

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

**GUADALUPE REYES, *Applicant***

**vs.**

**HACOR INC.; SAFETY NATIONAL INSURANCE CORPORATION  
administered by TRISTAR RISK MANAGEMENT, *Defendants***

**Adjudication Numbers: ADJ12359666; ADJ12359768  
Van Nuys District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.<sup>1</sup> We now issue our Opinion and Decision After Reconsideration.

Applicant seeks removal in response to an Order dismissing ADJ12359666, issued by the workers' compensation administrative law judge (WCJ) on September 20, 2021.

Applicant contends that she did not intend to dismiss ADJ12359666 as part of the settlement in ADJ12359768.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Removal (Report), recommending that we deny the Petition.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed herein, we will vacate our November 28, 2022 Order granting applicant's petition for reconsideration, dismiss applicant's Petition as premature, and return this matter to the trial level for consideration of the Petition as one to set aside.

**BACKGROUND**

We will briefly review the relevant facts and procedural history.

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<sup>1</sup> Commissioner Lowe, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panelist has been assigned.

Applicant filed an Application for Adjudication in ADJ12359768, claiming injury to various body parts while employed by defendant as a food packer on June 17, 2019.

Applicant filed an Application for Adjudication in ADJ12359666, claiming injury to various body parts while employed by defendant as a food packer during the period from July 30, 2018, through June 18, 2019.

On February 6, 2020 and March 23, 2020, orthopedic Qualified Medical Evaluator (QME) Albert Hakimian, M.D., issued reports.

On March 6, 2020, defendant filed a substitution of attorney, appointing CBE Law as counsel for defendant.

On March 9, 2020, applicant filed a Declaration of Readiness (DOR), describing the issue as “Applicant entitled to additional PQME in field of neurology. ....” (DOR, March 9, 2020 p. 7 [original in all-caps].)

On June 1, 2020, the matter came on for hearing. The minutes state:

QME Hakimian reqt'd neuro panel, second panel order to issue upon filing of the two reports by QME Hakimian; diagnostics requested by QME are to be authorized forthwith by defendant.

On June 2, 2020, the WCJ issued a Finding and Order directing the issuance of a panel QME in neurology. The WCJ designated applicant's attorney, JHM Law Office, to serve the Findings and Order, but we note that a proof of service does not appear in the record in the Electronic Adjudication Management System (EAMS).<sup>2</sup>

On July 30, 2020, defendant filed a substitution of attorney, listing both case numbers, and appointing Lewis Brisbois Bisgaard & Smith (Lewis Brisbois) as counsel for defendant. However, Lewis Brisbois is shown in EAMS in ADJ12359768, but not in ADJ12359666.

On December 17, 2020 and March 29, 2021, QME in neurology Martin D. Levine, M.D. issued reports.

On March 29, 2021, applicant filed a DOR, describing the issue as: “Case ready to settle and/or proceed to trial. ....” (DOR, March 29, 2021 p. 7 [original in all-caps].)

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<sup>2</sup> The WCJ designated service of the minutes pursuant to WCAB Rule 10629. However, as a proof of service was not filed, as required by WCAB Rules 10610 and 10625(c), we are unable to determine the date of service. (Cal. Code Regs., tit. 8, §§ 10610, 10625(c).)

On July 13, 2021, the matter came on for hearing. The minutes state: “Parties agree to 15% PD stip based on two PQME combined reports.” ([Original in all-caps].) The WCJ designated defendant to serve the minutes, but a proof of service does not appear in EAMS.<sup>3</sup>

On August 27, 2021, applicant, applicant’s attorney, and a licensed interpreter signed Stipulations with Request for Award (Stipulations). (Stipulations, pp. 9, 11.)

On September 8, 2021, defense counsel signed the Stipulations. (Stipulations, p. 10.)

The parties used the DWC form to draft the Stipulations. Based on the date of injury and case number fields on page one, the parties intended to settle a date of injury of June 17, 2019, in ADJ12359768. (Stipulations, p. 1.)

As pertinent here, the parties stipulated that: in Case Number ADJ12359768, the date of injury is June 17, 2019, and the settled body parts are head and shoulder. In ADJ12359666, the date of injury is from July 30, 2018, through June 18, 2019, and the settled body parts are neck, back, hips, shoulder(s), and “other unclassified body parts.” (Stipulations, ¶ 1, p. 5.)

In the Comments box in Paragraph no. 1, the parties stipulated that applicant sustained injury arising out of and in the course of employment (AOE/COE) as follows:

Body parts included: left shoulder and head only per QME Dr. Hakimian and Dr. Levine.

Applicant hereby dismisses with prejudice any claim for any additional body parts, conditions, and systems not specifically included herein. Applicant stipulates as part of this award that she is entitled to future medical care for his left shoulder and head only, subject to utilization review and treatment within defendant’s medical provider network. Applicant dismisses ADJ12359666 with prejudice.

(Stipulations, ¶ 1, p. 5.)

Paragraph no. 9 states:

1. Settlement is based on the findings of orthopedic QME Dr. Albert Hakimian’s medical legal reporting of 2/6/2020 and 4/5/2020 and neurological QME Dr. Mark Levine’s reports dated 12/17/2020 and 3/29/2021. The orthopedic QME Dr. Hakimian found permanent impairment to applicant’s left shoulder for the 6/17/19 injury only and neurology QME Dr. Levine found permanent impairment for headaches. For the 6/17/2019 injury only. The parties stipulate to a combined rating of 15% PD.

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<sup>3</sup> The WCJ designated service of the minutes pursuant to WCAB Rule 10629. However, as a proof of service was not filed, as required by WCAB Rules 10610 and 10625(c), we are unable to determine the date of service. (Cal. Code Regs., tit. 8, §§ 10610, 10625(c).)

L. Shoulder- 100% (16.02.01.00-4-[8]-1.4-6-360G-7-8) 8% PD  
Head - 100% (13.07.04.00-5-[8]-7-360F-7-8%) 8% PD  
CVC: 15% PD

2. **Applicant stipulates to dismiss with prejudice any and all claims of injury unrelated to her injuries to her 6/17/2019 injury and claims of injury to her neck, right shoulder, waist, and hips.** Applicant dismisses the CT claim of 7/30/2018-6/18/2019 ADJ12359666, per the findings outlined by the QME Hakimian and QME Levine.

3. Applicant stipulates to seek medical treatment for these injuries within the MPN of Hacor /Tristar, should there be a need for future medical care. All medical treatment requests are subject to utilization review/ IMR.

4. Settlement resolves all issues of retroactive TTD, TPD, PD, and all out of pocket costs, medical mileage, penalties and interest as of the date of service of the order approving this Award.

5. Applicant is not a qualified injured worker, and has obtained subsequent employment as a janitor at the Getty Center Museum.

6. Defendants assert credit for permanent disability advances paid through the date of Order Approving this Award if any.

7. Applicant to be issued the retroactive balance of the PD Award payable from 6/31/2020 through the present, less attorney fees, within 30 days of the service of the order approving this stipulated award.

8. All future disputes regarding new and further disability to be addressed by QME medical legal examiners, Dr. Hakimian and Dr. Levine, or a replacement QME if necessary.

(Stipulations, ¶ 9, p. 8, emphasis added [original in all-caps].)

On September 16, 2021, Lewis Brisbois submitted the signed Stipulations to the WCJ for approval by way of e-filing and served on the parties by way of regular mail.

On September 16, 2021, the WCJ approved the Stipulations in ADJ12359768. On September 20, 2021, service of the Award was designated to CBE Law Group (former attorneys for defendant). Although the Stipulations appear in FileNet in ADJ12359768 and ADJ12359666, the Award only appears in ADJ12359768. There is no proof of service of the Award in the record.

On September 16, 2021, the WCJ signed an Order dismissing ADJ12359666, and the Order was served on September 20, 2021 by the WCAB. According to the Proof of Service in

Communications in EAMS, CBE Law Group was served; Lewis Brisbois not on the Proof of Service. The Order dismissing ADJ12359666 only appears in FileNet in ADJ12359666.

On September 27, 2021, applicant filed a DOR for an expedited hearing in ADJ12359768 and ADJ12359666, stating:

Dear Judge Devine, we would like to request an emergency stay on the stipulations and request for award that was recently filed with the WCAB. There has been a mistake/misrepresentation. Applicant withdraws here (sic) request for stipulation until this matter is resolved.

Please reopen the case that was dismissed on 09/16/2021, ADJ12359666, because, since we are withdrawing our stipulation, 'prior to it being issued', the dismissal is also null/void.

(DOR, September 27, 2021, p. 7 [original in all-caps].)

On October 25, 2021, the matter proceeded to a telephonic status conference. According to the minutes, the matter was ordered taken off calendar (OTOC) at the conclusion of the conference. The full minutes are as follows:

Parties convened virtually today on WCJ's AT&T line and discuss issues as per AA's DOR filed 9/27/21 and defendant's Objection filed 10/6/21.

The Court asks if parties have had an opportunity to discuss these issues before today; AA states he has emailed defendant multiple times but has received no reply. Defendant responds saying she is not inclined to respond based on the assertions levied by counsel.

To that end, AA states he told defendants after case ADJ12359768 was settled, he would be obtaining a panel on the CT. He felt defendants unfairly attempted to dismiss the CT without his knowledge - he did not agree to it. Defendants disagree: dismissal of the CT is in the plain language of the settlement (paragraph 2) and the medical evidence supports there is no CT.

Today AA confirms having received service of the Dismissal of the CT (ADJ12359666) but states he never received service of the Award issued on ADJ12359768. He filed the emergency stay being unaware an Award issued. Defendant states she served the Award despite the Court having served it to CBE Law (prior defense counsel). She obtained it from FileNet. The Court does not find POS filed in EAMS per 10629. AA advises as of today, he still does not have the Award, and had contacted defendant to discuss the Dismissal, but did not receive a response.

Today (10/25/21) WCJ Croft serves - by email to both parties - the Award signed by WCJ Devine from ADJ12359768 and the Dismissal signed by WCJ

Devine from ADJ12359666. WCJ Croft discusses these issues with APJ Seymour who orders the case OTOC suggesting the remedies of Petition for Reconsideration / Petition to Set-Aside, both of which would then re-set the case back with WCJ Devine.

(Minutes, October 25, 2021 status conference, p. 2.)

On October 27, 2021, applicant filed this Petition for Removal.

### DISCUSSION

As a preliminary matter, if a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Bd. en banc).) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, the following: injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Here, the underlying order of dismissal in ADJ12359666 determines a “threshold” issue, e.g., that applicant’s claim for benefits is foreclosed. Thus we will treat applicant’s petition as one for reconsideration.

We observe that contract principles apply to settlements of workers’ compensation disputes. The legal principles governing compromise and release agreements, and by extension, stipulations with request for award, are the same as those governing other contracts. (*Burbank Studios v. Workers’ Co. Appeals Bd.* (1982) 134 Cal.App.3d 929, 935.) 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. (*Id.*) 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 in the same sense. (Civ. Code, § 1580; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.) 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].)

“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 unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*Weatherall, supra*, at 1121.)

“Good cause” to set aside an order or stipulations 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]; *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 awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Labor Code § 5702; *Weatherall, supra*, 1118-1121; *Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].)

We note that while the parties may stipulate to the facts in controversy, the WCJ is not bound by the parties’ stipulations and may make further inquiry into the matter “to enable it to determine the matter in controversy.” (Lab. Code, § 5702; see also *Weatherall, supra*, at 1119; *Turner Gas Co. v. Workers' Comp. Appeals Bd. (Kinney)* (1975) 47 Cal.App.3d 286 [40 Cal.Comp.Cases 253].)

Moreover, “[t]he 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).)

This inquiry should carry out the legislative objective of safeguarding the injured worker from entering into unfortunate or improvident releases as a result of, for instance, economic pressure or lack of competent advice. (*Claxton v. Waters* (2004) 34 Cal.4th 367, 373 [69 Cal.Comp.Cases 895]; *Sumner v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 965, 972-973.) The worker's knowledge of and intent to release particular benefits must be established separately from the standard release language of the form. (*Claxton, supra*, at 373.)

Here, applicant's attorney contends that he did not intend to dismiss ADJ12359666, stating that his "office mistook this ADJ number for the other ADJ number, ADJ12359768." (Minutes, October 25, 2021, p. 2; Petition, p. 2.) Moreover, our preliminary review indicates that the settlement document is ambiguous as to what applicant is dismissing.

For example, Paragraph no. 9 states that applicant "stipulates to dismiss with prejudice any and all claims of injury unrelated to ... claims of injury to her **neck, right shoulder, waist, and hips**." (Stipulations with Request for Award, ¶ 9, p. 8, emphasis added.) The body parts included in the settlement of ADJ12359768 are head and left shoulder, whereas the injured body parts in ADJ12359666 are **neck**, back, hips, **shoulder(s)**, and "other unclassified body parts." Because ADJ12359666 includes the body parts of neck and shoulder(s), this could be interpreted to mean that applicant stipulates to dismiss other body parts, e.g., back and hips, but not necessarily the entire claim of ADJ12359666. In addition, the first page of the Stipulations only lists ADJ12359768 and is silent as to ADJ12359666; and yet, the two cases are then listed in Paragraph one on page five. We also note that there appears to be multiple discrepancies with respect to service, which caused further confusion to the parties.

It is the policy of the law to favor, whenever possible, a hearing on the merits. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478, "when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.") This is particularly true in workers' compensation cases, where there is a constitutional mandate "to accomplish substantial justice in all cases." (Cal. Const., art. XIV, § 4.)

WCAB Rule 10517 states that "pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof." (Cal. Code Regs., tit. 8, § 10517.) This Rule represents the application of California's public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings. Informality of pleading in proceedings before the Board has long been recognized, and courts have repeatedly rejected pleading technicalities as



grounds for depriving the Board of jurisdiction. (*McGee Street Productions v. Workers' Comp. Appeals Bd.* (2003) 108 Cal.App.4th 717, 724 [68 Cal.Comp.Cases 708]; *Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200-201 [50 Cal.Comp.Cases 160]; *Liberty Mutual Ins. Co. v. Workers' Comp. Appeals Bd.* (1980) 109 Cal.App.3d 148, 152-153 [45 Cal.Comp.Cases 866].)

All parties to a workers' compensation proceeding retain the 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].) 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*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (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 [57 Cal.Comp.Cases 230].)

Based on our review of the record before us, when applicant filed the DOR on the September 27, 2021, seeking to set-aside the order of dismissal, the WCJ should have treated it as a petition to set-aside the order of dismissal and provided applicant the opportunity present evidence. It is not entirely clear what issues were framed, narrowed, and/or adjudicated at the October 25, 2021 hearing, if any, and the minutes are silent as to what evidence was considered. The minutes state that the WCJ discussed the issues with the presiding judge and that the presiding judge "orders the case OTOC suggesting the remedies of Petition for Reconsideration / Petition to Set-Aside ...." (October 25, 2021 minutes, p. 2.) Following the hearing on October 25, 2021, the WCJ should have created a record and issued a decision. (Lab. Code, § 5313; Cal. Code Regs., tit. 8, §§ 10745, 10758, 10787.) Even where the disposition is an order taking the matter off calendar or a continuance, the WCJ should issue an MOH/SOE containing the reasons for the order taking the matter off calendar. (Cal. Code Regs., tit. 8, § 10787(c)(4).)

Accordingly, we vacate our November 28, 2022 Order granting applicant's petition for reconsideration, dismiss applicant's Petition as premature, and return this matter to the trial level for consideration of the Petition as one to set aside.

For the foregoing reasons,

**IT IS ORDERED** as the Decision after Reconsideration of the Workers' Compensation Appeals Board that our November 28, 2022 Opinion and Order Granting Petition for Reconsideration is **VACATED**.

**IT IS FURTHER ORDERED** that applicant's Petition for Removal is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**September 30, 2024**

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

**GUADALUPE REYES  
JOHN MARDOYAN LAW OFFICE  
LEWIS BRISBOIS BISGAARD & SMITH**

**JB/pm**

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