WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

KATHLEEN MCKINNEY, ***Applicant,*** **vs.** **ENTERPRISE RENT-A-CAR OF SAN FRANCISCO; TRAVELER PROPERTY CASUALTY COMPANY OF AMERICA, Administered by YORK RISK SERVICES GROUP, INC.,** ***Defendants.***	**Case No. ADJ10124565** **(San Jose District Office)** **OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION**

By timely filed and verified petition, Enterprise Rent-A-Car and Traveler Property Casualty Company of America, administered by York Risk Services Group, Inc. (defendant) seeks reconsideration of the Findings and Award and Award of Sanctions (F&A) issued by a workers' compensation administrative law judge (WCJ) on June 28, 2016, in which it was found that defendant acted with bad faith in its handling of four separate Requests for Authorization of Treatment[1] (RFA), making it liable for the imposition of sanctions under the provisions of Labor Code[2] section 5813.

Defendant contends that the WCJ exceeded her authority by asserting jurisdiction over applicant's request for penalties and sanctions concerning defendant's conduct in the handling of several RFAs for medical treatment, arguing that any dispute over the medical necessity of a particular treatment modality is within the exclusive purview of Independent Medical Review[3] (IMR). Additionally, defendant contends that the WCJ erred by finding that defendant acted in bad faith in connection with its handling of requests from applicant's treating physician for authorization of various treatment modalities

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[1] Cal. Code Regs., tit. 8, § 9792.6.1(t)(1) defines "Request for Authorization" as a written request for a specific course of medical treatment made by the treating physician.

[2] All statutory references hereinafter are to the Labor Code unless otherwise indicated.

[3] Labor Code section 4610.5(e) states that a utilization review decision may be reviewed or appealed by IMR.

requested on applicant's behalf since the Administrative Director, rather than the Appeals Board, has exclusive jurisdiction to police claims administrators and their utilization review programs. Moreover, defendant argues that its conduct in connection with utilization review of the four RFAs in this case does not rise to the level of frivolous, bad-faith conduct. Finally, defendant raises the prospect of a due process violation if its conduct in the course of utilization review[4] of RFAs is subject to scrutiny and potential sanctions.

The WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied. We have received an Answer to the Petition from applicant. We have considered the allegations of the Petition, the WCJ's Report, applicant's Answer, and we have reviewed the record in this matter.

For the reasons set forth in the following discussion, we will grant defendant's Petition for Reconsideration (Petition), rescind the F&A, and issue a new decision reversing the WCJ's findings that defendant acted with bad faith in its handling of the treating physician's RFA's for a prescription of Diclofenac, a prescription for Salonpas patches, a prescription for trigger point injections, and a prescription for Soma. We will also reverse the Award of sanctions imposed by the WCJ.

STATEMENT OF RELEVANT FACTS

Applicant, born April 14, 1945, while employed by defendant on September 23, 2014, as a driver sustained an injury arising out of and occurring in the course of said employment to her neck and headaches, and also claims injury to other body parts that are not at issue in the present dispute. (Minutes of Hearing/Summary of Evidence [MOH/SOE], March 30, 2016, p. 2: 5-16.)

On December 3, 2015, applicant filed four separate Petitions for Penalties and Sanctions under sections 5813 and 5814. Although each Petition for Penalties and Sanctions[5] addresses a different form of medical treatment requested by applicant's treating physician, they share the same underlying

[4] Utilization review, which will be referred to hereinafter as "UR", is defined as the "utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny ...treatment recommendations by physicians..." (Lab. Code, § 4610(a).)

[5] Petition for Penalties and Sanctions #1 addresses the RFA for a prescription of Diclofenac ER 100mg # 60. Petition for Penalties and Sanctions #2 addresses the RFA for Salonpas. Petition for Penalties and Sanctions #3 addresses the RFA for trigger point injections. Petition for Penalties and Sanctions #4 addresses the prescription for SOMA.

theory—that a defendant who fails its obligation to conduct a full and timely investigation of a claim for benefits so as to insure the prompt provision of benefits to the injured employee engages in bad faith conduct intended to cause unnecessary delay, warranting the imposition of sanctions under section 5813 and penalties under section 5814. The gravamen of applicant's theory is that when the RFAs were submitted, defendant had in its possession and control medical reports and records germane to each of the four RFAs and failed to provide the same to WellComp, its UR organization (WellComp) for consideration, causing the RFAs to be denied.

On January 4, 2016, defendant filed an Answer to each of the four Petitions for Penalties and Sanctions. In answer to Petition for Penalties and Sanctions #1, defendant asserts that the RFA for Diclofenac ER 100 mg #60 was timely denied by Utilization Review (UR) and, therefore, the WCAB lacks jurisdiction over applicant's claim for penalties and sanctions. Additionally, defendant claims entitlement to attorney fees and costs as against applicant on account of applicant's own bad-faith actions under section 5813. (Answer to Petition for Penalties and Sanctions #1, January 4, 2016, p. 1: 22-28.) In answer to Petition #2, defendant asserts that the RFA for two boxes of Salonpas was timely denied by UR; the WCAB lacks jurisdiction over applicant's claim for penalties and sanctions; and defendant is entitled to attorney fees and costs as against applicant on account of applicant's frivolous and bad-faith actions. (Answer to Petition for Penalties and Sanctions #2, January 4, 2016, p. 2: 3-28; p. 3: 1-2.) In answer to Petition #3, defendant contends that the RFA for trigger point injections was timely denied by UR; the WCAB lacks jurisdiction over applicant's claim for penalties and sanctions; and defendant is entitled to attorney fees and costs as against applicant on account of applicant's frivolous and bad-faith actions. (Answer to Petition for Penalties and Sanctions #3, January 4, 2016, p. 2: 6-12; p. 3: 1-28.) In answer to Petition #4, defendant also asserts that the RFA for Soma 350 mg. #60 was timely denied by UR; the WCAB lacks jurisdiction over applicant's claim for penalties and sanctions; and defendant is entitled to attorney fees and costs as against applicant on account of applicant's frivolous and bad-faith actions. (Answer to Petition for Penalties and Sanctions #4, January 4, 2016, p. 2: 6-10; p. 3: 1-28.)

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At the Mandatory Settlement Conference (MSC) on February 23, 2016, the parties were unable to resolve their dispute with regard to Petitions for Penalties and Sanctions, #1-#4. Applicant's entitlement to penalties and sanctions was bifurcated and scheduled for trial.

Trial was held on March 30, 2016. Testimony was presented and seventeen medical reports/documents were admitted into evidence on applicant's behalf, numbered Exhibit 1 through Exhibit 17. Six documents were admitted into evidence on defendant's behalf, lettered Exhibit A through Exhibit F. On June 28, 2016, the F&A issued.

EVIDENTIARY RECORD

Exhibit 1 is the January 8, 2015 report of the MRI of applicant's cervical spine. The MRI findings note "chronic discogenic endplate changes at several levels," and go on to describe central and neural foraminal narrowing at several levels, as well as "concentric uncovertebral hypertrophy (3 mm) with a superimposed left paracentral disc protrusion" at C4-C5. (Exhibit 1, Cervical Spine MRI, January 8, 2015, p. 1.)

Exhibits 2 through 7 are progress reports from Felicia Radu, M.D., a physician with US Health Works Medical Group[6] covering the period from January 22, 2015 to July 23, 2015.

Exhibit 8-12 are UR Determinations that correspond to the RFAs and progress reports submitted by applicant's treating physician(s), as generally documented in Exhibits 13 through 17.

Lauren Ott, the Assistant Vice President of WellComp Managed Care testified. She explained that WellComp Managed Care performs UR services on behalf of defendant. Ms. Ott oversees defendant's UR coordinators and the intake process for RFAs submitted to the company. The role of the UR coordinator is to prepare RFAs for review. If the RFA is accompanied by adequate medical reports, it is forwarded to a nurse for review. If the medical documentation is inadequate, the RFA is put on delay and a request is made for more medical records. Additionally, the UR Coordinator must insure that the treating physician is within defendant's MPN and the parts of the body for which treatment is requested are compensable. (MOH/SOE, March 30, 2016, p. 8:14-34.)

[6] Applicant's Answer asserts that US Health Works Medical Group is part of defendant's Medical Provider Network (MPN). We are unable to find any such stipulation of admission in the MOH/SOE, or in defendant's Petition; however, our review of the Division of Workers' Compensation's List of Approved Medical Provider Networks suggests that assertion is accurate.

Ms. Ott went on to explain that when the RFA is complete, it is sent to a nurse for review and possible approval. The nurse reviews the RFA and medical record and is authorized to either approve the RFA or forward the RFA to physician-level review. (MOH/SOE, March 30, 2016, p. 8: 36-41.) The nurse also determines if additional documentation is necessary. If the RFA is elevated to physician-level review, the nurse sends the medicals received with the RFA; any testing reports, including MRI reports; and requested supplemental documentation to the physician. (*Id.*, p. 9: 1-14.) WellComp has access to all of defendant's medical records. (*Id.*, p. 9: 8-9.)

According to Ms. Ott, the burden is on the treating doctor to provide adequate documentation to support the RFA; however, if a RFA is submitted without adequate documentary support, defendant has an obligation to get more medical documentation. In such case, the RFA is put on delay and additional information is requested. (MOH/SOE, March 30, 2016, p. 11:4-8.)

With regard to the four RFAs at issue in this case, Ms. Ott testified the February 26, 2015 RFA packet for diclofenac included the RFA itself and Dr. Radu's office note, both dated February 19, 2015. The RFA was timely denied under the Medical Treatment Utilization Schedule (MTUS) because applicant had been on NSAID medication for an extended period of time without benefit in functional improvement. (MOH/SOE, March 30, 2013, p. 14: 22-34; p. 15: 5-9.) In Ms. Ott's opinion, the statements on page 8 of Dr. Radu's January 22, 2015 progress report (Exhibit 7), do not provide appropriate documentation of functional improvement. (*Id.*, p. 13: 13-28.)

Ms. Ott further testified that the RFA for two boxes of Salonpas patches (Exhibit 13) was timely denied and the denial was appropriate because there was no evidence of functional improvement within Dr. Radu's report dated June 25, 2015 (Exhibit 3.) (MOH/SOE, March 30, 2016, p. 15: 17-23.)

Similarly, Ms. Ott explained that the July 23, 2015 RFA for trigger point injections was timely denied and the denial was appropriate for lack of a documented twitch response. (MOH/SOE, March 30, 2016, p. 15: 25-34.) She later admitted, however, that Dr. Radu's June 4, 2015 report (Exhibit 4) and June 25, 2015 report (Exhibit 3) should have been provided to the UR reviewers because both indicate that applicant has myofascial discogenic pain. (*Id.*, p. 12: 20-41.)

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With regard to the RFA for Soma, Ms. Ott testified that the UR Determination was timely and Soma was not-certified, and there is no reference in the determination to the fact that applicant has cervical disc dysfunction, myospasm, or that an MRI was performed. (MOH/SOE, March 30, 2016, p. 14: 9-17.)

Ms. Ott agreed that defendant has an obligation to investigate if there is a need for medical treatment and to treat the injured worker in good faith. (MOH/SOE, March 30, 2016, p. 11: 37-39.)

We observe that Exhibit 10, the July 30, 2015 UR denial of the RFA for outpatient trigger point injections to the neck states that the review was based on the July 23, 2015 RFA; Dr. Radu's progress report dated July 23, 2015 (Exhibit 2); and the report of Dr. Daniels dated June 26, 2015 (Exhibit 17). The reason given for the non-certification is "[r]equest does not adequately document myofascial pain syndrome." (Exhibit 10, UR Determination, July 30, 2015, p. 2.) We also observe that Dr. Radu's progress reports dated June 4, 2015 (Exhibit 4, p. 4); June 25, 2015 (Exhibit 3, p. 4); and July 23, 2015 (Exhibit 2, p.4) state that applicant has myofascial pain syndrome.

We also observe, generally, that each of the four UR determinations (Exhibits 8, 9, 10, 11 and 12) identify the documentation reviewed by the physician. In each instance, the documentation reviewed was limited to the actual RFA and the treating physician's contemporaneous progress report. There is no indication that additional records or documents, including the January 8, 2015 MRI results, were provided to the evaluating doctor. None of the RFAs were put on delay status because the medical documentation submitted was inadequate. Finally, each UR determination contains the following statement:

> ***This evaluation has been conducted entirely on the basis of the medical information/documentation provided for review. If additional information becomes available, it may alter the conclusions contained in this report.*** (Emphasis added.)

DISCUSSION

At the outset, we note that defendant's Petition claims the possibility of a claims administrator and/or its utilization review organization being subject to monetary sanctions for conduct in conjunction with UR is a violation of due process. That issue is not identified as a contention in the MOH/SOE of the

trial in this case; it was not raised at the MSC; and it is not raised in defendant's Answers to applicant's Petitions for Penalties and Sanctions. It has been raised for the first time in the instant Petition, and, therefore, we decline to address it. (*Cottrell v. Workers' Comp. Appeals Bd.* (1998) 63 Cal.Comp.Cases 760 (writ den.).)

A. The Appeals Board has Authority to Impose Sanctions and Penalties on a party under sections 5813 and 5814.

Next, we address, generally, the authority of the Appeals Board and of a WCJ to impose sanctions on a claims administrator for bad faith actions or tactics that are frivolous or solely intended to cause delay, or to award sanctions for an unreasonable delay in the provision of benefits to the injured worker. We will begin this discussion with a brief review of California's workers' compensation system because an understanding of its purpose and structure is fundamental to an understanding of the reasoning behind the statutes that allow the imposition of penalties and sanctions.

California Constitution, art. XIV, §4 authorizes the Legislature to create a complete system of workers' compensation, designed to accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character. Toward that end, the Legislature designed the system to be self-executing so that a worker who sustains a compensable industrial injury receives medical treatment and appropriate indemnity benefits automatically and without delay. The expectation is that the employer or its insurance carrier will begin providing medical treatment and paying compensation inunediately upon learning of the workers' injury. Sometimes, however, disputes arise and must be resolved.

The Appeals Board is the judicial arm of California's workers' compensation system. Under section 5300, it has exclusive jurisdiction with regard to proceedings for the recovery of compensation, or concerning any right or liability arising out of or incidental thereto; and for the enforcement against the employer or its insurer of any liability for compensation imposed upon the employer by Division 4 that is not otherwise vested in Division of Workers' Compensation and the Administrative Director. In its design of California's system, the Legislature gave the Appeals Board the authority to sanction a party or the party's attorney for conduct that is antithetical to the self-executing nature of the system. Section

5813 specifically authorizes the Appeals Board or a WCJ to order a party, a party's attorney, or both, to pay any 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. Appeals Board Rule 10561(b)[7] defines bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay to 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 Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit."

Similarly, if the employer or its insurance carrier unreasonably delay or refuse to pay compensation and/or provide reasonable and necessary medical treatment to the industrially injured worker, section 5814 authorizes an increase in the delayed compensation payment up to prescribed monetary amounts. The purposes of section 5814 are both remedial and penal. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Stuart*) (1998) 18 Cal.4th 1209, 1214 [63 Cal.Comp.Cases 916, 919].) The penal aspect of the section provides an incentive to employers and insurance carriers to pay benefits promptly by making unreasonable delays costly. (*Stuart, supra*, 18 Cal.4th at p. 1214.) The remedial nature of section 5814 is to lessen the economic hardship on the injured worker that results from an unreasonable delay in the provision of benefits. (*Id.*, at p. 1214.)

Sanctions under section 5813 and penalties under section 5814[8] are tools that the Legislature gave to the Appeals Board to encourage and insure that employers and their insurance carriers act in good faith and administer benefits to eligible injured workers in a timely and appropriate manner. (*Duncan v. Workers' Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294 [73 Cal.Comp.Cases 1197].)

B. <u>The Appeals Board has jurisdiction under appropriate circumstances to impose sanctions under section 5813 for bad faith actions or tactics in a defendant's handling of a claim for benefits involving medical treatment.</u>

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[7] Cal. Code Regs., tit. 8, § 10561(b).

[8] Inasmuch as the F&A found that defendant did not unreasonably delay the provision of medical treatment to applicant and declined to award penalties under section 5814, we will not address that section further.

In this case, applicant requests that sanctions be imposed against defendant for the manner in which defendant handled medical treatment requests submitted to it by applicant's treating physician. It is applicant's position that specific actions taken and/or not taken by defendant with regard to four RFAs submitted to it for approval were tantamount to bad faith conduct and/or tactics that were frivolous, without merit, and intended to cause delay. It is defendant's position that the Appeals Board lacks authority to impose section 5813 sanctions because section 4610.5(e) explicitly provides that medical treatment disputes can only be reviewed or appealed by Independent Medical Review (IMR). In this regard, defendant argues that our holding in *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 (Appeals Bd. en banc) (*Dubon II*) prohibits a WCJ or the Appeals Board from reviewing the actions of a claims adjustor or agent within the context of UR of a RFA. It is defendant's position that such review of an employer's UR process is a medical necessity determination which can only be made by a medical professional and reviewed only through IMR pursuant to section 4610.5(e).

Secondarily, defendant asserts that only the Administrative Director of the Division of Workers' Compensation can "police" the actions of a claims administrator and its UR program in connection with medical treatment disputes, citing section 5300(f) and section 4610.

We disagree with both contentions. Foremost, *Dubon II* does not discuss the propriety of section 5813 sanctions or make any determination with regard thereto. Next, although section 4610(i) gives the Administrative Director specific authority to penalize an employer, insurer or other entity for a failure to meet the statute's time frames or other provisions, it does not authorize the Administrative Director to impose sanctions under section 5813. There is nothing within section 4610 that excludes the actions of an employer or its claims administration in the handling of a RFA from the imposition of sanctions under section 5813 by the Appeals Board or a WCJ if those actions are the result of bad faith tactics or undertakings that are frivolous or solely intended to cause unnecessary delay.

In construing a statute, we first look to the language of the statute, and where that language is clear and there is no uncertainty as to the intent of the legislature, we look no further and enforce the statute according to its terms. (*Atlantic Richfield Co. v. Workers' Comp. Appeals Bd.* (1982) 31 Cal.3d. 715, 726 [47 Cal.Comp.Cases 500, 508].) Section 5813 is clear—the Appeals Board and its WCJ are

authorized to impose sanctions for bad faith tactics or actions that are frivolous or solely intended to cause unnecessary delay even where the underlying process concerns the claims handling aspects of a RFA for medical treatment.

Defendant further contends that compliance with Administrative Director Rule 10109—which requires every claims administrator to conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or a claim for workers' compensation benefits—is within the exclusive purview of the Administrator Director and cannot be considered by the Appeals Board in determining whether or not sanctions should be imposed under section 5813. Again, we disagree. In our view, Administrative Director Rule 10109 is consistent with long-standing authority confirming the employer's obligation to take affirmative steps to investigate the need for and to promptly provide appropriate benefits to an eligible injured worker. (*Braewood Convalescent Hospital v. Workers' Compensation Appeals Bd.* (1983) 34 Cal.3d 159 [48 Cal.Comp.Cases 566]; *Ramirez v. Workers' Comp. Appeals Bd.* (1970) 10 Cal.App.3d 227, 234 [35 Cal.Comp.Cases 383].)

C. Defendant's Conduct in Handling the Four Requests for Authorization of Medical Treatment was not in Bad Faith, Frivolous, or Solely Intended to cause Unnecessary Delay.

Having determined that the Appeals Board and a WCJ have the authority to impose sanctions under section 5813, we now consider whether or not defendant's conduct here is such that imposition of sanctions is appropriate.

Rule 10561(b) defines "bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay" as "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 Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit." Subsection (b)(4) of the Rule provides that a failure "to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure, with the regulations of the Administrative Director ..." may also constitute a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay.

The word, "willful" as used in Rule 10561 is significant. It denotes conduct that is beyond negligence, carelessness, or inadvertence. In *Billups v. Workers' Comp. Appeals Bd.* (2010) 75 Cal.Comp.Cases 650, 654 (writ den.) it is stated that this is a high standard. We agree.

Here, the WCJ determined that defendant's conduct in handling the four RFAs resulted from its willful failure to comply with its obligations under Administrative Director Rule 10109 because it had access to all of applicant's medical records and diagnostic testing results but did not take the initiative to insure that complete records were provided to the UR doctor. We disagree. In this regard, we note that Administrative Director Rules 9785(g) and 9792.6.1(t)(2) require the RFA to include documentation substantiating the need for the requested treatment. The primary treating physician, and not a claims adjustor, is the one who knows what medical records substantiate the requested treatment. The four RFAs submitted by Dr. Radu did include documentation, and presumably, the records and reports Dr. Radu included with each RFA were those, in her expert medical opinion, that supported the recommended treatment. Therefore, we cannot say that under these circumstances, defendant's failure to take the initiative and submit applicant's complete medical record to the UR doctor was a willful failure to comply with its regulatory and statutory obligations, or an indication of a bad faith tactic that is frivolous or solely intended to cause delay.

We need not reach the issue of a defendant's duty in ensuring that there is a complete record review by the UR doctor since, in this case, it was not shown that defendant abrogated its duty in bad faith or by frivolous action solely intended to cause unnecessary delay.

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For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the June 28, 2016, Findings and Award and Award of Sanctions is **GRANTED**, and as our **Decision After Reconsideration**, we **RESCIND** the decision, and **SUBSTITUTE** a new decision as follows:

FINDINGS OF FACT

1. Applicant, KATHLEEN MCKINNEY, born 04/14/1945, while employed on 09/23/2014, as a driver, in Menlo Park, California, by Enterprise Rent-A-Car San Francisco, sustained an injury arising out of and occurring in the course of employment to the neck and headaches, and claims to have sustained an injury arising out of and in the course of employment to the bilateral shoulders, head, brain, ears, eyes and an impairment to balance;

2. On the date of injury the employer was permissibly self-insured with Travelers Property Casualty Co. as excess carrier and the claim adjusted by York;

3. The reasonableness and/or necessity of medical treatment is not at issue in this case because applicant is not requesting an award of medical care.

4. The WCJ has jurisdiction in this matter.

5. Applicant is not entitled to an award of penalties under Labor Code Section 5814 because there was no unreasonable delay by defendant in the provision of medical care to applicant in the form of a prescription for Diclofenac (Petition #1); a prescription for Salonpas patches (Petition #2); a prescription for trigger point injections (Petition #3); or a prescription for Soma (Petition #4).

6. Applicant is not entitled to an award of sanctions, including attorney fees, pursuant to Labor Code Section 5813 because she failed to demonstrate that defendant's claims handling practices in conjunction with treatment requests made by her treating physician for Diclofenac (Petition #1); Salonpas patches (Petition #2); trigger point injections (Petition#3); and Soma (Petition #4) constitute bad faith actions that are frivolous or solely intended to cause unnecessary delay.

7. Defendant is not entitled to an award of sanctions, including attorney fees, pursuant to Labor Code Section 5813 because it failed to demonstrate that applicant's actions in filing Petitions #1 through #4 herein constitute bad faith actions that are frivolous or solely intended to cause unnecessary delay.

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ORDER

IT IS HEREBY ORDERED that applicant take nothing on account of Petitions for Penalties and Sanctions, referred to herein as Petition #1 through Petition #4.

WORKERS' COMPENSATION APPEALS BOARD

DEPUTY RICHARD L. NEWMAN

I CONCUR,

DEIDRA E. LOWE

CONCURRING, BUT NOT SIGNING

FRANK M. BRASS

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEP 23 2016

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

D'ANDRE, PETERSON, BOBUS & ROSEBERG
ENTERPRISE CAR RENTAL
KATHLEEN MCKINNEY
LAW OFFICE OF MICHAEL J. RICHTER
YORK RISK SERVICES GROUP, INC.

SH/ara