

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

BRUCE MORGAN, *Applicant*

vs.

**CLEAR CHANNEL OUTDOOR;
GALLAGHER BASSETT SERVICES, *Defendants***

**Adjudication Numbers: ADJ7295268;
ADJ7295269; ADJ7151536
Sacramento District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant, apparently filing in pro per, seeks reconsideration of the Award issued by the workers' compensation administrative law judge (WCJ) on October 18, 2023, wherein the WCJ approved stipulated settlement agreements in case numbers ADJ7295268, ADJ7295269, and ADJ7151536.

Applicant contends that he signed a fee agreement for attorney's fees in the 9% to 12% range with prior counsel in 2010 and thus the WCJ erred in awarding 15% for attorney fees in his cases-in-chief.

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.¹

Based on our review of the record, and as discussed below, we will dismiss the Petition as premature, and return this matter to the trial level for consideration of the Petition as one to set aside the Award.

¹ 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.

BACKGROUND

We will briefly review the relevant facts.

Applicant's underlying claims in case numbers ADJ7295268, ADJ7295269, and ADJ7151536 resolved by Stipulation with Request for Award. Applicant stipulated to a 15% attorney's fee in the underlying cases.

On October 18, 2023, without holding a hearing, the WCJ approved the Stipulation with Request for Award. No party sought review of the October 18, 2023 Award.

On July 17, 2024, the matter went to trial on the sole issue of attorney's fees in the Subsequent Injuries Benefit Trust Fund (SIBTF) claim.

At trial, applicant testified as follows:

He had an initial agreement with attorney Dan Abramson, and that agreement did not agree to a 15% fee. His underlying workers' compensation settlement in this case had a 15% fee awarded, but he was not aware of the 2010 agreement with Dan Abramson when that was plead.

In regard to this case, he did whatever was requested by his attorney to advance the case. This included obtaining costs regarding surgery, working on the Medicare Set Aside agreement, when the Compromise and Release was discussed, and worked on a response to the reporting of Dr. Ward.

In 2020 he sent material samples for analysis which showed that some of the materials he worked with had 18.01% crystal tile, and they were rated at 2%, so this was 9 times over what was indicated, and he indicated this may have involved asbestos tiles.

In August of 2022 he obtained Social Security Administration 1099s for SIBTF to calculate offsets. In September of 2023, he obtained pension information and contacted a Noel Catalbas who provided the information. He also provided other tax information when requested.

He testified that the fee agreement with Dan Abramson was for 9% to 12%. If he had been made aware of this when the underlying compensation case was settled, he would have asked for a 12% fee and not the 15% fee that was awarded. He thinks the 12% fee is high in the SIBTF case.

He would like to have his original agreement honored. He would like to have been aware of the 9% to 12% range at the time of the workers' compensation settlement, and he would like to have a 9% fee awarded in the SIBTF case.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), July 17, 2024 trial, pp. 3-4.)

On August 1, 2024, the WCJ issued a Findings and Award, wherein the WCJ found, in pertinent part, as follows:

AWARDS AND ORDERS

1. Applicant's Attorney's Fee Lien is Allowed in the amount of 12% of the benefits Awarded July 17, 2024, in Applicant's SIBTF claim.

(Findings and Award, issued by the WCJ on August 1, 2024, p. 2.)

The WCJ made no new findings regarding the attorney's fees in the underlying cases (case numbers ADJ7295268, ADJ7295269, and ADJ7151536).

On August 23, 2024, applicant's attorney for the SIBTF claim sought reconsideration of the WCJ's August 1, 2024, Findings and Award.

On October 28, 2024, the Appeals Board denied reconsideration.

DISCUSSION

I.

Former Labor Code section² 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 in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under

² All statutory references are to the Labor Code unless otherwise stated.

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 April 2, 2025, and 60 days from the date of transmission is Sunday, June 1, 2025. The next business day that is 60 days from the date of transmission is Monday, June 2, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Monday, June 2, 2025, 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 April 2, 2025, and the case was transmitted to the Appeals Board on April 2, 2025. 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 April 2, 2025.

II.

Subject to the limitations of 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] ... 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 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

³ WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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.) Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*Weatherall, supra*, at 1121.)

"Good cause" to set aside an order or stipulations depends upon the facts and circumstances of each case. "Good cause" includes mutual mistake of fact, duress, fraud, undue influence, and procedural irregularities. (*Johnson v. Workmen's Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases 362]; *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp.Cases 311].) To determine whether there is good cause to rescind awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Labor Code § 5702; *Weatherall, supra*, 1118-1121; *Robinson, supra*, at 790-792; *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].)

We note that while the 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].)

Moreover, "[t]he 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).) Because no hearing was held with respect to settlement in the cases-in-chief, the WCJ did not have the opportunity to assess applicant's understanding of the proposed settlement agreements, nor his understanding with respect to attorney's fees.

However, at trial regarding settlement of the SIBTF case, applicant testified that the fee agreement in the underlying case "was for 9% to 12%. If he had been made aware of this when the underlying compensation case was settled, he would have asked for a 12% fee and not the 15% fee that was awarded." (MOH/SOE, July 17, 2024 trial, p. 3.) This calls into question what applicant intended with respect to the settlement of the underlying cases-in-chief.

The WCJ's decision "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*).) An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall ". . . make and file findings upon all facts involved in the controversy[.]" (Lab. Code, § 5313; *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Hamilton, supra*, at 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 w[33 Cal.Comp.Cases 350]).)

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 [65 Cal.Comp.Cases 805].) A

fair hearing includes, but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*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.4th 703, 710 [57 Cal.Comp.Cases 230].)

Section 3202 imposes an obligation of liberal construction in order to extend protection to injured employees and informality of pleadings in workers' compensation proceedings before the Board has been recognized. (*Liberty Mutual Ins. Co. v. Workers' Comp. Appeals Bd. (Aprahamian)* (1980) 109 Cal.App.3d 148, 152 [45 Cal.Comp.Cases 866].) The courts have rejected pleading technicalities as grounds for depriving the Board of its continuing jurisdiction under Labor Code sections 5410, 5803, 5804 and 5805. (*Aprahamian, supra*, at 152-153.)

Accordingly, we will dismiss the Petition as premature, and return this matter to the trial level. Upon return of this matter to the trial level, we recommend that the WCJ treat the Petition as a petition to set aside and set a hearing so applicant can provide evidence in support of the arguments contained in the Petition 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.

We remind applicant that the WCAB has exclusive jurisdiction over fees to be allowed or paid to applicant's attorneys and that the WCJ has broad discretion in determining a reasonable fee. (*Vierra v. Workers' Comp. Appeals Bd.* (2007) 154 Cal.App.4th 1142, 1147-1148 [72 Cal.Comp.Cases 1128]; Cal. Code Regs., tit. 8, § 10840.) Pursuant to section 4906, in determining what constitutes a "reasonable" attorney's fee, consideration shall be given to the following factors: (1) the responsibility assumed by the attorney; (2) the care exercised in representing the applicant; (3) the time involved; and (4) the results obtained by the attorney. (Lab. Code, § 4906(d); see also Cal. Code Regs., tit. 8, § 10844.) We note that the stipulation with request for award settled three different cases, spanning many years.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

LISA A. SUSSMAN, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 2, 2025

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

**BRUCE MORGAN
MCMONAGLE STEINBERG
OFFICE OF THE DIRECTOR – LEGAL UNIT (SACRAMENTO)
SUBSEQUENT INJURIES BENEFITS TRUST FUND**

JB/pm

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