

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

**TERRY BAWCUM, *Applicant***

**vs.**

**SAN FRANCISCO BAY AREA RAPID TRANSIT, permissibly self-insured;  
administered by ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ15830531  
San Francisco District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Lien Claimant and former applicant's attorney Craig W. Morrison ("lien claimant") seeks reconsideration of the Award Approving the Stipulations, issued by the workers' compensation administrative law judge (WCJ) on June 27, 2024.

Lien claimant contends that his due process rights were violated when the Stipulations with Request for Award (Stipulations), entered into by applicant's current counsel and defendant, were approved with clauses impacting his attorney's fees, including a waiver of all attorney's fees. Lien claimant requests that the Stipulations and Award be set aside, and the matter returned for further proceedings and/or referred to mediation.

We received a Report and Recommendation (Report) from the WCJ, wherein he recommends that the Petition for Reconsideration be denied. We received an Answer from defendant. We did not receive an Answer from current applicant's attorney.

We have considered the allegations of the Petition for Reconsideration (Petition), defendant's Answer, and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will dismiss the Petition and return this matter to the trial level for consideration of the Petition as one to set aside the June 27, 2024 Award and Order Approving the Stipulation.

## BACKGROUND

Applicant filed an Application for Adjudication (Application) on February 8, 2022, claiming that she was injured on November 12, 2020, while employed by defendant. Defendant filed a timely denial. A report by agreed medical evaluator (AME) Dr. Michael Sommer concluded that applicant had sustained industrial injuries to her bilateral knees and ankles, due to a fall while working at BART on November 12, 2020. (4/6/23 AME report, at pp. 3, 37-38.)

Defendant requested a mandatory settlement conference and contended that, “there is a large TTD [temporary total disability] over payment based on undisclosed wages received from other job while collecting TTD from defendant. WCAB assistance is required.” (12/20/23 Declaration of Readiness to Proceed.) Defendant further contended that applicant received temporary disability payments from November 13, 2020 through March 11, 2022, and requested a credit for overpayment. (3/19/24 Petition for Credit.) Applicant objected to defendant’s request. (3/25/24 Objection.)

Applicant was represented by lien claimant from the start of the case in 2022 through approximately May 2, 2024, when applicant filed a notice of dismissal of attorney form and a substitution of attorney form. (5/2/24 Notice of Dismissal; 5/2/24 Substitution of Attorney.) On May 10, 2024, lien claimant filed a lien for attorney’s fees. (5/10/24 Notice of Request for Allowance of Lien.) On that same date, lien claimant filed an “Objection to an Apparently Pending Settlement,” asserting that his due process rights would be violated if applicant’s new attorney was permitted to waive attorney’s fees to which lien claimant was entitled. (5/10/24 Objection.)

As relevant herein, applicant and defendant entered into the following stipulations, using the DWC form:

The body parts being settled were described in Paragraph No. 1 as bilateral knees and ankles. (6/27/24 Stipulations with Request for Award, ¶ 1, p. 5.) The date of injury was November 12, 2020. (*Ibid.*)

Pursuant to Paragraphs No. 2 and 2(a), the injuries caused temporary disability for the period November 13, 2020 through May 6, 2021 and August 31, 2021 through March 6, 2024. (6/27/24 Stipulations with Request for Award, ¶ 2 and 2(a), p. 6.) The parties stipulated that the temporary disability indemnity was already paid for both time periods. (*Ibid.*)

Pursuant to Paragraph No. 3, the injuries caused permanent disability of 24%, beginning the week of March 7, 2024, for which indemnity is payable, less credits for such payments previously made. (6/27/24 Stipulations with Request for Award, ¶ 3, p. 6.)

Pursuant to Paragraph No. 6, applicant's attorney requested a fee of \$0. (6/27/24 Stipulations with Request for Award, ¶ 6, p. 6.) Paragraph 6 includes the additional statement that, "AA fee in dispute due to PT/TD credit claim by defendant, AA fee deferred to lien trial or settlement agreement between the parties." (*Ibid.*)

In Paragraph 7, the parties stipulated, in relevant part, "Except for the attorney fees lien from prior counsel, Craig Morrison, there are no liens on file per DA check of EAMS on May 20, 2024." (6/27/24 Stipulations with Request for Award, ¶ 7, p. 6.)

In Paragraph 9, the parties stipulated, in relevant part, that "applicant stipulates that she has been fully compensated for all period of temporary disability to date. The TTD periods and payments described above include broken periods at multiple rates, since the applicant collected TTD from BART without advising she was working at another job, the parties agree that defendants are entitled to a credit in the amount of \$43,062.08 to be applied against PD and TD currently due or due in the future. Although currently disputed, any attorney fee award will increase the credit by the amount of the attorney fee awarded." (6/27/24 Stipulations with Request for Award, ¶ 9, p. 7.)

The signed Stipulations with Request for Award were served on lien claimant, by mail, on June 27, 2024. (6/27/24 Proof of Service.)

On June 26, 2024, one day prior to the trial date, defendant's attorney filed a request to continue the matter to a lien conference by way of an email to the WCJ and cc'd applicant's current attorney and lien claimant.

On June 27, 2024, the WCJ approved the Stipulations, issued the Award, and directed that a date be set for a lien conference. (6/27/24 MOH; 6/27/24 Award.) The issued Award states:

**AWARD IS MADE** in favor of **TERRYE BAWCUM** against the **SAN FRANCISCO BAY AREA RAPID TRANSIT**, of:

- (A) Temporary disability indemnity in accordance with sections 2 and 2(a) above;
- (B) Permanent disability indemnity in accordance with section 3 above;
- (C) Liens in accordance with section 7;
- (D) Further medical treatment in accordance with section 4;
- (E) Medical-legal expenses in accordance with section 5;
- (F) Stipulations in sections 8 and 9 are approved;

- (G) The matter is ordered set for a lien conference;
- (H) Injured worker has five years from the date of injury in which to file a petition to reopen for new and further disability.

## DISCUSSION

### I.

Former Labor Code<sup>1</sup> section 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, Labor Code 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 Labor Code 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 August 5, 2024, and 60 days from the date of transmission is October 4, 2024. This decision is issued by or on October 4, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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

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

parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code 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 and Recommendation by the workers' compensation administrative law judge, the Report was served on August 5, 2024, and the case was transmitted to the Appeals Board on August 5, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 5, 2024.

## II.

“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.) “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).)

All parties in workers’ compensation proceedings retain their 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 [65 Cal.Comp.Cases 805].) Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Id.*) A fair hearing includes the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to 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 Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4 703, 710 [57 Cal.Comp.Cases 230].)

A WCJ is required to “make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the

proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).) The WCJ’s opinion on decision “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 v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Contract principles apply to settlements of workers’ compensation disputes; the legal principles governing compromise and release agreements, and by extension, stipulations with request for award, 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].) 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’ Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193]; Civ. Code, § 1636.) “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.) The Board “has the discretion to reject factual stipulations,” but is not permitted “to reject a stipulation clarifying the issues in controversy absent good cause.” (*Id.*, at 1119.)

“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); Lab. Code § 5702.) “Agreements that provide for the payment of less than the full amount of

compensation due or to become due and undertake to release the employer from all future liability will be approved only where it appears that a reasonable doubt exists as to the rights of the parties or that approval is in the best interest of the parties.” (Cal. Code Regs., tit. 8, § 10700(c).) The WCJ has the discretionary authority to develop the record when appropriate to provide due process or to fully adjudicate the issues. (Lab. Code, §§ 5701, 5702, 5906; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924].)

A lien may be filed, following the procedures set forth in section 4903.05 and WCAB Rule 10862, for “a reasonable attorney’s fee for legal services pertaining to any claim for compensation...before the appeals board...,” and the “[a]ppeals board may determine, and allow as liens against any sum to be paid as compensation...” (Lab. Code §§ 4903, 4903(a), 4903.05, 4906(a); Cal. Code Regs., tit. 8, § 10862.) However, “the commission’s ‘discretion’ as to liens under paragraphs (a) through (e) of section 4903, though wide, does not include ‘discretion’ to disallow completely a lien where it is established that the lien claimant did furnish services or living expenses of value.” (*Bryant v. Industrial Acci. Com.* (1951) 37 Cal.2d 215, 220 [citations omitted].)

WCAB Rule 10702 requires that if a lien claim is on file with the WCAB, and Stipulations with Request for Award are filed, a copy of the stipulations “shall be served ... on the lien claimant.” (Cal. Code Regs., tit. 8, § 10702.) The Rule requires, further, that “[n]o lien claim shall be disallowed or reduced unless the lien claimant has been given notice and an opportunity to be heard.” (*Ibid.*) A lien claimant has a due process right to participate in a workers’ compensation hearing, must be served with notice of all hearings, and must be informed of the scope and purpose of any hearing that may affect its rights or liabilities. (*Beverly Hills Multispecialty Group, Inc. v. Workers’ Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789, 803, 805-806 [59 Cal.Comp.Cases 461].) A lien claimant must be permitted to present relevant evidence, inspect documents, cross-examine witnesses, and make reasonable objections. (*Id.*, at p. 804.) The denial of a lien claim without the lien claimant having been provided with an opportunity for a fair hearing is reversible per se. (*Id.*, at p. 806.) When a lien claim cannot be resolved in a stipulation, the stipulation should indicate that the WCAB reserved jurisdiction to resolve the lien claim at a later date.

Here, lien claimant’s due process rights were violated because lien claimant was not given adequate notice nor adequate time to respond to the Stipulations and lien claimant had no

opportunity to be heard prior to the WCJ's approval of the Stipulations and issuance of the Award, as required. (Cal. Code Regs., tit. 8, § 10702.) Lien claimant was not a party to the Stipulations and had previously indicated in writing that he was not in agreement with the attorney's fees amount of zero. (5/10/24 Objection.) The signed Stipulations were served by mail to lien claimant on June 27, 2024, one day after defendant's request that the party's appearances at trial be excused because "[a]ll issues between the applicant and defendants have been resolved." The WCJ responded the same day, indicating that no appearances would be necessary. On June 27, 2024, the WCJ approved the Stipulations, including paragraph 6 which reads "Applicant's attorney requests a fee of \$0," and paragraph 9, which includes the statement, "Although currently disputed, any attorney fee award will increase the credit [owed to defendant] by the amount of the attorney fee awarded." (6/27/24 Stipulations with Request for Award, ¶ 6, p. 6 and ¶ 9, p. 7; 6/27/24 MOH.) Since the Stipulations were served, by mail, on lien claimant on the same date that the WCJ issued the Award, lien claimant had no adequate notice of the stipulated agreement prior to approval. Moreover, the WCJ approved the Stipulations and issued the Award after instructing the parties not to appear for trial, thus denying lien claimant an opportunity to be heard on the issue of his attorney's fees, prior to the WCJ's approval of the Stipulations. Due process requires that lien claimant be provided with adequate notice and an opportunity to be heard on the issue of attorney's fees before the approval of the Stipulations and issuance of an Award. (*Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd.*, *supra*, 26 Cal.App.4th at 803-806; Cal. Code Regs., tit. 8, § 10702.)

Accordingly, we dismiss the Petition and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, lien claimant's Petition for Reconsideration shall be treated as a petition to set aside in the first instance, and the WCJ shall set a hearing, to allow lien claimant an opportunity to put on testimony or other evidence. After the WCJ issues a decision, any aggrieved person may then timely seek reconsideration of that decision.



For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Reconsideration be treated as a petition to set aside, and that the Petition for Reconsideration is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

I CONCUR,

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**JOSEPH V. CAPURRO, COMMISSIONER**  
CONCURRING NOT SIGNING



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

**OCTOBER 4, 2024**

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

**LAW OFFICE OF CRAIG W. MORRISON  
LAUGHLIN, FALBO, LEVY & MORESI  
TERRYE BAWCUM  
PACIFIC WORKERS' OAKLAND**

***MB/ara***

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