

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

**MATEO AVILA GARIN, *Applicant***

**vs.**

**WILLIAM M. PERKINS COMPANY, INC.;  
BERKSHIRE HATHAWAY SAN DIEGO, *Defendants***

**Adjudication Number: ADJ11813243  
San Diego District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Order Approving Compromise and Release (OACR) issued by a workers' compensation administrative law judge (WCJ) on April 5, 2024.

Defendant contends that the OACR should be set aside due to newly discovered evidence of an Employment Development Department (EDD) lien for benefits paid from March 5, 2019 to January 19, 2020 while defendant paid temporary disability benefits. When Applicant and Defendant entered into the Compromise & Release (C&R) EDD had not filed their lien in this case nor had EDD filed their lien before the date of submission and when the Workers' Compensation Appeals Board (WCAB) issued the Order. To date, EDD has not filed a lien in this matter.

We did not receive an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the petition be denied.

We have considered the allegations of the defendant's Petition and the contents of the report of the of the WCJ with respect thereto. Based on our review of the record, and for the reasons provided below, we will dismiss defendant's Petition as premature, and return this matter to the trial level for a substantive hearing on the Petition as one to set aside the OACR.

## BACKGROUND

Applicant claimed a specific injury to his left knee patella and low back on December 3, 2018, while employed by defendant as a painter.

On February 5, 2024, a C&R signed by applicant, applicant's attorney, defendant's attorney and two witnesses was filed and served.

On April 5, 2024, the WCJ issued an OACR without holding a hearing.

On April 11, 2024, defendant filed and served a Declaration of Readiness to Proceed (DOR) requesting WCAB assistance with the resolution of an outstanding EDD lien. The date selected for the status conference was May 8, 2024. (DOR, April 11, 2024, p. 7.)

On April 24, 2024, defendant filed and served a Petition To Set Aside Compromise and Release.

In a letter dated April 24, 2024, applicant's attorney requested a continuance for the May 8, 2024, status conference due to a scheduling conflict. On April 25, 2024, the WCJ granted applicant's continuance request and set a status conference for June 5, 2024. (Minutes of Hearing<sup>1</sup>, April 25, 2024.)

On April 30, 2024, defendant filed a Petition for Reconsideration.

## DISCUSSION

“The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.” (Lab. Code, § 5803.4<sup>2</sup>)

We observe that contract principles apply to settlements of workers' compensation disputes. The legal principles governing compromise and release agreements are the same as those governing other contracts. (*Burbank Studios v. Workers' Co. Appeals Bd.* (1982) 134 Cal.App.3d 929, 935.) There can be no contract unless there is a meeting of the minds and the parties mutually agree. (Civ. Code, §§ 1550, 1565; *Sackett v. Starr* (1949) 95 Cal.App.2d 128; *Sieck v. Hall* (1934) 139 Cal.App.279, 291.) Moreover, there is no contract unless the parties agree upon the same thing

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<sup>1</sup> Defendant filed a proof of service listing applicant's attorney as being served with the April 25, 2024, Minutes of Hearing.

<sup>2</sup> All further statutory references are to the Labor Code unless otherwise stated.

in the same sense. (Civ. Code, § 1580; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.) For a compromise and release agreement to be effective, the necessary elements of a contract must exist, including an offer of settlement of a disputed claim by one of the parties and an acceptance by the other. (*Burbank Studios, supra*, at p. 935.) A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful. (Civ. Code, § 1636; *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) The plain language of a contract is the first step in determining the intent of the parties. (Civ. Code, §§ 1638, 1639.)

“The Workers’ Compensation Appeals Board shall inquire into the adequacy of all Compromise and Release agreements and Stipulations with Request for Award, and may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards.” (Cal. Code Regs., tit. 8, § 10700(b).) The Appeals Board’s record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any. . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit 8, §10803.)

A stipulation is ‘An agreement between opposing counsel . . . ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,’ (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves ‘to obviate need for proof or to narrow range of litigable issues’ (Black’s Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding.” (*County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [65 Cal.Comp.Cases 1].) Stipulations are binding on the parties. (*Id.*, at p. 1121.) However, if there is a showing of good cause, the parties may be permitted to withdraw from their stipulations. (*Id.*) Whether “good cause” exists to set aside a settlement depends upon the facts and circumstances of each case. “Good cause” includes mutual mistake of fact, duress, fraud, undue influence, and procedural irregularities. (*Johnson v. Workmen’s Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases 362]; *Santa Maria Bonita School District v. Workers’ Comp. Appeals Bd. (Recinos)* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Workers’ Comp.*

*Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691, 1692 (writ den.); *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp.Cases 311].) To determine whether there is good cause to rescind the awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Labor Code § 5702; *Weatherall, supra*, at pp. 1118-1121; *Robinson v. Workers' Comp. Appeals Bd. (Robinson)* (1987) 194 Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers' Comp. Appeals Bd. (Huston)* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; *Hamilton, supra*, at p. 476; *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622.) “It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, at p. 475.) The WCJ's decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Hamilton, supra*, at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

Additionally, there must be a complete record in order to review the case. “[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision (*Hamilton v. Lockheed Corporation* (2001) 66 Cal. Comp. Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947 (Appeals Board en banc).)

A WCJ's decision must be based on admitted evidence and must be supported by substantial evidence (Lab. Code, §§ 5903, 5952(d); *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) (*Hamilton*); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (*Garza*) (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]). "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, at p. 475.)

The WCJ is "charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at pp. 475-476; see Lab. Code, § 5313 and *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22.) Pursuant to section 5313:

The appeals board or the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made. (Lab. Code, § 5313.)

All parties in workers' compensation proceedings retain their fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805] (*Rucker*).) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, 82 Cal.App.4th at pp. 157-158, citing *Kaiser Co. v. Industrial Acc. Com.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710-712 [57 Cal.Comp.Cases 230].)

Here, the WCJ did not hold a hearing on the C&R and did not have the opportunity to assess whether the parties understood the meaning of the terms in the C&R. Defendant<sup>3</sup> in its Petition for Reconsideration states: “On or about June 12, 2019, defendant Berkshire Hathaway San Francisco (hereinafter DEFENDANT) reached an agreement with EDD for monies owed.” (Petition For Reconsideration, February 5, 20224, 1:26-1:27.) The Petition goes on to state that Defendant was paying Temporary Total Disability Benefits (TTD) to applicant from December 3, 2018 through July 20, 2020, from August 8, 2020 through September 28, 2020 and from June 20, 2020 through September 30, 2022. (Petition For Reconsideration, February 5, 2024, 1:28-2:2.) Defendant contends that on the date it filed the C&R there was no EDD lien filed. (Petition For Reconsideration, February 5, 2024, 2:7.)

Defendant contends that it learned in a later conversation with EDD that EDD had paid out benefits to applicant from March 5, 2019 through January 19, 2020, thus there are both TTD and EDD payments from March 5, 2019 through January 19, 2020. (Petition For Reconsideration, February 5, 2024, 2:9-2:11.) Further, defendant contends that the OACR should be set aside due to newly discovered evidence of EDD’s payment for benefits paid from March 5, 2019 to January 19, 2020 while defendant paid temporary disability benefits. Defendant contends it learned about the EDD Lien for SDI benefits after it filed the C&R on February 5, 2024, and that it notified applicant of EDD’s claim in a letter dated March 5, 2024. A DOR was filed and served by defendant on April 11, 2024, requesting a May 8, 2024 hearing for the WCAB to assist the parties with the outstanding EDD lien. On April 24, 2024, defendant filed a Motion to Set Aside Compromise and Release approved on April 8, 2024<sup>4</sup> or in the alternative, Petition for Reconsideration of the Order Approving Compromise and Release on the grounds of the newly discovered EDD lien. Due to applicant’s attorney’s scheduling conflicts, the hearing date was moved to June 5, 2024. On April 29, 2024, defendant filed a Petition For Reconsideration, before the WCJ could hold a hearing on their Motion to set aside the Compromise and Release. Thus,

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<sup>3</sup> In its pleadings, defendant is referred to as Defendant Berkshire Hathaway San Francisco (hereinafter DEFENDANT) (Petition For Reconsideration, April 30, 2024, 1:26-1:27.) Applicant named defendant Berkshire Hathaway San Diego. (Application For Adjudication, January 3, 2019, p. 8.) The C&R names Berkshire Hathaway San Diego, February 5, 2024, p. 3.) The WCJ should have the defendant clarify its proper name at the next hearing.

<sup>4</sup>Defendant in its Motion to Set Aside the C&R stated that the OACR is dated April 8, 2024, however, this is in error, as the Order issued on April 5, 2024, per the adjudication file in EAMS.

Reconsideration is premature and this matter should be returned to the WCJ for a substantive hearing on the Petition to Set aside the C&R.

Accordingly, we dismiss applicant's Petition as premature, and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, we recommend that the WCJ treat applicant's Petition as a Petition to set aside, including the setting of a hearing so the parties can provide evidence in support of their arguments and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, either party may then timely seek reconsideration of that decision.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**June 27, 2024**

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

**MATEO AVILA GARIN  
SIEGEL MORENO & STETTLER  
LAW OFFICES OF MANUEL RODRIGUEZ**

**DLM/oo**

*I certify that I affixed the official seal of  
the Workers' Compensation Appeals  
Board to this original decision on this  
date. o.o*