

6

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

Case No: SDO 345671

**Bonnie Jackson**

*Applicant*

vs.

**Standard Homeopathic Company; State  
Compensation Insurance Fund**

*Defendant*

**FINDINGS AND ORDER  
RE SANCTIONS**

Parties appearing at the time of trial were as follows:

For Lien Claimant: Michael Blott, D.C.

For Defendant: No Appearance

At trial on March 29, 2007, a ten (10) day Notice of Intention to Submit On Issue of Sanctions Against State Compensation Insurance Fund issued. There was no objection to the submission. The above-entitled matter having been submitted for decision to the Honorable Nikki S. Udkovich, Workers' Compensation Administrative Law Judge, decision is made as follows:

**FINDINGS OF FACT**

1. State Compensation Insurance Fund failed to timely pay penalty and interest to Dr. Blott as required by Labor Code section 4622 (a).
2. State Compensation Insurance Fund failed to offer any excuse for its failure to comply with Labor Code section 4622(a).
3. State Compensation Insurance Fund's failure to comply with Labor Code section 4622(a) constituted a bad faith action that was frivolous and solely intended to cause unnecessary delay.
4. State Compensation Insurance Fund failed to appear for the status conference on March 5, 2007 after being duly served with notice of hearing.
5. State Compensation Insurance Fund failed to offer any reasonable excuse for its failure to appear at the status conference on March 5, 2007.

6. State Compensation Insurance Fund's failure to appear at the status conference on March 5, 2007 constituted a bad faith action that was frivolous and solely intended to cause unnecessary delay.
7. The actions of State Compensation Insurance Fund as set forth above are violations of Labor Code Section 5813.
8. A reasonable sanction for the violation is \$500.00 payable to Dr. Michael Blott.

### **OPINION ON DECISION**

It is undisputed that Dr. Blott performed a qualified medical evaluation of applicant, Bonnie Jackson, on April 28, 2005. The case in chief was settled by way of compromise and release on June 28, 2006.

It is undisputed that Dr. Blott served his report and billing on defendant, State Compensation Insurance Fund, (SCIF) on May 25, 2005. It is undisputed that SCIF paid Dr. Blott \$750.00 on October 26, 2005, without paying any penalty or interest. Dr. Blott credibly testified that SCIF never objected to the services he provided as being unreasonable. Dr. Blott filed a Declaration of Readiness on December 19, 2006, on the issue of penalties on account of the late payment by SCIF. The matter was set for Mandatory Settlement Conference (MSC) on March 5, 2007. SCIF was duly noticed of the MSC on January 11, 2007 by the Appeals Board SCIF failed to appear at the MSC.

The matter was set for trial on penalties and sanctions on March 27, 2007. SCIF was duly served with the notice of hearing, the pre-trial conference statement and lien claimant's petition for sanctions. SCIF failed to appear.

After the Notice of Intention to Submit and Order issued on March 29, 2007, SCIF filed an objection and declaration. The declaration submitted by Attorney Reynaldo Q. Gracia, is insufficient and not based on any personal knowledge of this case. The declaration concedes that Dr. Blott's bill was paid five months late. However, the statement that the bill payer did not believe that penalty and interest were due when a bill is paid five months after receipt is unsupported by any evidence. Labor Code section 4622 states:

"All medical-legal expenses for which the employer is liable shall, upon receipt by the employer of all reports and documents required by the administrative director incident to the services, be paid to whom the funds and expenses are due, as follows:

(a) Except as provided in subdivision (b), within 60 days after receipt by the employer of each separate, written billing and report, and where payment is not made within this period, that portion of the billed sum then unreasonably unpaid shall be increased by 10

percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of receipt of the bill and report by the employer. Where the employer, within the 60-day period, contests the reasonableness and necessity for incurring the fees, services, and expenses, payment shall be made within 20 days of the filing of an order of the appeals board directing payment.

The penalty provided for in this subdivision shall not apply if (1) the employer pays the provider that portion of his or her charges which do not exceed the amount deemed reasonable pursuant to subdivision (c) of Section 4624 within 60 days of receipt of the report and itemized billing, and, (2) the appeals board sustains the employer's position in contesting the reasonableness or necessity for incurring the expenses. If the employer prevails before the appeals board, the referee shall order the physician to reimburse the employer for the amount of the paid charges found to be unreasonable.

(b) Where requested by the employee, or the dependents of a deceased employee, within 20 days from the filing of an order of the appeals board directing payment, and where payment is not made within that period, that portion of the billed sum then unpaid shall be increased by 10 percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of the filing of the order of the board directing payment.

(c) The employer shall notify, in writing, the provider of the services, the employee, or if represented, his or her attorney, if the employer contests the reasonableness or necessity of incurring these expenses, and shall indicate the reasons therefor.”

SCIF fails to present any documentary evidence that it ever objected to Dr. Blott's bill. SCIF fails to present any evidence that rebuts the fact that the bill was paid five months after it was served on SCIF. The fact that after the hearing of March 5, 2007 SCIF paid interest and penalty does not excuse SCIF's prior failure to comply with the mandatory statutory language in Labor Code section 4622. Dr. Blott wrote letters to SCIF dated August 7, 2006, December 19, 2006 and February 20, 2007 asking for interest and penalty. He had to file a Declaration of Readiness and appear at a further conference on March 5, 2007. Dr. Blott testified at trial that at the conference on March 5, 2007 he attempted to call SCIF and was advised that a San Diego SCIF attorney would not appear at the conference. It was only after SCIF was advised that the matter was set for trial that SCIF took any action to comply with the mandatory language of Labor Code section 4622 concerning interest and penalty.

State Compensation Insurance Fund failed to timely pay penalty and interest to Dr. Blott as required by Labor Code section 4622 (a). State Compensation Insurance Fund failed to offer any excuse for its failure to comply with Labor Code section 4622(a). State Compensation Insurance Fund's failure to comply with Labor Code section 4622(a) constituted a bad faith action that was frivolous and solely intended to cause unnecessary delay.

State Compensation Insurance Fund failed to appear for the status conference on March 5, 2006 after being duly served with notice of hearing on January 11, 2007. SCIF acknowledges receiving Dr. Blott's Declaration of Readiness and notice of hearing, but maintains that, since the claims file and legal file were in different offices, no legal file was ever initiated and no notice received by the San Diego legal office.

SCIF was given notice and opportunity to appear and present evidence in rebuttal to the contentions for sanctions as set forth in Dr. Blott's petition of March 5, 2007, served on SCIF on March 6, 2007. There is no indication in the file that legal notice was to be sent to San Diego, however, there is not indication that it should have been. The compromise and release agreement submitted recited the post office box in Los Angeles as SCIF's mailing address. Dr. Blott credibly testified that on March 5, 2007 a SCIF hearing representative called the Los Angeles office on his behalf. Another San Diego SCIF attorney advised him that she would not appear for SCIF.

On the date of trial on March 27, 2007, Dr. Blott testified that he appeared at 8:30 am, and the acting presiding judge asked a SCIF SD attorney to call SCIF LA. Dr. Blott was advised that the supervisor would assign an adjuster and contact him regarding settlement. He waited all morning and was assigned to trial in the afternoon. In the afternoon Dr. Blott at the direction of court placed a call to the SCIF LA to determine if anyone would appear. The supervisor advised that no one would be appearing on behalf of SCIF. The supervisor verified the address for SCIF LA as P.O. 92622, Los Angeles, Ca 90009, the same address that appeared on the compromise and release filed on June 21, 2006. SCIF offers no reasonable excuse for its inability to re-open a case and appear at the duly noticed conference. SCIF had notice of the pending issues by the letters authored by Dr. Blott, an application filed by Dr. Blott, a Declaration of Readiness filed by Dr. Blott, a petition for sanctions filed by Dr. Blott, and the pre-trial conference statement served on it by Dr. Blott.

State Compensation Insurance Fund failed to offer any reasonable excuse for his failure to appear at the status conference on March 5, 2007. State Compensation Insurance Fund's failure to appear at the status conference on March 5, 2007 constituted a bad faith action that was frivolous and solely intended to cause unnecessary delay. The actions of State Compensation Insurance Fund as set forth above are violations of Labor Code Section 5813.

Dr. Blott has requested sanctions in the amount of \$1875.00 for his appearance at the conference on March 5, 2007 and his research and preparation of his petition for sanctions. The court considered Dr. Blott's request and determined a reasonable sanction to be \$500.00. This sanction is imposed to encourage the defendant to cease its activity of ignoring hearing notices, ignoring the mandatory language of the Labor Code section 4622, and ignoring correspondence from the lien claimant such that that lien claimant was forced to file a Declaration of Readiness to obtain the attention of defendant, to obtain due process, and to ultimately secure payment of interest and penalty.

**ORDER**

IT IS HEREBY ORDERED that State Compensation Insurance Fund now make payment as follows:

- a) \$500.00 as a sanction as set forth in Finding of Fact number 8. Such payment to be made by cash or negotiable instrument payable to Michael Blott, D.C. and mailed to 17586 Via Loma Dr. Poway, CA 92064.

Dated: 5/1/07

 4/30/07

NIKKI S. UDKOVICH

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

By: Nancy Schuster

Dated and filed in San Diego, California  
Service on parties as shown on the Official  
Address Record effected on above date.

A petition for reconsideration from this Decision shall be filed only at the San Diego District Office of the Workers' Compensation Appeals Board.