

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

NELSON BARRERA, *Applicant*

vs.

**PERRY S. LARKSPUR LLC; REPUBLIC INDEMNITY CO. OF AMERICA;
REPUBLIC INDEMNITY SAN FRANCISCO, *Defendants***

**Adjudication Numbers: ADJ18880902; ADJ18880841
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Lien claimant Solano County DCSS seeks reconsideration of the Order Approving Compromise and Release (OACR), issued by the workers' compensation administrative law judge (WCJ) on July 26, 2024.

Lien claimant contends that unpaid child support is owed and the OACR should be set aside.

We have not received an Answer from any party.

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, for the reasons stated in the WCJ's Report and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

In case number ADJ18880902, applicant filed an application for adjudication on February 16, 2024, claiming injury to various body parts while employed by defendant as a cook, during the period from January 19, 2023 to January 19, 2024.

In case number ADJ18880841, applicant filed an application for adjudication on February 16, 2024, claiming injury to his knee while employed by defendant as a cook, on January 1, 2023.

The following background is incorporated from the WCJ's Report:

...

On 07-26-2024, a Compromise and Release was filed for both cases. (EAMS Doc. ID. No. 53056422.) The settlement amount was \$25,000.00 less attorney fees of \$3,750.00 resulting in a net balance of \$21,250.00 to applicant. **With regard to liens, paragraph 8 at page 6 of the settlement stated, "none known at this time" and "Defendant will adjust, negotiate, or litigate any timely filed lien with WCAB jurisdiction reserved."**

...

The undersigned issued an Order Approving Compromise and Release (OACR) for both case numbers on 07-26-2024, which was served on the same day. (EAMS Doc. ID. No. 78201969.) The undersigned checked EAMS for liens of record and there were none. As a result, the OACR states in paragraph 1: "There are no liens of record."

...

On 08-05-2024, petitioner/lien claimant filed a Notice and Request for Allowance of Lien in the amount of \$10,713.07. (EAMS Doc. ID. No. 53213973.) An Audit Report by DCSS was filed with the lien which shows monthly charges against applicant accruing in the amount of \$500 per month for the period of 01-2023 to 08-2024 for a total amount in arrears of \$10,000 plus interest of 713.07. (EAMS Doc. ID. No. 53213975.)

...

(Report, pp. 2-3, emphasis added.)

DISCUSSION

I.

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.

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

(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.”

Here, according to Events, the case was transmitted to the Appeals Board on September 6, 2024, and 60 days from the date of transmission is November 5, 2024. This decision is issued by or on November 5, 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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on September 6, 2024, and the case was transmitted to the Appeals Board on September 6, 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 September 6, 2024.

II.

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].) For a compromise and release agreement to be effective, the necessary elements of a contract must exist, which includes the mutual consent of

the parties. (Civ. Code, §§ 1550, 1565, 1580; *Yount, supra.*) Put another way, 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; *Sackett v. Starr* (1949) 95 Cal.App.2d 128, 133; *Sieck v. Hall* (1934) 139 Cal.App. 279, 291; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.)

Since a compromise and release is a written contract, the parties' intention should be ascertained, if possible, from the writing alone, and the language of the contract governs its interpretation, if the language is clear and explicit, and does not involve an absurdity. (Civ. Code, §§ 1638, 1639; *TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, 27 (*TRB Investments*)).) 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, supra*, at 27; *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].)

“Stipulations are designed to expedite trials and hearings and their use in workers' compensation cases should be encouraged.” (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1120 [65 Cal.Comp.Cases 1], quoting *Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 791 [52 Cal.Comp.Cases 419].) 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.)

Here, the parties stipulated to jointly settle case numbers ADJ18880902 and ADJ18880841 for \$25,000.00, less attorney fees in the amount of \$3,750.00. (July 25, 2024 Compromise and Release (C&R), ¶ 7, p. 6.) With respect to liens, the parties stipulated that “none were known at this time” and that “Defendant will adjust, negotiate, or litigate any timely filed lien with WCAB jurisdiction reserved.” (C&R, ¶ 8, p. 6.) This language is clear on its face and is not ambiguous. Thus, based on the clear language of the C&R, there was a mutual intent that defendant will adjust, negotiate, or litigate any timely filed lien.

As to applicant's child support obligations, to the extent that DCSS sent a withholding order to defendant in March 2024, that is not the same as filing a lien. However, if true, then defendant was presumably aware of outstanding child support obligations at the time it settled the

underlying case. As defendant did not file an Answer, we can only speculate as to what defendant knew with respect to applicant's child support obligations.

In any event, these are the undisputed facts before us: 1) on July 25, 2024, defendant stipulated that it will adjust, negotiate, or litigate any timely filed lien; 2) the parties stipulated that no liens were known as of July 25, 2024, when they signed the settlement documents; 3) no lien was filed when the OACR issued on July 26, 2024; 4) per the OACR, the WCJ found that there were no liens of record; and 5) DCSS filed a lien on August 5, 2024, pursuant to section 4903(e). Based on the foregoing, the lien filed on August 5, 2024, is defendant's responsibility per Paragraph 8 of the C&R. To the extent that defendant and DCSS are unable to adjust or negotiate the lien at issue, either party may file a Declaration of Readiness now that the case-in-chief has been resolved.

Accordingly, we deny lien claimant's Petition for reconsideration.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 1, 2024

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

**NELSON BARRERA
RAPHAEL HEDWAT
REPUBLIC INDEMNITY
SOLANO COUNTY DCSS**

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*