

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

RUBEN MERCADO, *Applicant*

vs.

**LOS ANGELES COUNTY OFFICE OF EDUCATION, permissibly self-insured,
adjusted by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ19370874
Pomona District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the June 6, 2024 Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ).

Applicant contends that "the findings of fact do not support the order" as "there is an inconsistency between the permanent stationary report" and other "medical records/progress reports." (Petition, p. 1.) Applicant further contends that his future medical was "based on a lumbar strain instead of a herniated disk with a 6mm bulge" which makes the value of his "[future] medical payment inadequate." (*Id.*)

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

We have considered the Petition, the Answer, and 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, while employed by defendant as a career development program specialist, sustained a June 2, 2022 specific injury to the back.

Applicant obtained treatment and was ultimately found to have reached maximum medical improvement (MMI) by Dr. Aaron Coppelson. (Compromise and Release Agreement, p. 7, paragraph 9.)

The parties negotiated a settlement in the form of a Compromise and Release Agreement in the amount of \$30,000 based upon the March 15, 2023 MMI report of Dr. Aaron Coppelson which parties rated at 16% permanent disability for the lumbar spine. (Compromise and Release Agreement, pp. 6-7, paragraphs 7, 9.)

On June 6, 2024, the WCJ issued an Order Approving Compromise and Release.

DISCUSSION

I.

Preliminarily, 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.

- (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 Events tab in the Electronic Adjudication Management System (EAMS). Specifically, in Case

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

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 17, 2024, and 60 days from the date of transmission is November 16, 2024, which is a Saturday. The next business day that is 60 days from the date of transmission is November 18, 2024. This decision is issued by or on November 18, 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 17, 2024, and the case was transmitted to the Appeals Board on September 17, 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 17, 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.”

“The Workers’ Compensation Appeals Board shall [also] 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 should carry out the legislative objective of safeguarding the injured worker from entering into unfortunate or improvident releases as a result of, 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 particular 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.)²

III.

Pursuant to *County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1], 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

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

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, he 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 his 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 his 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 6, 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 18, 2024

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

**RUBEN MERCADO
PEETZ LAW**

RL/cs

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