

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

JOSE MARTINEZ GUERRA, *Applicant*

vs.

**NMG HOLDING COMPANY INC DE;
LIBERTY MUTUAL INSURANCE, *Defendants***

**Adjudication Number: ADJ18204962
Oakland District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Defendant seeks reconsideration of the Award issued by the workers' compensation administrative law judge (WCJ) on July 22, 2024. In the Award, the WCJ made findings on temporary disability indemnity, permanent disability indemnity, attorney fees, liens, further medical treatment, and reimbursement for medical-legal expenses, by way of reference to a Stipulations with Request for Award (Stipulations).

Defendant contends that the Award is not valid because defendant did not sign the Stipulations and as such, there was no mutuality of intent.

We have not received 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 in the Petition and the contents of the Report with respect thereto.

Based on our review of the record, and as discussed below, we will grant defendant's Petition for Reconsideration, rescind the Award issued by the WCJ on July 22, 2024, and return the matter to the trial level for further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts.

On September 12, 2023, applicant filed an Application for Adjudication, claiming injury to the lower extremities while employed by defendant as a food server on July 1, 2023.

On April 26, 2024, applicant filed a declaration of readiness (DOR), requesting a mandatory settlement conference (MSC). The disputed issue was identified as:

Defendant has not responded to applicant's demand dated 2/21/24 and 3/13/24.
WCAB intervention requested.

(April 26, 2024 DOR, p. 7.)

On June 6, 2024, applicant's attorney appeared for an MSC. Per the minutes that issued on June 10, 2024, defendant was not present at the hearing. The minutes state:

AA to submit Stipulations with award of 0% PD, TD from 7/5/23 to 1/22/24 and future medical. Defendant to pay or adjust applicant's out-of-pocket medical costs. A notice of intent to approve will issue upon receipt of the Stipulations.

On June 19, 2024, applicant submitted the Stipulations for approval by the WCJ. The document was not signed by defendant.

On June 24, 2024, the WCJ issued a Notice of Intent to accept applicant's proposed Stipulations.

On July 22, 2024, the WCJ issued an Award, which included findings on temporary disability indemnity, permanent disability indemnity, attorney fees, liens, further medical treatment, and reimbursement for medical-legal expenses based on the Stipulations.

On July 26, 2024, defendant filed a notice of representation and a petition to set aside the Award.

On August 9, 2024, defendant filed a Petition for Reconsideration.

DISCUSSION

I.

Former Labor Code section¹ 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on September 17, 2024, and 60 days from the date of transmission is Saturday, November 16, 2024. The next business day that is 60 days from the date of transmission is Monday, November 18, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, November 18, 2024, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are

¹ All statutory references are to the Labor Code unless otherwise stated.

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on August 15, 2024, and the case was transmitted to the Appeals Board on September 17, 2024. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on September 17, 2024.

II.

Stipulations are designed to expedite trials and hearings and their use in workers' compensation cases should be encouraged. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1120 [65 Cal.Comp.Cases 1].) 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.” (*Id.*, at 1118.)

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. (Yount)* (1982) 134 Cal.App.3d 929, 935 [47 Cal.Comp.Cases 832].) For a settlement 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.*) The essential elements of contract include the mutual consent of the parties and there can be no contract unless there is a meeting of the minds and the parties mutually agree upon the same thing. (Civ. Code, §§ 1550, 1565, 1580; *Sackett v. Starr* (1949) 95 Cal.App.2d 128, 133; *Sieck v. Hall* (1934) 139 Cal.App. 279, 291; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.)

“An approved workers’ compensation compromise and release rests upon a higher plane than a private contractual release; it is a judgment, with the same force and effect as an award made after a full hearing.” (*Smith v. Workers’ Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1169 [50 Cal.Comp.Cases 311] (writ den.), internal citations and quotations omitted.)

Here, applicant submitted Stipulations with Request for Award, which was not signed by defendant. Given the lack of signature by defendant, there is no evidence of an agreement, much less a meeting of the minds. As there was no meeting of the minds, e.g., no stipulations, there was no contract, and no basis for the issuance of the Award, rendering the Award void ab initio.

The WCJ’s emphasis on defendant’s failure to object to applicant’s April 26, 2024 DOR is misplaced, as is the WCJ’s reliance on defendant’s failure to object to the Notice of Intent within fifteen (15) days. When the WCJ issued the Notice of Intent on June 24, 2024, defendant still had not appeared in the case. Similarly, when the WCJ issued the Award on July 22, 2024, defendant had not appeared in the case.

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].) “Due process requires notice and a meaningful opportunity to present evidence in regards to the issues.” (*Rea v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers’ Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) 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. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 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].)

Labor Code section 5702 states that:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

If the two parties do not agree, there is no stipulation. If there is no stipulation, the WCJ has no authority to make an Award. More significantly, approving an unsigned Stipulations with no appearance in the case by defendant is a fundamental violation of defendant's right to due process.

Accordingly, we grant defendant's Petition, rescind the July 22, 2024 Findings and Award, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Award issued by the WCJ on July 22, 2024 is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 18, 2024

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

**JOSE MARTINEZ GUERRA
JOHN HILL
AMARO BALDWIN LLP**

JB/pm

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