

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

WCAB CASE NO. SDO 345671

**Bonnie Jackson vs. Standard Homeopathic Company; State
Compensation Insurance Fund**

**REPORT AND RECOMMENDATION
OF WORKERS' COMPENSATION ADMINISTRATIVE LAW
JUDGE ON PETITION FOR RECONSIDERATION**

**NIKKI S. UDKOVICH
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE
SAN DIEGO**

INTRODUCTION

On May 29, 2007, State Compensation Insurance Fund filed a timely and verified Petition for Reconsideration of the Findings and Order Re Sanctions which issued on May 1, 2007. The Findings and Order determined that lien claimant, Dr. Michael Blott, a panel qualified medical evaluator in this case, was entitled to sanctions of \$500.00 under Labor Code 5813 against State Compensation Insurance Fund for its failure to comply with Labor Code section 4622(a) and its failure to appear for conference after being served notice of hearing. Defendant failed to offer any reasonable excuse for its actions which were determined to be in bad faith, frivolous and solely intended to cause unnecessary delay.

Factual Background: The unrepresented injured worker, Bonnie Jackson (Jackson), born June 12, 1959, while employed on June 22, 2004 as a sales representative

by Standard Homeopathic, insured by State Compensation Insurance Fund (SCIF), injured her neck. The case in chief was settled on June 29, 2006 for \$3500.00.

Dr. Michael Blott performed a panel qualified medical evaluation (QME) on Jackson on April 28, 2005. On May 25, 2005 Dr. Blott served his bill for the QME on SCIF. It is undisputed that SCIF paid Dr. Blott \$750.00 on October 26, 2005, without paying penalty or interest. Dr. Blott, after failing in his attempt to collect statutory penalties and interest owing, filed a Declaration of Readiness to Proceed (DOR) on December 19, 2006. The matter was set for status conference (SC) on March 5, 2007. SCIF was served with notice of the conference on January 11, 2007 by the Appeals Board. SCIF failed to appear at hearing.

The matter was set for trial on March 27, 2007 on penalties and sanctions. Dr. Blott served notice of hearing, the pre-trial conference statement and his petition for sanctions on SCIF. SCIF failed to appear at trial.

After trial, a Notice of Intention to Submit and Order issued on March 29, 2007. SCIF filed an objection and declaration, acknowledging that Dr. Blott's bill was paid on October 24, 2005. SCIF did not object to the submission of the case.

Thereafter, the Findings and Order issued ordering payment of sanctions by SCIF to Dr. Blott in the amount of \$500.00.

It is respectfully recommended that SCIF's petition for reconsideration be denied. It is important to insure that panel QMEs are paid in a timely fashion. In this case defendant failed to pay Dr. Blott for five months. When a defendant fails to make timely payment to a panel QME, the medical evaluation process for unrepresented injured workers is compromised. Doctors need to know they will receive prompt payment of the uncontested portion of their bill, and that if payment is late, that they will receive the

statutory penalties and interest, without having to invoke the jurisdiction of the Appeals Board. In this way doctors are encouraged to remain QMEs in the workers' compensation system.

DISCUSSION

Defendant's contention #1: "SCIF's failure to appear at the March 5, 2007 status conference did not constitute bad faith action in violation of Labor Code section 5813."

The contention is without merit. SCIF has belatedly and inappropriately attached evidence to its petition to support its position that it timely paid Dr. Blott, and therefore, it was not necessary for SCIF to appear at the March 5, 2007 conference.

However, this is a new position for SCIF. SCIF in its objection and declaration filed April 13, 2007 admitted that the lien was paid "approximately five months after lien claimant submitted his bill." (See page 2, line 21 of the Objection and Declaration filed April 13, 2007) Now, SCIF contends that "Dr. Blott's bill for date of service April 28, 2005 was paid within 32 days." (See Petition for Reconsideration, page 3 lines 24-25) It is apparent that at the time of the March 5, 2007 hearing, SCIF still believed that its payment was five months late. After the March 5, 2007 hearing, SCIF issued a check for \$144.14 to Dr. Blott for interest and penalty owing. This would appear to be further acknowledgement that payment to Dr. Blott was not timely.

SCIF was provided with an opportunity to object to the submission of this matter and failed to do so. Certainly, if SCIF thought it had made appropriate payment for the April 28, 2005 QME, SCIF could have included this declaration in its objection and

declaration to the Notice of Intention to Submit and Order. Instead, SCIF admitted to the late payment and failed to state factual reasons why the matter should not be submitted.

SCIF contends that it did not know that additional documentary evidence would be accepted and therefore did not provide any at the time of its objection. This contention is without merit. SCIF was provided with ample notice as to lien claimant's issue. The DOR filed by Dr. Blott on December 20, 2006, advised SCIF that the issue was "Late QME Report payment penalties." SCIF has had ample opportunity to gather its exhibits and serve them on lien claimant at least a year before it decided to attach them to its instant petition. The exhibits submitted by SCIF should not be considered. The only credible evidence in the evidentiary record is the proof of service by mail that Dr. Blott served his bill and report on SCIF on May 25, 2005; that SCIF failed to pay until October 26, 2005, and SCIF failed to include interest and penalties at the time of payment.

SCIF acknowledges receiving notice of the March 5, 2007 hearing and failed to appear contending that the issue was resolved. Making payment to Dr. Blott in October 2005 did not resolve the issue of penalties and interest claimed. SCIF's unilateral determination that the issue was or should have been resolved is not determinative that the issue was indeed resolved. Furthermore, it is apparent that SCIF's belief that the issue was resolved was without basis. Dr. Blott credibly testified he submitted audit referral forms on December 7, 2005, January 4, 2006 and May 8, 2006 because of SCIF's failure to pay penalties and interest. He filed a lien in the case on August 7, 2006 and served SCIF. On December 20, 2006 he filed a DOR and served SCIF. On January 11, 2007 SCIF was served with notice of conference. On February 20, 2007 Dr. Blott filed a petition for an order for service of records and served SCIF. SCIF's contention that it in good faith believed the issue was resolved is contrary to the facts and not believable.

Defendant's contention #2: "Judge Udkovich's order of sanctions's(sic) was not supported by the facts of the case and was issued in excess of her powers."

The contention is without merit. The sanction imposed was appropriate considering the definitions of a bad faith action or tactic as defined in Rule 10561. Rule 10561 states in part:

"A bad faith action or tactic is one that results from a willful failure to comply with a statutory or regulatory obligation or from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board."

Imposing sanctions is an appropriate remedy for SCIF's bad faith tactics and actions in this case of failing to make timely payment of an uncontested medical-legal expense, failing to pay statutory penalties and interest owing when payment is late, ignoring notices of hearing, and failing to appear at conference. Such actions and tactics are recited in Rule 10561 as violations of Labor Code section 5813.

Payment of sanctions to Dr. Blott hardly represents an "undeserved windfall" to him in light of the time he has expended to secure payment of penalty and interest. Dr. Blott credibly testified that as a QME he bills at the rate of \$250.00 an hour; that he prepared the documents filed in the instant case; that he remained at the conference on March 5, 2007 for two hours; and that his travel time for the conference was an hour and a half. He billed for two hours to prepare the sanctions petition. Dr. Blott's testimony reflects that he spent additional time calling SCIF for the statutory penalties and interest and filing a lien and a DOR. It is apparent that the cost to Dr. Blott to secure payment of statutory penalty and interest far exceeds the sanction imposed. . . . However, the Opinion on Decision more fully states the primary reason for imposing the sanction:

“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.”

Moreover, it is detrimental to the QME evaluation process when SCIF cavalierly asserts that “filing and prosecuting liens is simply part of the cost of doing business and reimbursable under Labor Code section 5813,” and that “payment of any sanction would be an undeserved windfall to lien claimant.” There should be little reason for a QME to file a lien in the first place when the billing is uncontested. Labor Code 4622 is meant to insure prompt payment for medical-legal expenses without intervention by the WCAB. A QME is not supposed to file a lien and prosecute it as SCIF contends. Moreover, SCIF’s contention that filing and prosecuting liens is part of the cost of doing business contravenes the mandate to handle matters in a manner “to accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character. . .” (Cal. Const., art.XIV, §4.)

RECOMMENDATION

It is respectfully recommended that defendant’s Petition for Reconsideration be denied.

 6/11/07

NIKKI S. UDKOVICH

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

Dated: 6/11/07

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