

## Significant Decision

***New Labor Code § 5814 applies to all claims of unreasonable delay or refusal to pay compensation that were pending as of June 1, 2004.***

*Ann McCarthy v. Workers' Comp. Appeals Board, Best Sanitizers, Inc. et. al.*,  
Court of Appeal, Third Appellate District  
Civil No.: C049516  
Filed January 25, 2006  
135 Cal.App.4<sup>th</sup> 1230; 37 Cal.Rptr.3d 909;  
2006 Cal. App. LEXIS 69; 2006 Daily Journal DAR 989

**Significance:** The Court of Appeal affirmed the Board's en banc decision in *Abney v. Aera Energy* (2004) 69 Cal.Comp.Cases 1552, which held "section 5814, as enacted by SB 899 and operative June 1, 2004, applies to unreasonable delays or refusals to pay compensation that occur prior to the operative date where the finding of unreasonable delay is made after June 1, 2004." (*Id.*, at p 1553.)

**Facts** On April 27, 2001, applicant McCarthy injured her left ankle at work. A dispute arose with the applicant claiming defendants unreasonably denied or delayed medical treatment. Seeking relief, McCarthy filed penalty petitions under former Labor Code § 5814 on May 6, 2002, and May 14, 2004. During the interval between McCarthy's penalty filings, SB 899 was enacted, and became effective on April 19, 2004. SB 899 provided that former Labor Code 5814 would become "inoperative" on June 1, 2004, and was "repealed" as of January 1, 2005. SB 899 also enacted new Labor Code § 5814 which became operative on June 1, 2004.

On September 2, 2004, a hearing was held on the penalty claims. The WCJ determined that former Labor Code § 5814 applied, because the delays occurred before the section became "inoperative." The WCJ's determination was made on December 7, 2004. The next day, December 8, 2004, the Board issued its decision in *Abney*, which held that new Labor Code § 5814 applied to claims filed under former Labor Code § 5814 where the finding of unreasonable delay is made after the June 1, 2004, operative date of the new section. Acknowledging the binding precedent of the Board's en banc decisions, the WCJ issued a new findings, award and order consistent with the holding in *Abney*. After the Board denied her petition for reconsideration, McCarthy petitioned for writ of review contending *Abney* was incorrectly decided, and that the penalties should have been calculated under former Labor Code § 5814. The Court of Appeal granted McCarthy's petition.

Discussion The court interpreted Labor Code § 5814 by focusing on the language of the section, specifically subdivisions (h) and (i), which read:

(h) This section shall apply to all injuries, without regard to whether the injury occurs before, on, or after the operative date of this section.

(i) This section shall become operative on June 1, 2004.

The court also focused on the declaration that SB 899 was urgent legislation. Section 49 of SB 899 provides:

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide relief to the state from the effects of the current workers' compensation crisis at the earliest possible time, it is necessary for this act to take effect immediately.

Based on the foregoing language of Labor Code § 5814, and SB 899 the court applied the rules of statutory construction and concluded that the Board's decision in *Abney* was correct, i.e., "section 5814, as enacted by SB 899 and operative June 1, 2004, applies to unreasonable delays or refusals to pay compensation that occur prior to the operative date where the finding of unreasonable delay is made after June 1, 2004."

The court's opinion can be found at the following web address:  
[http://www.lexis.com/research/retrieve/frames?\\_m=bd89ac16570d7671e00fd9d44ed056ce&csvc=le&cform=byCitation&fmtstr=FULL&docnum=1&startdoc=1&wchp=dGLbVlz-zSkAB&md5=ea23dd8c4e24996c0a567db6ec8e7f3f](http://www.lexis.com/research/retrieve/frames?_m=bd89ac16570d7671e00fd9d44ed056ce&csvc=le&cform=byCitation&fmtstr=FULL&docnum=1&startdoc=1&wchp=dGLbVlz-zSkAB&md5=ea23dd8c4e24996c0a567db6ec8e7f3f)