WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIA RODRIGUEZ, *Applicant*

vs.

GENESIS HC WASHINGTON CENTER; AIG INSURANCE, adjusted by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ12739899
San Jose District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the April 12, 2024 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) denied applicant's Petition for Penalties/Enforcement. The WCJ determined that notwithstanding the Compromise and Release agreement stating defendant advanced no permanent disability to applicant, defendant permissibly deducted a credit for $18,270 in permanent disability advances from the net proceeds of the settlement agreement.

Applicant contends that any errors in the Compromise and Release were unilateral on the part of the defendant, and that ambiguities in the language of the settlement document should be construed against the defendant.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant applicant's Petition, rescind the F&O, and substitute new Findings of Fact that defendant is not entitled to

credit for permanent disability advances, grant applicant's January 12, 2024 Petition for Penalties/Enforcement, find that defendant is liable for the remaining amount of payment of $55,000 based on the OACR of November 16, 2023, together with amounts owing pursuant to Labor Code[1] section 4650(d) and interest pursuant to section 5800, and defer the issue of penalties pursuant to sections 5814 and 5814.5.

I.

Applicant claimed injury to her low back while employed as a Certified Nursing Assistant (CNA) by defendant Genesis HC Washington Center Health Care on October 22, 2019.

On or about November 6, 2023, the parties entered a Compromise and Release (C&R) agreement, resolving the case in chief. Paragraph Six of the agreement describes indemnity previously paid on the claim, including temporary disability indemnity in the amount of $18,037. The amount of permanent disability indemnity advances is listed as "0." Paragraph Seven of the document notes a gross settlement amount of $55,000, with a deduction for attorney fees of $8,250. There is no figure listed for permanent disability advances (PDAs). Paragraph Nine contains additional comments, including the statement that "Defendant to receive credit for all PD advances, subject to proof."

On November 16, 2023, the WCJ issued an Order Approving Compromise and Release (OACR), in which it is noted that the parties had filed a proposed settlement in the amount of $55,000, and that the settlement was payable "forthwith to the applicant in one lump sum, less credit to defendants for permanent disability in the sum of $-0- and otherwise to be adjusted by the parties for continuing payments and/or as set forth in the Compromise and Release, and with jurisdiction reserved, less $8,250.00 payable to The Law Offices of Noel Hibbard as a reasonable attorney's fee."

On January 12, 2024, applicant filed a Petition for Penalties seeking enforcement of the C&R, penalties pursuant to Labor Code section 5814, attorney fees pursuant to section 5814.5, and statutory interest pursuant to section 5800. Applicant alleged that notwithstanding the terms of both the C&R and the OACR which stated that defendant was seeking credit for zero dollars in

[1] All further references are to the Labor Code unless otherwise noted.

PDAs, defendant had nonetheless issued a settlement check that reflected credit for $18,270 in PDAs. (Petition for Penalties, dated January 12, 2024, at p. 2:13.)

On April 4, 2024, the parties proceeded to trial on the sole issue of applicant's Petition for Penalties.

On April 12, 2024, the WCJ issued her F&O, denying applicant's Petition for Penalties. The WCJ noted that it was undisputed that applicant actually received the PDAs in question, and that any omission of the PDAs from the settlement documents was the result of mutual mistake. (Finding of Fact No. 15; Opinion on Decision, at p. 5.)

II.

In *Camacho v. Target Corp*. (2018) 24 Cal.App.5th 291 [83 Cal.Comp.Cases 1014], the Court observed that:

> Given the more informal nature of workers' compensation proceedings, there are certain safeguards in place to protect workers from unknowingly releasing their rights. For example, "[t]o safeguard the injured worker from entering into unfortunate or improvident releases as a result of, for instance, economic pressure or bad advice, the worker's knowledge of and intent to release particular benefits must be established separately from the standard release language of the form. [Citation.]" (*Ibid.*) Further, "[e]ven with respect to claims within the workers' compensation system, execution of the form does not release certain claims unless specific findings are made. [Citations.]" (*Ibid*.)
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> The board or referee must inquire into the fairness and adequacy of a settlement and may set the matter for hearing to take evidence when necessary to determine whether to approve the settlement. (*Id*. at p. 181; Cal. Code Regs., tit. 8, §§ 10870, 10882[2].) "These safeguards against improvident releases place a workmen's compensation release 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.' [Citation.]" (*Johnson v. Workmen's Comp. App. Bd*. (1970) 2 Cal.3d 964, 973 [88 Cal.Rptr. 202, 471 P.2d 1002]; see also *Steller*, at p. 181.)

(*Camacho, supra*, at pp. 301-302.)

Here, the WCJ reviewed the C&R, and issued the OACR wherein she found that defendant was to issue payment of $55,000 to applicant, "less credit to defendant for permanent disability in

[2] Effective January 1, 2020, WCAB Rules 10870 and 10882 are now WCAB Rule 10700.

the sum of **$-0-** and otherwise to be adjusted by the parties for ***continuing*** payments. (Emphasis added.)" In her decision, she found that defendant "did represent that there were no permanent disability advances in November 2023." Yet, defendant now claims ***past*** permanent disability advances of $18,270 in 2021 and 2022, and not zero, despite the specific words of the C&R stating that advances are zero. If, despite defendant's representation at the time of approval, the WCJ had a concern as to whether advances were actually previously made, the time to clarify this issue of adequacy was ***before*** she approved the C&R, ***not after***. In other words, a consideration of adequacy is based on the actual amount an injured worker will receive, and here, when the WCJ subsequently altered the actual amount that applicant will receive, in contravention of her OACR, the sufficiency of her review as to adequacy at the time of approval is called into question.

As stated in *Camacho, supra*:

> We interpret a release or settlement agreement under the same rules of construction that apply to contracts generally. (Civ. Code, § 1635; *Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 524 [117 Cal. Rptr. 2d 220, 41 P.3d 46].) We interpret a contract to give effect to the mutual intention of the parties at the time they formed the contract. (Civ. Code, § 1636; *Hess*, at p. 524.) We discern the parties' intention based on the written contract alone, if possible, but may also consider the circumstances under which the contract was made and its subject matter. (Civ. Code, §§ 1639, 1647; *Hess*, at p. 524.) We consider the contract as a whole, and interpret contested provisions in their context, not in isolation, with the aim of giving effect to all provisions, if doing so is reasonably possible. (Civ. Code, § 1641; *People v. Doolin* (2009) 45 Cal.4th 390, 413, fn. 17 [87 Cal. Rptr. 3d 209, 198 P.3d 11]; *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 473 [80 Cal. Rptr. 2d 329] ["Courts must interpret contractual language in a manner which gives force and effect to *every* provision, and not in a way [that] renders some clauses nugatory, inoperative or meaningless"].)

(*Camacho, supra*, at p. 306.)

Here, the specific language of the C&R states that permanent disability advances are "0" and the WCJ issued the OACR, finding that permanent disability advances are "-0-". Thus, based on the clear language of the OACR and based on the clear language of the agreement, defendant is not entitled to permanent disability advances for amounts paid in 2021 and 2022, before the execution of the agreement.

In *Quintanilla v. Tarzana Five-Four Corners Investment* (June 19, 2018, ADJ9615369, ADJ9615370, ADJ10928806) [2018 Cal. Wrk. Comp. P.D. LEXIS 293], the parties entered into a

settlement agreement by way of C&R. The agreement provided for deduction of attorney fees, but no credits to defendant for permanent disability advances. Following the issuance of an Order Approving on April 3, 2018, defendant petitioned for reconsideration averring bilateral mistake in the omission of credit for permanent disability advances in the amount of $5,913.87. A panel of the WCAB concluded there had been no mutual mistake of fact from which defendant could claim relief. The panel observed that the C&R contained no reference to credit for permanent disability advances, explicitly stated that the amount of permanent disability paid was zero and struck out the dates for any permanent disability paid. (*Id.* at pp. 7-8.) Accordingly, the panel determined there had been no mutual mistake of fact.

The panel also evaluated whether the evidence supported relief under an assertion of a unilateral mistake of fact:

> Rescinding a contract due to unilateral mistake of fact is an affirmative burden, (See Civ. Code, §§ 1567, 1568, 1577; *Architects & Contractors Estimating Service, Inc. v. Smith* (1985) 164 Cal.App.3d 1001, 1007–1008, 211 Cal. Rptr. 45; BAJI No. 330.) The party seeking to rescind the contract must prove that (1) the party was mistaken as to a material fact, (2) the opposing party knew of the mistake and used it to his advantage, (3) the mistake was not caused by the neglect of a legal duty on the party making the mistake, and (4) that the party would not have entered into the contract had it known of the mistake. (*Id.*) "Failure to make reasonable inquiry to ascertain or effort to understand the meaning and content of the contract upon which one relies constitutes neglect of a legal duty such as will preclude recovery for unilateral mistake of fact." (*Wal-Noon Corporation v. Hill* (1975) 45 Cal.App.3d 605, 615, 119 Cal. Rptr. 646.)
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> Here, pursuant to the discussion above, there is no evidence in the record that applicant understood the settlement terms to include a $ 5,913.87 credit in favor of defendant for permanent disability advances. Even assuming that applicant knew that defendant had mistakenly failed to include the credit within the C&R, applicant still could not have used that knowledge to her advantage. The record indicates applicant did not appear at the walk-through hearing, and thus could not have presented any materials known to have omitted terms to the WCJ in order to obtain the Order Approving.
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> Furthermore, a party seeking to be relieved from a unilateral mistake must show that the mistake was not caused by its own neglect of a legal duty. Defendant has offered no evidence, and we see none in the record, that the omission of the $ 5,913.87 credit from the C&R and from the Order Approving was not the result of defendant's neglect of a legal duty. If, as defendant contends, the terms of the settlement agreement should have included the credit, then defendant had a legal duty to ascertain whether those terms were in fact included in the C&R. Instead

> of doing so, defendant signed the C&R and presented it for approval to the WCJ. This failure to ascertain the meaning and content of the C&R was a unilateral mistake from which we can discern no good cause to relieve defendant.
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> (*Id.* at pp. 8-9.)

In similar fashion, defendant in the present matter knew or should have known of the permanent disability advances it had previously made to applicant. However, in drafting the settlement documents, defendant specifically disclaimed any advances at both paragraphs six and seven of the C&R agreement. Moreover, defendant has not presented any evidence that applicant understood that the settlement terms included credit for permanent disability advances. Additionally, we discern no evidence to support an assertion that the omission of the amount of the PDAs in this matter was not a matter of defendant's neglect of a legal duty. Accordingly, we are persuaded that there has been no mutual mistake of fact, nor is there a basis for defendant to seek relief under a theory of excusable unilateral mistake.

We reached a similar conclusion in *Olton v. Workers' Comp. Appeals Bd.* (1991) 56 Cal.Comp.Cases 141 [1991 Cal. Wrk. Comp. LEXIS 2439] (writ den.) (*Olton*), even when the C&R contained ambiguous terms concerning permanent disability advances. Therein, the parties entered into a C&R agreement which on one page stated that no permanent disability had been paid, but in an addendum also stated that credit could be taken "for all PD advanced, if any." Following approval of the settlement, defendant issued a check that reflected credit for PDAs. Applicant filed a petition for penalties, and the WCJ found the district liable for the entire amount of the settlement without credit for PDAs, along with attorney fees and penalties. A panel of the WCAB agreed, noting that the specific language stating there were no permanent disability advances controlled over the non-specific "boilerplate" clause stating that credit could be taken for permanent disability advances, "if any." (*Id.* at p. 142.) The Second District Court of Appeal denied defendant's subsequent Petition for Writ of Review.

And in *May Dept. Stores Co. v. Workers Comp. Appeals Bd.* (Brown) (1998) 64 Cal.Comp.Cases 107 [1998 Cal. Wrk. Comp. LEXIS 4198] (writ den.) (*Brown*), the parties entered into a settlement agreement that contained competing interlineations added by counsel for applicant and defendant regarding the amounts of disability advances for which defendant would be entitled to credit. Although the settlement document itself was not a model of clarity, the OACR was specific, and allowed credit only for advances made *after* February 3, 1997. The OACR did

not include approximately $5,237.99 in PDAs paid prior to that date. Following approval of the settlement, defendant issued a check that reflected credit for PDAs in the amount of $5,623.99 including advances made prior to February 3, 1997. Applicant filed a petition for penalties, and again a WCJ found that the defendant had underpaid the settlement agreement in the amount of $5,327.99. Following defendant's Petition for Reconsideration, we affirmed the WCJ's decision, noting "even if the C&R were ambiguous, the OACR was not, since it clearly stated that the settlement amount [] was to be less an attorney's fee of $2,475 and 'less advances made per proof after 2/3/97.'" (*Brown, supra*, at p. 109.) In addition, defendant failed to timely seek reconsideration of the OACR.

Here, defendant drafted the C&R agreement, and stated in both paragraphs six and seven that it had advanced no permanent disability to applicant. While the additional comments in paragraph nine indicate that defendant was to take credit for permanent disability advances, "if any," we are persuaded that the more specific statements made by defendant in paragraphs six and seven control over the non-specific catch-all statement in paragraph nine. (*Olton, supra*, at p. 142.)

We further note that despite any ambiguities in the language underlying the C&R, the WCJ's OACR provides for credit to defendants for permanent disability in the sum of zero dollars, and as was the case in *Brown, supra*, 64 Cal.Comp.Cases 107, defendant did not timely petition for reconsideration of the Order Approving.

We are thus persuaded that any ambiguities in the language of the settlement agreement were not the result of bilateral mistake, and that defendant has not established a basis for relief under a theory of excusable unilateral mistake. We are further persuaded that any ambiguities in the C&R should be imputed against defendant as the party drafting the agreement. We further observe that even if the settlement agreement itself contained potentially ambiguous language, the OACR allows defendant zero dollars of credit for disability advances, and that defendant failed to timely seek reconsideration of the OACR.

Accordingly, we will grant applicant's Petition, rescind the F&O, and substitute Findings of Fact that defendant is not entitled to credit for permanent disability advances. We will further grant applicant's January 12, 2024 Petition for Penalties/Enforcement, and find that defendant is liable for the remaining amount of payment of $55,000 based on the OACR of November 16, 2023, together with amounts owing pursuant to section 4650(d) and interest pursuant to section 5800, and defer the issue of penalties pursuant to sections 5814 and 5814.5.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the decision of April 12, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of April 12, 2024 is **RESCINDED** and that the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. The parties to this matter settled the underlying case-in-chief by way of Compromise and Release, ordered Approved on November 16, 2023.

2. Defendant is not entitled to credit for permanent disability advances made to applicant.

3. Applicant's Petition for §5814 Penalties and Petition for Enforcement of Award and Request for Attorney Fees pursuant to §5814.5 and Request for Interest Per Labor Code §5800 is granted.

4. Defendant is liable for the remaining amount of payment up to $55,000 based on the Order Approving of November 16, 2023, together with amounts owing pursuant to Labor Code section 4650(d) and interest pursuant to Labor Code section 5800, which shall be adjusted by the parties with jurisdiction to the WCJ in the event of a dispute.

5. The issue of penalties pursuant to Labor Code sections 5814 and 5814.5 is deferred.

ORDER

Defendant shall issue the remaining amount of payment of up to $55,000 based on the Order Approving of November 16, 2023 forthwith, together with amounts owing pursuant to Labor Code section 4650(d) and interest pursuant to Labor Code section 5800, which shall be adjusted by the parties with jurisdiction to the WCJ in the event of a dispute.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

I DISSENT (See Dissenting Opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 5, 2024

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

MARIA RODRIGUEZ
LAW OFFICES OF NOEL HIBBARD
LAW OFFICES OF SASSANO & FLEISCHER

SAR/abs

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

DISSENTING OPINION OF COMMISSIONER RAZO

I dissent. It is undisputed in the record that applicant received $18,270 in indemnity advances. It is also undisputed that both counsel for applicant and defendant were notified of those advances. Accordingly, there is no reasonable basis to assert that the failure to list those advances in the C&R agreement was anything other than inadvertence. Given the clear record that all parties knew both the nature and the amount of the indemnity advanced by defendant in good faith, I agree with the WCJ that the omission of the dollar amount of the advances was the result of mutual mistake.

Nor is there substantive ambiguity in the drafting of the agreement. The language at Paragraph 9 of the C&R clearly provides that defendant is entitled to credit for sums previously advanced. This is especially true in light of the fact that all parties to the agreement were notified in writing of the amount of advances made by defendant well before the parties reached a tentative settlement agreement. The record establishes that defendant provided a permanent disability benefit notice on or about April 28, 2022 to applicant, with a copy sent to both applicant's and defense counsel. This notice confirmed that defendant had advanced $18,270 over more than a year of installments. (Report, at p. 2; Finding of Fact No. 14.) Importantly, applicant does not assert that she was unaware of the advances made by defendant prior to the settlement agreement.

Accordingly, *all parties* and counsel were apprised of the existence of the permanent disability advances, and the omission of those advances from the draft Compromise and Release was the result of mutual mistake.

The WCJ's Report observes:

> It must be recalled that applicant stipulated to having received the payments in this case. She knew she received them. Applicant's attorney received written verification of the payments and the total amount. They both knew. Yet they also both signed the settlement documents and THEY also represented to the Court by way of their signature that the information was accurate and that no advances had been made or received. This is in error. The mistake was not just by defense counsel. Applicant and her attorney were also mistaken in their representation of the facts to the Court. I do not see this as unilateral mistake. This was a mutual mistake.
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> (Report, at p. 7.)

In addition, the WCJ points out that the *amount* of PDAs made by defendant is not *de minimus*. Rather, the $18,270 in advances represent more than one third of the gross amount of the settlement and reflects approximately 14 months of payments to applicant. (Report, at p. 8.)

Thus, as is summarized in the WCJ's Report, "[a]pplicant's counsel had written notice that applicant had received permanent disability advances of $18,270.00 over a 14-month period, and yet apparently failed to note said fact in his settlement negotiations, apparently failed to recall said fact in his settlement negotiations, and apparently failed to consult his client's file which already had the information he requested from defense counsel during settlement negotiations." (*Ibid*.)

On these facts, I agree with the WCJ's determination that all parties knew, or reasonably should have known, that defendant made significant advances to the applicant prior to the settlement, and that the failure to list those advances was a mutual mistake. The *actual knowledge* of the parties of the existence of the permanent disability advances vitiates any assertion of unilateral mistake, while the clear language of paragraph 9 provides for the credit that defendant appropriately applied to the proceeds of the settlement after the WCJ approved it.

Accordingly, I would adopt and incorporate the WCJ's report and affirm her denial of applicant's Petition for Penalties.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 5, 2024

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

MARIA RODRIGUEZ
LAW OFFICES OF NOEL HIBBARD
LAW OFFICES OF SASSANO & FLEISCHER

SAR/abs

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