

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

JUAN MORALES, *Applicant*

vs.

SA RECYCLING, administered by CORVEL CORPORATION, *Defendants*

**Adjudication Number: ADJ15769399
Bakersfield District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the Order Approving (Order) a Stipulation and Award and/or Order (Stipulation), issued by the workers' compensation administrative law judge (WCJ) on July 9, 2024, wherein the WCJ approved the Stipulation wherein the parties stipulated to: payment of temporary disability indemnity and attorney fees for the period from May 6, 2024 to July 22, 2024 and that applicant's attorneys withdraws their petition for penalties; and that "EDD is being resolved in a separate agreement." It ended with the statement that: "With these *two* agreements, 104 weeks of temporary disability indemnity are exhausted. (Emphasis added.)"

The crux of applicant's contention appears to be that the parties did not mutually agree when they entered into the settlement agreement because with respect to the second agreement, if they had known that defendant resolved the \$42,172.00 EDD lien for \$9,578.67, applicant would not have stipulated that applicant's 104 weeks of temporary disability indemnity was exhausted. Applicant seeks to have the Stipulation set aside, or alternatively requests that the language: "With these two agreements, 104 weeks of temporary disability indemnity are exhausted" be struck from the Stipulation.

We have not received an Answer from defendant.

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 dismiss the Petition as premature, and return this matter to the WCJ for consideration of the Petition as one to set aside the Stipulation.

BACKGROUND

On or about February 8, 2022, applicant filed an Application for Adjudication, claiming injury to various body parts while employed by defendant as a welder on December 14, 2021.

On May 24, 2024, applicant filed a Declaration of Readiness (DOR) to proceed to an expedited hearing, identifying the disputed issue as follows:

Applicant had back surgery on 05/06/2024 and he is TTD and he is entitled to TTD benefits. A demand for benefits reinstatement was made on emails dated 05/10/2024 and 05/15/2024; a fax transmittal was sent on 05/20/2024. Defendant has failed to respond.

Board assistance requested.

(Original in all-caps.)

On May 29, 2024, the State of California Employment Development Department (EDD) filed a Notice and Request for Allowance of Lien. Below the proof of service, the following is written:

WBA \$811

261 days at \$115.8571 per day from 06/09/2022 - 02/24/2023

103 days at \$115.8571 per day from 12/05/2023 - 03/16/2024

Total \$42172

(Original in all-caps.)

On June 28, 2024, applicant filed a petition for penalties, sanctions and attorney fees.

On July 9, 2024, the matter came on for hearing. Although the minutes are not entirely clear on the appearances, applicant, applicant's attorney, defendant, and a hearing representative for EDD were present for the hearing. The matter was ordered off calendar and the minutes state:

Issues of retroactive temporary disability and EDD lien resolved by separate stipulation(s) and order(s).

(Original in all-caps.)

On July 9, 2024, the WCJ issued a Stipulation and Order, as between EDD and defendant, to resolve the \$42,172.00 EDD lien for \$9,578.67, in full satisfaction of the EDD lien.

On July 9, 2024, the WCJ issued a Stipulation and Award and/or Order, as between applicant and defendant, which states:

Defendant to retroactively issue temporary disability for the period beginning May 6, 2024, through July 22, 2024 at the rate of \$975. per week, for a total of \$10,870.86. \$1,630.62 to be withheld for attorney fees.
Berry, Smith + Bartell withdraws its Petition for penalties.

EDD is being resolved in a separate agreement.

With these two agreements, 104 weeks of temporary disability indemnity are exhausted.

(Original in all-caps.)

DISCUSSION

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.”

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

Here, according to Events, the case was transmitted to the Appeals Board on August 1, 2024, and 60 days from the date of transmission is September 30, 2024. This decision is issued by or on September 30, 2024, so that we have timely acted on the petition as required by section 5909(a).

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

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on August 1, 2024, and the case was transmitted to the Appeals Board on August 1, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 1, 2024.

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.) 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.*)

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 in the same sense. (Civ. Code, §§ 1550, 1565, 1580; *Sackett v. Starr* (1949) 95 Cal.App.2d 128; *Sieck v. Hall* (1934) 139 Cal.App. 279, 291; *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; *TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, 27

(*TRB Investments*); *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, it appears that applicant received disability payments from EDD for the periods from June 9, 2022 to February 24, 2023 (261 days) and December 5, 2023 to March 16, 2024 (103 days). According to the Stipulation, defendant was to pay temporary disability indemnity for the period from May 6, 2024, through July 22, 2024 (approximately 11 weeks). Based on the limited record before us, applicant would have received 63 weeks of disability payments at most. The Petition contends that payments by EDD to an applicant only satisfy the obligation to pay temporary disability indemnity where defendant reimburses EDD for the days that were paid. Because the amount paid by defendant to EDD in their stipulation was less than 25% of the amount EDD paid, it cannot represent payment for 365 days of temporary disability. In addition, the Petition alleges that even if defendant can show that applicant is not entitled to 104 weeks of payment, the statutory limit of 104 weeks was not exhausted so that the phrase “With these two agreements, 104 weeks of temporary disability indemnity are exhausted” is legally incorrect and should be struck.

The WCJ’s decision “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*).) 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; *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621.) 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 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

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].)

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].)

When applicant filed the Petition for Reconsideration seeking to set aside the Stipulation, the WCJ could have vacated the Order, set the Petition for hearing as a petition to set aside the Stipulation, and provided all parties with an opportunity present evidence as to adequacy of the Stipulation and address any allegations of fraud or misrepresentation between the parties, and then issued a decision. (Lab. Code, § 5313; Cal. Code Regs., tit. 8, §§ 10750, 10758, 10832.)

The Appeals Board’s record of proceedings is maintained in the adjudication file and includes: the pleadings, minutes of hearing, summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits identified 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.) Here, no evidence has been admitted to the record.

In the absence of an evidentiary record, we must return this matter to the trial level for further proceedings. We caution applicant’s attorney that attaching documents to a petition that have not been admitted into evidence is a violation of WCAB Rule 10945. (Cal. Code Regs., tit. 8, § 10945(c)(1)-(2).) “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.)

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 the Petition as a petition to set aside and set a hearing so that applicant can provide evidence in support of his arguments and create a record upon which a decision can be made by the WCJ.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, 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.

**JUAN MORALES
J SMITH LAW
BERRY SMITH & BARTELL
HITZKE FERRAN**

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*