

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

MICHAEL GARCIA, *Applicant*

vs.

**DEBORAH & GERALD WALBERG,
insured by STATE FARM FIRE & CASUALTY COMPANY,
adjusted by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ3006563 (SAC 0361556); ADJ7197475
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Applicant seeks reconsideration of the May 8, 2024 Rulings on Evidence, Findings of Fact, and Order (RF&O) wherein a workers' compensation administrative law judge (WCJ) denied applicant's petition to set aside a prior 2012 Compromise and Release Agreement (C&R). The C&R resolved a May 2, 2007 specific injury and a cumulative trauma injury from April 1, 2002 through May 2, 2007 to the back, bilateral shoulders, neck, and psyche. The cases were settled in the amount of \$70,000 and approved via a Joint Order Approving Compromise and Release (OACR) issued on May 31, 2012.

Applicant contends that he was a victim of fraud, was not competent to settle his claims, and that the C&R was signed under duress.

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 Petition and the Report. We have also reviewed the record in this matter. Based upon our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and for the reasons discussed below, we deny the Petition.

Pursuant to Labor Code section 5903, any person aggrieved by any final order, decision, or award may petition for reconsideration upon one or more of the following grounds:

- (a) That by the order, decision, or award made and filed by the appeals board or the workers' compensation judge, the appeals board acted without or in excess of its powers.

- (b) That the order, decision, or award was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order, decision, or award.

In the instant case, applicant alleges that the C&R was procured by fraud and that he was under duress at the time he entered the C&R. Applicant's Petition, however, fails to provide any details regarding his allegations of fraud and duress. Applicant also submits no evidence of fraud or of being under duress at the time of settlement.

Labor Code section 5902 sets forth the guidelines for the filing of a Petition for Reconsideration. It states, in relevant part, that a Petition must "set forth specifically and in full detail the grounds upon which the petition considers the final order, decision, or award" to be "unjust or unlawful" and "every issue to be considered by the appeals board." Workers' Compensation Appeals Board Rules provide further clarification on these requirements. Per WCAB Rule 10945, "Every petition for reconsideration ... shall fairly state all the material evidence relative to the point or points at issue [and] [e]ach contention contained in a petition for reconsideration ... shall be separately stated and clearly set forth." (Cal. Code Regs., tit. 8, § 10945).

Absent inclusion of the above information, "a petition for reconsideration ... may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved." (Cal. Code Regs., tit. 8, § 10972.) In accordance with section 5902 and WCAB Rules 10945 and 10972, the Appeals Board may dismiss or deny a petition for reconsideration if it is skeletal (e.g., *Cal. Indemnity Ins. Co. v. Workers' Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 104 (writ den.); *Hall v. Workers' Comp. Appeals Bd.* (1984) 49 Cal.Comp.Cases 253 (writ den.); *Green v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 564 (writ den.)); if it fails to fairly state all of the material evidence, including that not favorable to it (e.g., *Addecco Employment Services v. Workers' Comp. Appeals Bd.* (2005) 70 Cal.Comp.Cases 1331 (writ den.); *City of Torrance v. Workers' Comp. Appeals Bd.* (Moore) (2002) 67 Cal.Comp.Cases 948 (writ den.); or if it fails to specifically discuss the particular portion(s) of the record that support the petitioner's contentions (e.g., *Moore, supra*, 67 Cal.Comp.Cases at p. 948; *Shelton v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 70 (writ den.)).

Here, applicant has submitted a skeletal Petition which fails to provide any details regarding his allegations and fails to cite to the record with specificity. Pursuant to Labor Code section 5705, the burden of proof rests upon the party with the affirmative of the issue, and all parties are to meet the evidentiary burden of proof on all issues by a preponderance of the evidence. (Lab. Code, § 3202.5.) Applicant has failed to meet his burden of proof here.

Applicant contends he was not competent to settle his claims. The Appeals Board has previously provided some guidelines in cases alleging “incompetency.” In *County of Santa Clara v. Workers’ Comp. Appeals Bd. (McMonagle)* (1992) 57 Cal.Comp.Cases 377, 378 (writ den.) the Appeals Board noted that in order to establish good cause to set aside an Order of Dismissal, the applicant had to provide evidence of “lack of ability or fitness to make the decision to request dismissal of her workers’ compensation claim at the time she made that request.” The Appeals Board defined incompetency not as “insanity, but rather [an] inability to properly manage or take care of oneself or property without assistance.” (*McMonagle, supra*, at 379.) Moreover, a finding of incompetence is to be supported by substantial medical evidence. (*Lamin v. City of Los Angeles* (2004) 69 Cal.Comp.Cases 1002, 1005; see also Lab. Code, § 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workers’ Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) Thus, in the absence of substantial medical evidence of an injured worker’s inability to properly manage or to take care of them self or their property without assistance, they are presumed competent.

Here, after careful consideration of the record, we agree with the WCJ that applicant did not meet his burden to show that he was incompetent at the time that he signed the C&R. Further, we agree that based upon the record before us, there is no evidence of fraud or duress. As such, the Petition for Reconsideration is denied.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the May 8, 2024 Rulings on Evidence, Findings of Fact, and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 15, 2024

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

**MICHAEL GARCIA
MULLEN & FILIPPI
OFFICE OF THE DIRECTOR – LEGAL UNIT**

RL/cs

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

REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION

RECOMMENDATION: **DENY**

INTRODUCTION

Applicant, Michael Garcia, claimed to have sustained an industrial injury on May 2, 2007, in ADJ3006563 and a cumulative trauma through May 2, 2007, in ADJ7197475 while employed with Deborah and Gerald Walberg. Applicant claimed injuries to back, shoulders, neck, and psyche in both cases. The cases were resolved by Joint Compromise and Release submitted on September 20, 2011, and approved on May 31, 2012. The parties agreed to settle the claims for \$70,000.00. Defendant never accepted liability for either injury. Applicant did not file a timely Petition for Reconsideration of the Joint Order Approving the Compromise and Release.

Applicant filed a Petition to Set Aside the Joint Compromise and Release in ADJ3006563 & ADJ7197475 on July 19, 2023. The issue proceeded to Trial on April 10, 2024, and a Rulings on Evidence, Findings of Fact, Orders; Opinion on Decision was issued on May 8, 2024. Applicant filed a timely, verified and sufficiently served Petition for Reconsideration on May 16, 2024. The Petition states the arguments are based on Labor Code Section 5903 (a), (b), (c), (d) and (e). Defendant filed an Answer to the Petition on May 20, 2024.

DISCUSSION

**PETITIONER FAILED TO ESTABLISH A BASIS FOR RECONSIDERATION
PURSUANT TO LABOR CODE § 5903(a)**

The basis for Petitioner asserting a Labor Code § 5903(a) argument is unclear. The Board has jurisdiction over controversies between an employer and employee and shall resolve the disputes upon request of either party.¹ The parties clearly submitted the issue of setting aside the compromise and release to the WCJ for decision. (MOH 4-10-24 Pages 2 & 3) Title 8 CCR§ 10330 states:

In any case that has been regularly assigned to a workers' compensation judge, the workers' compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue interim,

¹ Labor Code §4604

interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case, including the fixing of the amount of the bond required in Labor Code section 3715. Orders, findings and decisions and awards issued by a workers' compensation judge shall be the orders, findings, decisions and awards of the Workers' Compensation Appeals Board unless reconsideration is granted. (Title 8, CCR§ 10330)

Mr. Garcia has not established that the issuance of a determination that the Compromise and Release should not be set aside exceeds the authority of the WCJ. Therefore, Petitioner failed to establish a basis for granting reconsideration pursuant to Labor Code § 5903(a).

APPLICANT DID NOT PROVE BY A PREONDERANCE OF THE EVIDENCE THAT THE ORDER, DECISION OR AWARD WAS PROCURED BY FRAUD

Mr. Garcia's Petition for Reconsideration contains many accusations of fraud, but the record contains no evidence that the Compromise and Release was procured by fraud or that the defendant, the judges or the Information and Assistance officers in this case committed any fraud during the litigation as alleged in the Petition.² The Minutes of Hearing (Reporter) 9-20-2011 confirm that he was clear headed and aware of the terms of the settlement. (Court Ex. 1) Therefore, Petitioner did not establish the Petition should be granted pursuant to Labor Code Section 5903(b) or (c).

APPLICANT DID NOT PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE WAS INCOMPETENT TO ENTER INTO A SETTLEMENT WHEN THE COMPROMISE AND RELEASE WAS SUBMITTED

Mr. Garcia asserted at trial that he was *non compos mentis* at the time he settled his claim in September 2011. The Petition makes reference to his prior claims where he requested the settlement be set aside based on mental incompetence.³ Applicant's statements to Judge Thiessen when the C&R was submitted and during the subsequent hearing established that he was clear headed and understood the terms of the agreement at that time. (Court Ex. 1 & 2) There is no medical evidence establishing he was incompetent and mentally incapable of settling his cases.

² The Petition for Reconsideration is filed in EAMS in two parts. EAMS 77967773 & EAMS 77967774. A thorough review of the Petition requires review of both documents.

³ Petitioner has previously litigated this issue in ADJ1164291, ADJ862254, ADJ1046449, ADJ3981124, ADJ3034703 and ADJ2541408. These cases are referenced on Page 2 of the Petition with a request they be reviewed.

The party contending that a person is incompetent to enter into a legally binding agreement has the burden of proof. The evidence in this case established that Petitioner was clear headed and understood the terms of the settlement when he entered into the agreement and submitted it to Judge Thiessen. There is no contemporaneous medical evidence of incompetency at the time he negotiated the settlement.

CONCLUSION

Applicant has not established he was incompetent at the time he negotiated and submitted the Compromise and Release resolving the claims at issue. He has not proved that the settlement was procured by fraud. Petitioner did not identify any new evidence. The pattern of using bad faith is evidenced by a review of the full record in this case which includes skeletal petitions and multiple post settlement penalty petitions. The pattern is further established with the review requested by Petitioner of the cases cited in the Petition for Reconsideration and discussed at Trial (OOD 5-8- 2024 Page 3). Those cases show prior litigation of these issues. Therefore, Applicant failed to prove by a preponderance of the evidence there is a basis for reconsideration pursuant to Labor Code Section 5903 and the Petition should be denied.

DATE: May 22, 2024

Christopher Brown
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE