

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

**VICENTE VILLICANA, *Applicant***

**vs.**

**STEVE WILLS TRUCKING AND LOGGING LLC; REDWOOD FIRE  
AND CASUALTY INSURANCE COMPANY; adjusted by BERKSHIRE  
HATHAWAY ADJUSTING, *Defendants***

**Adjudication Numbers: ADJ10806522, ADJ3933264 (RDG0108626)  
Redding District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.<sup>1</sup> We now issue our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on August 22, 2022, wherein the WCJ found in pertinent part that, pursuant to Labor Code section 5804, the WCAB lacks jurisdiction to act on applicant's Petition to rescind the Order Approving Compromise and Release (OACR).

Applicant contends that the WCAB retains jurisdiction to enforce the OACR.

We have not received an answer from defendant.

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, and for the reasons discussed below, we will rescind the August 22, 2022 Findings and Order and substitute a new Findings and Order finding,

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<sup>1</sup> Commissioner Sweeney, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

inter alia, that applicant's request to enforce the OACR is granted, that applicant is entitled to \$43,845.48, and defendant is ordered to pay \$22,412.86.<sup>2</sup>

## BACKGROUND

Applicant filed an application for adjudication claiming injury to various body parts while employed by defendant as a trucker/logger, during the period from January 1, 2005 to December 9, 2016, in case number ADJ10806522.

Applicant also filed an application for adjudication claiming injury to various body parts while employed by defendant as a trucker/logger on December 9, 2016, in case number ADJ3933264.

On January 18, 2022, defendant served a Compromise and Release (C&R) executed on January 17, 2022 to jointly settle both cases (January 17, 2022 C&R), as well as a proposed OACR, on the WCJ, applicant, and applicant's attorney by way of mail. The executed C&R was prepared on DWC-WCAB form 10214(a), revised May 2020.

Paragraph No. 6 states, in pertinent part, that permanent disability indemnity was paid in the amount of \$31,243.38 for the period ending on January 3, 2021. (January 17, 2022 C&R, ¶ 6, p. 5, marked as Ex. 2 at trial.) Paragraph No. 7 states that that the parties agree to settle the claims for \$73,750.00, next to which "less PDAs" is handwritten.

Paragraph No. 9 instructs the parties to initial next to the issues they wish to settle and cautions that only the initialed issues are included in the settlement. Both parties initialed most of the issues, including permanent disability.<sup>3</sup> (January 17, 2022 C&R, ¶ 9, p. 7.)

The following amounts were to be deducted from the settlement amount: \$8,831.02 for permanent disability advances (PDAs) through January 3, 2021; \$9,475.71 payable to applicant for a self-administered Medicare set-aside (MSA); and a request for applicant's attorney's fees in the amount of \$11,062.50. "Leaving a balance of \$44,380.77, after deducting the amounts set forth above and less further permanent disability advances made after the date set forth above." (January 17, 2022 C&R, ¶ 7, p. 6 [emphasis added].)

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<sup>2</sup> This reflects a settlement of \$73,750.00, less credit for permanent disability advances of \$8,831.02, less attorney fees of \$11,062.50, less Medicare set-aside of \$10,011.00, and less credit for sums already paid of \$21,432.62.

<sup>3</sup> The complete list of issues that that parties initialed are: earnings, temporary disability, jurisdiction, apportionment, employment, injury AOE/COE, serious and willful misconduct, discrimination (Labor Code §132a), statute of limitations, future medical treatment, other, permanent disability, self-procured medical treatment, except as provided in Paragraph 7.

On February 4, 2022, defendant served an updated C&R, changing Paragraph No. 6 to state, in pertinent part, that permanent disability indemnity was paid in the amount of \$8,831.02 for the period ending on January 3, 2021. (February 4, 2022 updated C&R, ¶ 6, p. 5.) The February 4, 2022 C&R is otherwise identical to the January 17, 2022 version.

On February 18, 2022, an OACR issued, with the following terms: gross amount to applicant: \$73,750.00, less approved attorney fees in the amount of \$11,062.50, less credit for applicant's self-administered MSA in the amount of \$9,475.71, less credit for permanent disability advances in the amount of \$8,831.02, with balance to applicant: \$44,380.77.

On March 10, 2022, defendant's attorney emailed the WCJ, requesting that the MSA amount in the C&R be increased to \$10,011.00, per the Centers for Medicare and Medicaid Services (CMS). (March 10, 2022, email correspondence from defense attorney Richard Montarbo to the WCJ, marked as Ex. 9 at trial.) Per defendant's email, the proposed amended Order "is otherwise identical to the original order." (*Id.*) Applicant's counsel was copied on the email and, per defendant's email, it was a joint request to increase the MSA amount. (*Id.*)

On March 10, 2022, the WCJ issued an amended joint OACR increasing the credit for applicant's self-administered MSA to \$10,011.00. The terms of the amended OACR were otherwise unchanged: gross amount to applicant: \$73,750.00, less approved attorney fees in the amount of \$11,062.50, less credit for applicant's self-administered MSA, now in the amount of \$10,011.00, less credit for permanent disability advances in the amount of \$8,831.02, and balance to applicant: \$43,845.48. (March 10, 2022 amended joint OACR, p. 1.)

On or about March 18, 2022, applicant received two checks, one for \$10,011.00 for the self-administered MSA and another for \$21,432.62, towards the \$43,845.48 settlement. (Declaration of Robert L. Davis in support of applicant's petition to rescind order approving compromise and release, April 1, 2022, ¶ 4.)

On April 1, 2022, applicant filed a petition for rescission, contending that he signed the settlement agreement based upon his understanding that he would be receiving \$44,380.77 "new money," and that he will not accept \$21,432.62 in settlement. (Applicant's petition to rescind, dated April 1, 2022, p. 2.)

On April 18, 2022, defendant filed an answer to applicant's petition for rescission, contending in pertinent part that "The C&R provides on page 6 that the settlement amount was 'less PDA's'" and that "There was a clear intent and understanding between the parties that the

settlement to be “less PDAs” ... “to date and continuing subject to proof”. (Defendant’s answer to petition for rescission, filed April 19, 2022, p. 2.)

On June 28, 2022, the matter proceeded to trial on the following issues:

Whether the 1/17/2022 Compromise and Release should be rescinded and the 3/10/2022 Order Approving Compromise and Release vacated based on mutual mistake of the parties or a mistake of one party which the other party at the time knew or suspected; and if not, whether the 1/17/2022 Compromise and Release should be enforced; and if so, what amount of permanent disability advances are the defendants entitled to credit for.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), June 28, 2022 trial, p. 4 [emphasis added].)

At trial, the parties stipulated as follows:

1. Vicente Villicana, born [], while employed on 12/09/2016 and during the period of 1/01/2005 to 12/09/2016 as a trucker/logger at Fortuna, California, by Steve Wills Trucking and Logging, L.L.C., sustained injury arising out of and in the course of employment to the upper extremities, namely the shoulders, body systems, mid low back, bilateral knees, nervous system, and neck.
2. At the time of the injury, the employer’s workers’ compensation carrier was Berkshire Hathaway Homestate Insurance Company, adjusted by Berkshire Hathaway.
3. At the time of the injury, the employee’s earnings were \$1,011.18 per week, warranting indemnity rates of \$674.12 for temporary disability and \$290 per week for permanent disability.
4. The parties further stipulate permanent disability was paid at the aforementioned rate from 12/12/2018 through 6/04/2020 in the amount of \$22,412.86 and then at the same rate also from 6/05/2020 through 1/03/2021 in the total amount of \$8,831.02.

(MOH/SOE, June 28, 2022 trial, pp. 3-4.)

Applicant was the only witness to testify at trial. He testified in pertinent part:

He thought he was going to get a check for \$44,380.77 plus a check for \$9,475.07 for his Medicare set-aside. He thought that the \$44,000 check was in addition to money he had already been paid by the defendant. He testified he would not have signed the settlement documents if he thought he was getting less than \$44,000.

(MOH/SOE, June 28, 2022 trial, p. 5.)

At trial, the WCJ admitted numerous exhibits, including “Notice Regarding Permanent Disability Benefits Payment Termination dated 6/17/2020” as Exhibit B and “Notice Regarding Permanent Disability Benefits Payment Termination dated 1/05/2021” as Exhibit D.

## DISCUSSION

We first address the issue of whether the WCAB has jurisdiction to enforce the OACR. Subject to the limitations of Labor Code<sup>4</sup> section 5804, “[t]he appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] ....” (Lab. Code, § 5803.)

Section 5804 provides in pertinent part: “No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury except upon a petition by a party in interest filed within such five years....” (Lab. Code, § 5804.) However, the power of the WCAB to enforce an award is not constrained by the limitations set forth in section 5804 with respect to rescinding, altering, or amending an award. (*Barnes v. Workers’ Comp. Appeals Bd.* (2000) 23 Cal.4th 679, 687 [65 Cal.Comp.Cases 780]; *Kauffman v. Workers’ Comp. Appeals Bd.* (1969) 273 Cal.App.2d 829, 838-839 [34 Cal.Comp.Cases 373], emphasis added.)

Where, as here, more than five years have elapsed since the date of injury (DOI), the WCAB is vested with the authority and jurisdiction to conduct proceedings regarding the recovery of compensation. (Lab. Code, §§ 5300, et seq., emphasis added.) Section 5300 provides, in relevant part:

All the following proceedings shall be instituted before the appeals board and not elsewhere, except as otherwise provided in Division 4:

- (a) For the recovery of compensation, or concerning any right or liability arising out of or incidental thereto.
- (b) For the enforcement against the employer or an insurer of any liability for compensation imposed upon the employer by this division in favor of the injured employee, his or her dependents, or any third person.

(Lab. Code, § 5300(a)-(b), emphasis added.)

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<sup>4</sup> All further statutory references are to the Labor Code, unless otherwise noted.

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.) 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; *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 clear language of the contract governs its interpretation if an absurdity is not involved. (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, it is undisputed that the parties stipulated to settle the claims for \$73,750.00, less approved attorney fees, less credit for applicant's self-administered MSA, and less credit for permanent disability advances in the amount of \$8,831.02. (January 17, 2022 C&R, ¶ 7, p. 6; February 4, 2022 updated C&R, ¶ 7, p. 6.) Thus, based on the plain language of the various settlement documents executed by the parties, there was a mutual intent that defendant was entitled to a credit of \$8,831.02 for permanent disability advances. Moreover, it is undisputed that the parties stipulated that applicant's self-administered MSA be funded in the amount of \$10,011.00.

We note that while stipulations are encouraged in workers' compensation cases, they are not binding on the WCJ or the WCAB. (Lab. Code, § 5702; *Robinson, supra*, at 790; *Turner Gas Co. v. Workmen's Comp. Appeals Bd.* (1975) 47 Cal.App.3d 286, 290-291 [40 Cal.Comp.Cases 253].) Section 5001 provides that no release of liability or compromise agreement is valid unless it is approved by the Appeals Board or WCJ. (Lab. Code, § 5001; *Johnson v. Workmen's Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 973 [35 Cal.Comp.Cases 362].) Similarly, interest, if any, runs from the date of the making and filing of the Order approving the C&R. (Lab. Code, § 5800.)

An Order approving "a workers' compensation compromise and release rests 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." (*Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1169 [50 Cal.Comp.Cases 311] (writ den.), internal citations and quotations omitted; see Lab. Code, §§ 5806, 5807.)

Defendant's decision to unilaterally withhold a portion of the settlement funds is particularly puzzling in light of its arguments in answer to applicant's petition for rescission. Defendant stated that "The C&R provides on page 6 that the settlement amount was 'less PDA's'" and that "There was a clear intent and understanding between the parties that the settlement to be 'less PDAs' ... 'to date and continuing subject to proof.'" (Defendant's answer to petition for rescission, filed April 19, 2022, p. 2.) There is no dispute that permanent disability advances terminated with the period ending January 3, 2021. (January 17, 2022 C&R, ¶ 6, p. 5; February 4, 2022 updated C&R, ¶ 6, p. 5; Ex. B, notice regarding permanent disability benefits payment termination dated 6/17/2020, p. 1; Ex. D, notice regarding permanent disability benefits payment termination dated 1/05/2021, p. 1.)

The parties executed the January 17, 2022 C&R approximately one year after the last payment of permanent disability advances. Thus, defendant knew or should have known the status of permanent disability advances at the time they executed the January 17, 2022 C&R, and certainly by the time of the February 4, 2022 updated C&R. (*Brower v. David Jones Constr.* (2014) 79 Cal.Comp.Cases 550; Lab. Code, § 4650.) Where, as here, there is no mistake but merely a lack of full knowledge of the facts, which is due to the a failure of a party to exercise due diligence to ascertain them, there is no proper grounds for relief. (*Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 866 [44 Cal.Comp.Cases 798].)

Informality of pleading in proceedings before the Board is recognized and courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*McGee Street Productions v. Workers' Comp. Appeals Bd.* (2003) 108 Cal.App.4th 717, 724 [68 Cal.Comp.Cases 708].) WCAB Rule 10517 states that "pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof." (Cal. Code Regs., tit. 8, § 10517.)

Based on the record, applicant is essentially seeking to have the OACR enforced. Applicant testified that it was his understanding that he would receive a check for \$44,380.77, as well as a check for a Medicare set-aside, and that he would not have signed the settlement documents if he thought he would receive less. (MOH/SOE, June 28, 2022 trial, p. 5.) As such, the WCJ should have treated applicant's Petition as a petition to enforce the OACR.

Accordingly, we rescind the F&O and substitute a new Findings and Order, finding, *inter alia*, that applicant's request to enforce the OACR is granted, that applicant is entitled to \$43,845.48 after credit for permanent disability advances, less Medicare set-aside, and less attorney fees, and that defendant is ordered to pay applicant \$22,412.86.



For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order of August 22, 2022 is **RESCINDED**, and the following is **SUBSTITUTED** therefor:

#### **FINDINGS OF FACT**

- 1: Vicente Villicana, born [], while employed on 12/9/2016 and during the period of 1/1/2005 to 12/9/2016, as a trucker/logger at Fortuna, California, by Steve Wills Trucking and Logging, LLC, sustained injury arising out of and in the course of employment to the bilateral shoulders, mid and low back, bilateral knees, neck, nervous system and body system.
2. At the time of the injuries herein, the employer's workers' compensation insurance carrier was Redwood Fire and Casualty Insurance Company.
3. Permanent disability was paid by defendant at \$290.00 per week from 12/12/2018 to 6/4/2020 in the amount of \$22,412.86, and again from 6/5/2020 to 1/3/2021 in the amount of \$8,831.02.
4. Defendant is entitled to credit for permanent disability advances in the amount of \$8,831.02 and credit for a Medicare set-aside in the amount of \$10,011.00.
5. Applicant's petition to enforce the Order Approving Compromise and Release is granted.
6. By the terms of the Orders Approving Compromise and Release, applicant is entitled to \$73,750.00, less credit for permanent disability advances of \$8,831.02, less attorney fees of \$11,062.50, and less credit for a Medicare set-aside in the amount of \$10,011.00, leaving a balance to applicant of \$43,845.48.
7. After credit for a partial payment of \$21,432.62, the amount remaining to be paid is \$22,412.86.

**ORDER**

1. Defendant is ordered to pay applicant \$22,412.86 forthwith, plus an increase pursuant to Labor Code section 4650(d), plus interest pursuant to Labor Code section 5800, to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE ZALEWSKI, CHAIR

**I CONCUR,**

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



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

**September 10, 2024**

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

**VICENTE VILICANA  
LARRY S. BUCKLEY  
RICHARD MONTARBO**

**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*