

1 [Name of Applicant]
2 *In properia persona*
3 [Street Address]
4 [City, State, Zip Code]
5 [Telephone Number]

6 **STATE OF CALIFORNIA**

7 **WORKERS' COMPENSATION APPEALS BOARD**

8 Applicant,

9 vs.

10 ;

11 .

12 Defendant

) Case No.:
) WCAB:
) JUDGE:
) Hearing Date:

13 **PETITION FOR PENALTIES**
14 **(Labor Code §5814)**

15 Petitioner alleges that workers' compensation benefits have been unreasonably
16 delayed or denied and seeks an Order assessing multiple penalties against all of
17 these unreasonably delayed or denied benefits. Applicant alleges that the following
18 benefits were unreasonably denied or delayed and in support thereof alleges as
19 follows:

20 **Count 1**

21 1. On or about [*date*] Applicant filed a claim form alleging injuries arising out
22 of and occurring in the course and scope of [*his or her*] employment with the
23 employer herein.

24 2. Lab. Code §5402(c) mandates that Defendant authorize and pay for up to
25 \$10,000.00 in medical treatment upon the filing of a claim form.

1 3. Despite Applicant's filing of a claim form, Defendant has unreasonably
2 denied or delayed the provision of medical treatment prior to the issuance of a
3 denial of the within claim that gave rise to the filing of the claim form.

4 4. Due to Defendant's delay or denial of immediate treatment, Applicant was
5 forced to self-procure treatment, thereby incurring medical expenses that should
6 have been paid by Defendant.

7 5. There was no genuine doubt for Defendant to comply with Lab. Code
8 §5402(c), yet Defendant failed to provide treatment as mandated therein.

9 6. Defendant's delay or denial of benefits occurred within two years prior to the
10 date of filing this Petition for Penalties.

11 7. Applicant requests that the WCAB assess a penalty against Defendant for up
12 to \$2,500.00 for its non-compliance with Lab. Code §5402(c).

13
14 **Count 2**

15 1. On [date] Defendant issued its first temporary disability check, paying
16 benefits from [date] to [date].

17 2. This payment was not made within a reasonable time.

18 3. There was no genuine medical or legal doubt as to Defendant's obligation to
19 pay this compensation.

20 4. This failure to pay properly constituted an unreasonable delay in benefits.
21 Applicant requests an assessment against Defendant of a penalty of up to 25% of
22 the amount delayed or denied.
23
24
25

1 **Count 3**

2 1. On [date], Defendant issued its first temporary disability check, paying
3 benefits from [date] to [date].

4 2. This check did not pay benefits in accordance with Lab. Code §4650(a).

5 3. There was no genuine medical or legal doubt as to Defendant's obligation to
6 pay this compensation.

7 4. This failure to pay properly constituted an unreasonable delay in benefits.
8 Applicant requests an assessment against Defendant of a penalty of up to 25% of
9 the amount delayed or denied.
10

11 **Count 4**

12 1. On [date], Defendant issued its first temporary disability check, paying
13 benefits from [date] to [date].

14 2. This check did not include the penalty assessment as mandated by Lab. Code
15 §4650(d).

16 3. This check did not include interest as mandated by Lab. Code §5800.

17 4. There was no genuine medical or legal doubt as to Defendant's obligation to
18 pay this penalty and interest.
19

20 5. This failure to pay properly constituted an unreasonably delay in benefits.
21 Applicant requests an assessment against Defendant of a penalty of up to 25% of
22 the amount delayed or denied.
23
24
25

1 **Count 5**

2 1. On [date], Applicant was declared permanent and stationary by Dr. [name of
3 physician], who also described permanent impairment(s) and/or permanent
4 disability consisting of [specify the impairment or permanent disability].

5 2. Defendant has not paid any permanent disability advances.

6
7 3. There was no genuine medical or legal doubt as to Defendant's obligation to
8 pay this compensation.

9 4. This failure to pay properly constituted an unreasonable delay in benefits.
10 Applicant requests an assessment against Defendant of a penalty of up to 25% of
11 the amount delayed or denied.

12 **Count 6**

13 1. The earnings of the injured worker were found to be \$ _____
14 per week.

15 2. Pursuant to Lab. Code §4661.5, the injured worker's temporary disability rate
16 as of [enter two-year anniversary date] was [enter current maximum or 2/3 of
17 average weekly wage, whichever is less].

18
19 3. On [date] Defendant issued a temporary disability check incorrectly paying
20 benefits at the rate of \$ _____ per week.

21 4. There was no genuine medical or legal doubt as to Defendant's obligation to
22 pay compensation at the proper rate.

23 5. This failure to pay at the correct rate constituted an unreasonable delay in
24 benefits. Applicant requests an assessment against Defendant of a penalty of up to
25 25% of the amount delayed or denied.

Count 7

1
2 1. At all times pertinent, Dr. [*name of treating physician*] was the authorized
3 treating physician.

4 2. By report of [*date of medical report*], Dr. [*name of treater*] prescribed a
5 _____ . More than fourteen days have elapsed from the physician's
6 written request for authorization and this medical treatment has not been
7 authorized despite the physician's compliance with AD Rules §§9785, 9792.6 et
8 seq. and Lab. Code §4610.

9 3. By report of [*date of medical report*], Dr. [*name of treater*] requested
10 authorization for a referral to [*name of facility or treater*] for _____,
11 or by report of [*date of medical report*], Dr. [*name of treater*] requested
12 authorization to provide treatment. More than fourteen days have elapsed from the
13 written request for authorization and this referral or treatment has not been
14 authorized, thereby resulting in a delay or denial of payment for reasonable and/or
15 necessary self-procured treatment.

16 4. Defendant has not produced any admissible medical report or other evidence
17 indicating that the requested diagnostic study and/or mode of treatment are not
18 reasonable or necessary. Defendant has failed to comply with the utilization review
19 process mandated by Lab. Code §4610 and AD Rules §9792 et seq. The refusal to
20 authorize this treatment constitutes an unreasonable refusal to provide benefits.
21

22 5. Applicant requests an assessment against Defendant of a penalty of up to
23 25% of the amount of treatment denied or delayed.

24 6. Defendant's delay or denial of benefits occurred within two years prior to the
25 date of filing this Petition for Penalties.

1 **Count 8**

2 1. Defendant failed to pay the injured worker the 10% increase in benefits as a
3 self-assessed increase as required by Lab. Code §4650(d) at the time it made the
4 late payment. The benefit remains unpaid.

5 2. The failure to timely pay the Lab. Code §4560(d) amount and the delay in
6 payment of that penalty to the present constitutes an unreasonable delay in the
7 payment of indemnity due the injured worker, entitling _____ [him
8 or her] to a penalty of up to 25% of the amount delayed or denied under Lab. Code
9 §5814.

10 **Count 9**

11 1. A Findings and Award issued herein on [date]. That Findings and Award was
12 final by operation of law as of 25 days after it was issued by the workers'
13 compensation judge. That award required payment of substantial benefits, which
14 were both unpaid and late. The amount of unpaid disability indemnity by
15 Defendant's own calculations, amounts to \$_____.

16 2. Lab. Code §4650(d) provides that if any indemnity payment is not made
17 timely, the amount of the late payment shall be increased 10 percent and shall be
18 paid, without application, to the employee.

19 3. A “good faith” belief on the part of Defendant that the benefits are not
20 payable does not excuse the obligation to pay the Lab. Code §4650(d) penalty
21 when an Award of the Appeals Board requires payment.

22 4. Defendant is liable for up to 25% of the delayed or denied benefits that were
23 previously ordered paid to Applicant.
24
25

1 **Count 10**

2 1. The failure of Defendant to pay the Lab. Code §4650(d) penalty on the
3 delayed permanent disability awarded entitles Applicant to an additional penalty
4 under Lab. Code §5814. As discussed above regarding Count 8, the failure to pay,
5 or the delay in the payment of a Lab. Code §4650(d) penalty gives rise to
6 increasing the benefits in accordance with the provisions of Lab. Code §5814.

7 2. In this case, Applicant's attorney wrote to Defendant's attorney on [*date*], and
8 specifically requested the voluntary payment of the Lab. Code §4650(d) penalty.
9 Defendant has failed to pay the underlying benefits as well as a voluntary self-
10 assessed 10% penalty.

11 3. Applicant is entitled to an assessment against Defendant in a sum up to 25%
12 of the amount of the benefit delayed or denied as well as against the unpaid Lab.
13 Code §4650(d) self-assessed penalty that should have been paid.

14 As to all Counts, this Petition for Penalties was properly served upon
15 Defendant.
16

17 **WHEREFORE, Petitioner prays for penalties to be assessed as follows:**

18 1. A 25-percent penalty, up to \$10,000, whichever is less, against delayed
19 payments alleged in Count 1.

20 2. A 25-percent penalty, up to \$10,000, whichever is less, against delayed
21 payments alleged in Count 2.

22 3. A 25-percent penalty, up to \$10,000, whichever is less, against delayed
23 payments alleged in Count 3.

24 4. A 25-percent penalty, up to \$10,000, whichever is less, against delayed
25 payments alleged in Count 4.

1 5. A 25-percent penalty, up to \$10,000, whichever is less, against delayed
2 payments alleged in Count 5.

3 6. A 25-percent penalty, up to \$10,000, whichever is less, against delayed
4 payments alleged in Count 6.

5 7. A 25-percent penalty, up to \$10,000, whichever is less, against delayed
6 payments alleged in Count 7.

7 8. A 25-percent penalty, up to \$10,000, whichever is less, against delayed
8 payments alleged in Count 8.

9 9. A 25-percent penalty, up to \$10,000, whichever is less, against delayed
10 payments alleged in Count 9.

11 10. A 25-percent penalty, up to \$10,000, whichever is less, against delayed
12 payments alleged in Count 10.

13 11. All other relief under the law.
14

15
16 Respectfully submitted,

17 Dated April 28, 2008

18
19 _____
20 *[Name of Applicant]*
21 *In propria persona*
22 *[Street Address]*
23 *[City, State, Zip Code]*
24 *[Telephone Number]*
25