

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

***MINA FAKHOURI, Applicant***

**vs.**

**PARSONS TRANSPORTATION, INC; AIU INSURANCE NEW YORK administered by  
GALLAGHER BASSETT AIG WEST FOLSOM, *Defendants***

**Adjudication Number: ADJ18555747  
Marina Del Rey District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Applicant seeks reconsideration of the June 25, 2024 Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ).

Applicant contends that the "severity" of her "multiple injuries and psychological impacts" have been "inadequately recognized or compensated" by the approved Compromise and Release Agreement. (Petition, p. 1.) Applicant further contends that "reports from Dr. Andrew John Miles and specialist referrals for cardiology, pain management, and neurological evaluations substantiate the claim for ongoing medical expenses, severe pain, and psychological distress." (*Id.*)

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

We have considered the Petition for Reconsideration (Petition), the Answer, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss the Petition and return this matter to the trial level so that the WCJ can consider the Petition as a petition to set aside.

## FACTS

Applicant claimed that while employed by defendant as a senior engineer, she sustained a cumulative injury during the period from November 17, 2017 through July 25, 2023 to the neck, back, upper extremities, shoulders, digestive system, and psyche.

Applicant sought treatment, but a medical-legal evaluation was not completed, and applicant did not reach permanent and stationary status. (Compromise and Release Agreement, p. 7, paragraph 9.)

On April 18, 2024, the parties entered into a Compromise and Release Agreement in the amount of \$25,000.

On June 25, 2024, the settlement was approved via an Order Approving Compromise and Release issued by the WCJ.

## DISCUSSION

### I.

Preliminarily, former Labor Code section<sup>1</sup> 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 under the

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

Events tab 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 20, 2024, and 60 days from the date of transmission is November 19, 2024, which is a Saturday. The next business day 60 days from the date of transmission is November 19, 2024. This decision was issued by or on November 19, 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 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 and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report, it was served on September 20, 2024, and the case was transmitted to the Appeals Board on September 20, 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 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 September 20, 2024.

## II.

We note that pursuant to section 5803, “The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”

Additionally, “The 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 carries out the legislative objective of safeguarding the injured worker from entering

unfortunate or improvident releases due to, 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 benefits must be established separately from the standard release language of the form. (*Claxton, supra*, at 373.)

In *Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291, the court held 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.*)

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.) “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.)<sup>2</sup>

As a part of our inquiry, we observe that contract principles apply to settlements of workers' compensation disputes. The legal principles governing compromise and release agreements 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].) Thus, for a compromise and release agreement to be effective, the necessary elements of a contract must exist. (*Id.*)

The essential elements of a contract include mutual consent and consideration. (Civ. Code, §§ 1550, 1565, 1580, 1584, 1595, 1605, et seq.) 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;

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<sup>2</sup> Effective January 1, 2020, WCAB Rules 10870 and 10882 are now WCAB Rule 10700.

*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.) Pursuant to case law and section 1636 of the Civil Code, 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].)

In the instant case, applicant did not attend a qualified medical evaluation (QME). Further, as per the Compromise and Release Agreement, applicant had not yet reached permanent and stationary status. (Compromise and Release Agreement, p. 7, paragraph 9.) As such, it is unclear whether the settlement is supported by medical evidence. Moreover, when the C&R was approved, the WCJ did not hold a hearing and there is no evidence in the record to suggest that the WCJ spoke with applicant to confirm the adequacy of the settlement. As noted above, adequacy (consideration) is an essential element in contract formation.

## II.

Pursuant to *County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1], it is well established that stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. 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 litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*Weatherall, supra*, at 1118.)

The party seeking to set aside an agreement after it has become final must make a showing of good cause. Good cause includes fraud, duress, undue influence, mutual mistake of fact, mistake of law, invalidity of execution, incompetency, or minority at the time of execution of the agreement. (See California Workers' Compensation Law (Cont. Ed. Bar 4th Ed.) §§ 16.61 et seq.; see also *Argonaut Ins. Exch. v. Industrial Acc. Com. (Bellinger)* (1958) 49 Cal.2d 706 [23 Cal.Comp.Cases 34]; *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160 [50 Cal.Comp.Cases 311]; *Carmichael v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 311 [30 Cal.Comp.Cases 169]; *Silva v. Industrial Acc. Com.* (1924) 68 Cal. App. 510 [11 IAC 266]; *City*

*of Beverly Hills v. Workers' Comp. Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691 (writ den.); *Bullocks, Inc. v. Industrial Acc. Com.* (1951) 16 Cal.Comp.Cases 253 (writ den.); *Pac. Indem. Co. v. Industrial Acc. Com. (Forrest)* (1946) 11 Cal.Comp.Cases 117 (writ den.).)

Whether good cause exists is case specific. The circumstances surrounding the execution and approval of the agreement 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, applicant has the burden of proof to show, by a preponderance of the evidence, she should be relieved from the settlement agreement that was entered into with defendant. (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"].)

Here, applicant seeks to set aside the OACR but no evidence has been admitted into the record regarding her allegations. In the absence of evidence, we are unable to evaluate applicant's contentions. The Petition is therefore premature.

As explained in *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), 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].)

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 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 Acc. 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].)

We further note that while 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].)

Accordingly, since there is currently no evidence admitted into the record regarding applicant’s allegations, and to ensure applicant is provided due process, we will dismiss applicant’s Petition and return this matter to the trial level for further proceedings. Upon return of this matter to the trial level, we recommend the WCJ treat applicant’s Petition as a petition to set aside, including the setting of a hearing so applicant can provide evidence in support of her arguments and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, either party may then timely seek reconsideration of that decision.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the June 25, 2024 Order Approving Compromise and Release is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**NOVEMBER 19, 2024**

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

**MINA FAKHOURI  
JOHN MIKHAIL**

**RL/cs**

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