. Workers' Comp. Rpt. 176.)

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1 Accordingly, in light of the present circumstances, the Board will grant  
2 reconsideration, rescind the Findings and Order, and return this matter to the WCJ to  
3 create a record, to conduct further proceedings as appropriate, and to issue a new  
4 decision.

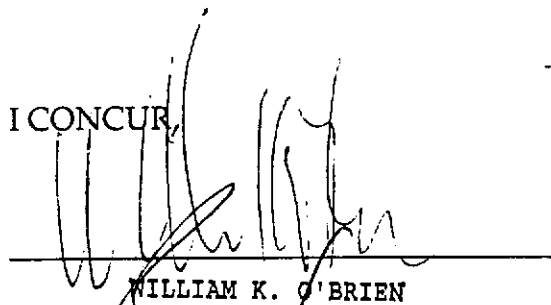
5 For the foregoing reasons,

6 **IT IS ORDERED** that lien claimant's Petition for Reconsideration filed December  
7 28, 2000, be, and it hereby is, **GRANTED**.

8 **IT IS FURTHER ORDERED** as the decision after reconsideration of the Workers'  
9 Compensation Appeals Board that the "Opinion on Decision and Award on Penalty  
10 issued December 20, 2000, be, and it hereby is **RESCINDED**, and this matter is  
11 **RETURNED** to the workers' compensation administrative law judge for further  
12 proceedings and decision.

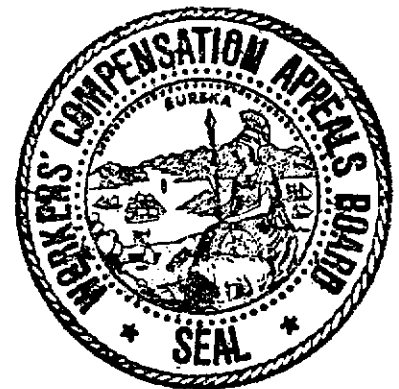
13 WORKERS' COMPENSATION APPEALS BOARD

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15  
16 I CONCUR,

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19 WILLIAM K. O'BRIEN

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22 ROBERT E. BURTON

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25 ROBERT N. RUGGLES



22 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

23 FEB 22 2001

24 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES  
25 LISTED ON THE OFFICIAL ADDRESS RECORD EXCEPT  
26 LIEN CLAIMANTS BUT INCLUDING PETITIONER LIEN  
27 CLAIMANT.

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FINGLETON, Joseph