WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

SVEVA MARGHERITA BESANA, ***Applicant***

vs.

YP HOLDINGS LLC; AMERICAN ZURICH INSURANCE;
AIG CLAIMS/THIRD PARTY ADMINISTRATOR, ***Defendants***

Adjudication Number: ADJ13873540
Los Angeles District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant acting in pro per seeks reconsideration of the Findings and Order (F&O) issued on April 30, 2024 by a workers compensation administrative law judge (WCJ) wherein he found that the Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ) on September 21, 2023 is valid and enforceable.

Applicant contends that the OACR should be set aside because she did not intend to resolve her outstanding petition for penalties in the settlement.

We received an Answer from each of the defendants. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the Answers and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed a cumulative injury from January 23, 2014 to January 15, 2020, to her nervous system, including stress/psyche while employed by defendant as a Product Management Team Lead.

On June 22, 2021, applicant filed a Petition For Penalties, alleging that she was entitled to reimbursement for her medical bills pursuant to Labor Code section 5402[1], and that defendant American Zurich Insurance Company (Zurich) failed to reimburse her for medical bills of more than $10,000.00.

On June 29, 2021, defendant answered applicant's Petition for Penalties and denied that it was liable for penalties. It contended that applicant submitted a DWC claim form dated April 12, 2020, and it timely denied the claim on June 25, 2020, so that the claim was not presumed to be compensable under section 5402(b). It further contended that under section 5402(c), which provides for reimbursement of up to $10,000.00 during the period between the submission of the DWC claim form and the denial of the claimed injury, here between April 12, 2020 and June 25, 2020, the bills submitted were for treatment prior to April 12, 2020, and applicant has not submitted any bills for treatment between April 12 and June 25, 2020.

On September 11, 2023, the parties submitted a C&R, resolving applicant's claim for $35,000. All of the lines which indicate the amounts of compensation paid before the C&R are blank, including for medical treatment, and the C&R specifies that medical bills are pursuant to Paragraph 8, and that the settlement includes "0" for out of pocket expenses (C&R, ¶ ¶ 6, 7). In Paragraph 8, it states that:

> No liens of records to be adjust/litigate.
> Payments under lc4650,5710,5813,5814.5,4553 are hereby resolved.
> All parties stipulate that there are no pre-settlement payments due for tpd, ttd, pd, supplemental job displacement benefit, mileage, medical transportation, expenses, self-procured expenses, interest or penalties up through the date of approval for this compromise and release. Interest is waived for all payments under this agreement for 30 days from the date of receipt of the award by defendants.
>
> Defendants will negotiate and resolve lien(s) in this matter with the understanding that there is a bona fide good faith legitimate issue as to whether or not the applicant sustained the claimed injuries herein arising from and occurring in the course of her employment which if litigated may preclude applicant from receiving any benefits. Defendant reserves any and all defenses.
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> Applicant states the basis of her injury stems from a cyber attack on/around 10/1/2013 and beyond such date, multiple times. Applicant has testified to such details in the medical reports/pqme as well as applicant's deposition. Applicant

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

> deems she unable to remedy her issues through her employer, and pursued the legal route for remedy. Applicant claims stress/psyche until 1/15/16. The panel qualified medical examiner deems the applicant able to return to work 12/31/2016. Applicant deems she was able to return to work on 9/21/2016.
>
> The parties wish to avoid the costs, and delays of litigation and buy their peace as it relates to all claims arising under the labor code and are prepared to settle this claim. (All capitals in original.)

In Paragraph 9, it states in relevant part that:

> This compromise and release resolves all issues under the Labor Code and is a complete release of liability between the parties. (All capitals in original.)

On September 21, 2023, without holding a hearing, the WCJ issued an Order Approving Compromise and Release (OACR).

Applicant filed a Petition for Reconsideration on October 2, 2023, contending that the order, decision, or award was procured by fraud and

> ". . . The C&R should include the penalties for a late payment for all that was my right to receive back then. I ask the Judge to review the petition and medical records and see that it would have been indisputable that my presence in the office was leading to injuries. I ask that the $35,000.00 amount in the C&R be augmented by the correct penalty(I take that to be $10,000.00). If we need to discuss the events in court to make sure that there was knowledge of the injuries on the part of the employer we can schedule a hearing for the penalty under LC 5814."

On October 11, 2023, defendant Gallagher Bassett AIG West filed an Answer opposing applicant's Petition and requested costs and sanctions.

On October 16, 2023, defendant Zurich filed an Answer to the Petition.

On November 30, 2023, we issued an "Opinion and Order Dismissing Petition for Reconsideration" to allow the WCJ to address the Petition in the first instance as a petition to set aside the C&R.

On March 28, 2024, the parties proceeded to trial on the issue of the C&R. According to the Minutes of Hearing and Summary of Evidence (MOH), applicant testified in relevant part that:

> The Applicant claims fraud based on the Applicants' belief she was entitled to penalties as the employer knew she was entitled to workers' comp [ ] and did not pay promptly. The Applicant believes the C&R was obtained by fraud as she was entitled to penalties, and she was told she was not entitled to penalties by

> defense counsel. The Applicant does not believe she has any psyche disability, and all settlement is retro benefits and penalties. The applicant has been informed by the Court she is not entitled to penalties. (MOH, pp. 2-3.)

On April 30, 2024, the WCJ issued a decision. He found in pertinent part that applicant's claim is denied in its entirety [by defendant], the OACR of September 21, 2023 is valid and enforceable, and applicant is not to contact defense counsel and should direct all inquiries to the Information and Assistance Office.

On June 3, 2024, applicant filed the instant Petition for Reconsideration, contending:

> The C&R amount was agreed upon based on the medical costs incurred and retroactive TTD. The PQME report dated April 14th 2022 stated that the predominant cause of my cumulative injuries were industrial injuries including cyberattacks, HR negligence and a forced resignation. The attorneys for the insurances agreed to reimburse my costs and the TTD payments in the form of a C&R. We computed the amounts based on the medical bills I had gathered. When I was asked to sign the C&R I was told that only the judge could award penalties (I had the email with me during the trial but the judge did not want to see it). I signed the C&R hoping the judge would see my prior petition for penalties and award the penalties (this is why I had stated that the C&R had been procured by fraud in my prior petition).
>
> What I believe is still at issue and there is no resolution on is the fact that I was injured at work. The penalties are being denied to me because the attorneys .for the.insurances [*sic*] are still denying there was a claim at issue in 2013. The employer was aware of my injuries so I know a claim should have been opened. By denying penalties the judge seems to deny the evidence: the PQME report and the medical records. If the attorneys for the insurances and the trial judge are dismissing the PQME report could the judge(s) order another report should be obtained at the expense of the insurances? The PQME in my favor seems to have been ignored by the trial court judge even thought the attorneys for the insurances did not object to it (they did not ask for another report to be prepared). If another report cannot be issued since the opposing party did not object to the supplemental may I ask the judge(s) to please read the PQME report dated April 14th 2022 and decide whether the C&R should be voided, and (a) a claim should be opened by the insurances, (b) the same amount we have calculated should be the amount of the claim, (c) penalties should be paid, and (d) the claim should then be closed (I don't have a disability)?
>
> A claim is still at issue and that is why the penalties are not being paid by the insurances.

DISCUSSION

"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." (Lab. Code, § 5803.)

We observe that contract principles apply to settlements of workers' compensation disputes. Stipulations between the parties must be interpreted 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. (*County of San Joaquin v. Workers' Comp. Appeals Bd.* (*Sepulveda*) (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193], citing Civ. Code, §1636.)

The legal principles governing compromise and release agreements are the same as those governing other contracts. (*Burbank Studios v. Workers' Comp. 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, including an offer of settlement of a disputed claim by one of the parties, and an acceptance by the other. (*Id*.) There can be no contract unless there is a meeting of the minds, that is, the parties must mutually agree upon the same terms and/or conditions. (Civ. Code, §§ 1550, 1565, 1580; *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.) Further, stipulations such as those in a compromise and release 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.4 th 1114, 1121 [65 Cal.Comp.Cases 1]).) "Good cause" to set aside stipulations depends on the facts and the circumstances of each case and includes mutual mistake of fact, duress, fraud, undue influence, and procedural irregularities. (*Johnson v. Workers' 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. Workers' 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].) However, when "there is no mistake but merely a lack of full knowledge of the facts, which . . . is due to the failure of a party to exercise due diligence to ascertain them, there is no proper ground for relief." (*Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 866 [44 Cal.Comp.Cases 798] quoting *Harris v. Spinall Auto Sales, Inc.* (1966) 240 Cal.App.2d 447.)

WCAB Rule 10700(b) states that: "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 a hearing to take evidence when necessary to determine whether the agreement should be approved or disproved, or issue findings and awards." (Cal. Code Regs., tit. 8, §10700(b), emphasis added.)

In *Camacho v. Target Corp*. (2018) 24 Cal.App.5th 291 [83 Cal.Comp.Cases 1014], the Court observed 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, 108822.) "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.)

Section 5814 states in relevant part that:

> (a) When **payment of compensation** has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the payment unreasonably delayed or refused shall be increased up to 25 percent or up to ten thousand dollars ($10,000), whichever is less. In any proceeding under this section, the appeals board shall use its discretion to accomplish a fair balance and substantial justice between the parties.
> ***
> (c) **Upon the approval of a compromise and release**, findings and awards, or stipulations and orders by the appeals board, **it shall be conclusively presumed that any accrued claims for penalty have been resolved, regardless of whether a petition for penalty has been filed, unless the claim for penalty is expressly excluded by terms of the order or award.** Upon the submission of any issue for determination at a regular trial hearing, it shall be conclusively presumed that any accrued claim for penalty in connection with the benefit at issue has been resolved, regardless of whether a petition for penalty has been filed, unless the issue of penalty is also submitted or is expressly excluded in the statement of issues being submitted. (Emphasis added.)

Here, applicant asserts that she is owed penalties in connection with this settlement; applicant does not otherwise seek to set aside any other terms of the agreement. However, section 5814(c) makes clear that if pending claims for penalties are not specifically excluded in the C&R, then an injured worker is not entitled to them. Applicant's Petition for Penalties was outstanding at the time of the settlement and was not excluded by the terms of the settlement. Thus, once the WCJ approved the C&R, it is presumed that the Petition for Penalties was resolved.

Section 3207 states that: "'Compensation' means compensation under this division and includes every benefit or payment conferred by this division upon an injured employee, or in the event of his or her death, upon his or her dependents, without regard to negligence."

As quoted above, section 5814(a) requires an injured worker to show that ***payment of compensation*** was delayed and an ***award of compensation***. That is, an injured worker must show that they were entitled to payment for a benefit such as medical treatment, receive an award of compensation for that benefit, and demonstrate that payment of compensation for that benefit was delayed. Here, applicant's claim was denied, and applicant did not show that she was entitled to any benefits, including medical treatment. It is clear from the language of the C&R that applicant's claim was denied, that defendant did not pay any compensation for medical treatment, and that no compensation for medical benefits was awarded. Therefore, section 5814 does not apply, and defendant was not liable for any penalties.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the F&O issued by the WCJ on April 30, 2024 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 2, 2024

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

SVEVA MARGHERITA BESANA
MAVREDAKIS PHILLIPS CRANERT
STOCKWELL HARRIS WOOLVERTON & FOX

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