

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

**MARTHA CASTELLANO MADRIGAL, *Applicant***

**vs.**

**PERFORMANCE BUILDING SERVICES INSURED SOLUTIONS;  
ZURICH NORTH AMERICA, *Defendants***

**Adjudication Number: ADJ18882823  
Santa Ana District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Award pursuant to the parties' Stipulations with Request for Award (Stipulations) issued on March 18, 2024 by a workers' compensation administrative law judge (WCJ).

Defendants contends that there is a mutual mistake in the Stipulations and that an amended award should issue.

We did not receive an Answer.

We received a Report and Recommendation on the Petition for Reconsideration (Report) from the WCJ, which recommends that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration, the Answer, 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 below, we will dismiss the Petition for Reconsideration as premature. We will then return this matter to the trial level for the WCJ to adjudicate defendant's Petition and determine if good cause exists to set aside the Stipulation & Award.

We remind defendant's attorney that documents that have not been admitted into evidence may not be attached to a petition for reconsideration because the Appeals Board may only consider documents that are contained in the record of proceedings unless a ground for the petition for reconsideration is newly discovered evidence. (Cal. Code Regs., tit. 8, § 10945(c)(2); see §§

10670, 10803.) Failure to comply with the WCAB's rules may result in the imposition of sanctions. (See Lab. Code § 5813; Cal. Code Regs., tit. 8, § 10421.).

## **BACKGROUND**

Applicant claimed injury to her ankle and foot while employed by defendant as a janitor on December 13, 2016.

The parties resolved the case by way of Stipulations, signed by the applicant in pro per and by defendant's attorney, and submitted to the WCJ by way of the Electronic Adjudication System (EAMS) as a case opening document. They were approved by the WCJ in the Award issued on March 18, 2024. The matter was not set, and there have been no other appearances in the case.

Defendant challenges the stipulation which states, "The injury (ies) caused permanent disability of 19% for which indemnity is payable at \$ 290.00 per week beginning 03/20/2019 in the sum of \$ 20,445.00, less credit for such payments previously made. (Stipulations, 2/20/2024, p. 6, ¶ 3.) Defendant contends that applicant's rate should have been \$193.81 rather than \$290.00 per week and requests that an amended award issue.

## **DISCUSSION**

Pursuant to Labor Code section 5702,

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. (Labor Code section 5702<sup>1</sup>.)

Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) As defined in *Weatherall*, "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

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise stated.

litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*Weatherall, supra*, 77 Cal.App.4th at p. 1119.)

"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]; *Santa Maria Bonita School District v. Workers' Comp. Appeals Bd.* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Worker's 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] (writ den.)) To determine whether there is good cause to rescind a stipulation, the circumstances surrounding its execution and approval must be assessed. (See § 5702; *Weatherall, supra*, 77 Cal.App.4th at pp. 1118-1121; *Robinson v. Workers' Comp. Appeals Bd. (Robinson)* (1987) 199 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].)

As the moving party, defendant has the burden of proof to show, by a preponderance of the evidence, it should be relieved from the settlement agreement it entered into with applicant. (See Lab. Code, § 5705 [the burden of proof rests upon the party with the affirmative of the issue]; see also Lab. Code, § 3202.5 ["All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence"].) Defendant seeks to set aside the Order but no evidence has been admitted into the record regarding its allegations. In the absence of evidence, we are unable to evaluate defendant's contentions. The Petition is therefore premature.

As explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [33 Cal.Comp.Cases 350-351], a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (§§ 5903, 5952, subd. (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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Aside from providing assurance that due process is being provided, this "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

*Hamilton* requires that the WCJ formally admit evidence into the record so that “a reviewing tribunal, be it the Board on reconsideration or a court on further appeal, . . . understand[s] the basis for the decision.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ is responsible for “clearly designating the evidence that forms the basis of the decision.” (*Ibid.*)

Further, 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 [97 Cal Rptr. 2d 852, 65 Cal.Comp.Cases 805].) A fair hearing is “... one of ‘the rudiments of fair play’ assured to every litigant ...” (*Id.* at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, “the commission ... must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law.” (*Id.* at p. 577.) 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 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].)

Here, a review of the record of proceedings reflects that the WCJ did not hold a hearing on the Stipulations Agreement before issuing the Award. Yet, the record also reflects that while defendant submitted a report from the qualified medical evaluator (QME), defendant did not submit any evidence as to earnings, including any documents regarding the basis for and calculation of average weekly earnings if less than maximum, so that it was reasonable for the WCJ to conclude that the rate was maximum. Instead, defendant now contends that the rate should be less than maximum *after* applicant has already accepted the settlement amount and *after* the Stipulations have already been approved. However, due process requires that the WCJ hold a hearing and create a record in order to address defendant’s contention in the first instance.

Accordingly, we dismiss defendant’s Petition for Reconsideration of the March 18, 2024 Award 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 the WCJ treat defendant’s Petition as a petition to set aside, including the setting of a hearing so the parties can provide evidence in support

of their argument and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, any aggrieved person 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/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**May 29, 2024**

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

**MARTHA CASTELLANO MADRIGAL  
THE WENDEROFF LAW GROUP  
ZURICH NORTH AMERICA**

**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*