

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

**EARNEST MCINTOSH, *Applicant***

**vs.**

**SAIA LTL FREIGHT; BROADSPIRE, *Defendants***

**Adjudication Numbers: ADJ16936069; ADJ15085332  
Sacramento District Office**

**OPINION AND ORDER  
DISMISSING PETITION  
FOR RECONSIDERATION**

Applicant apparently seeks reconsideration of the Order Approving Compromise and Release (OACR), issued by the workers' compensation administrative law judge (WCJ) on December 6, 2024.<sup>1</sup>

Applicant appears to contend that he is entitled to additional disability benefits for the period from October 2023 to March 2024.

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 dismiss applicant's Petition as premature, and return this matter to the trial level for consideration of the Petition as one to set aside the OACR.

**BACKGROUND**

We will briefly review the relevant facts.

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<sup>1</sup> We note that the WCJ designated service of the OACR on December 6, 2024, pursuant to WCAB Rule 10629. However, as a proof of service was not filed, as required by WCAB Rules 10610 and 10625(c), we are unable to determine the date of service. (Cal. Code Regs., tit. 8, §§ 10610, 10625(c).) Moreover, while the Appeals Board may designate a party to serve documents, service must still be in accordance with WCAB Rule 10628. (Cal. Code Regs., tit. 8, §§ 10628, 10629.) Because we are dismissing applicant's petition on other grounds, we do not further consider the issue of whether service was improper.

Applicant claimed injury to various body parts, while employed by defendant as a forklift driver on September 7, 2022.<sup>2</sup>

On August 27, 2024, applicant filed a Declaration of Readiness (DOR). The disputed issue was identified as:

AA submitted a change of address and DA confirmed receipt. He received one TD check at new location but no additional checks. Attempts to confirm why checks haven't been received have been unsuccessful. DA refuses to respond. Further, on 8/27/2024, two of applicant's checks were received at AA's mailing location, which is not the location of the applicant. Penalties and sanctions requested due to unreasonable delays causing major financial hardship.

(Applicant's DOR, dated August 27, 2024, p. 7, original in all-caps.)

Minutes and an Order taking the conference off calendar are dated September 11, 2024. The minutes state that it was a joint request for an OTOC. According to the minutes, applicant was not present at the hearing. The comments state: "BPO and PTP authorization provided." (Minutes, dated September 11, 2024, p. 1.)

On October 8, 2024, applicant filed a DOR. The disputed issue was identified as:

Applicant is P&S per AME Dr. Greenberg with ratable impairment. Applicant sent rating string with demand for stipulations/compromise and release and back-owed temporary disability. Applicant emailed DA on 10/2/2024 but no response was provided. Matter is ready for resolution (WCAB assistance needed) or trial as to TD entitlement and impairment level, in addition to future medical care concerns.

(Applicant's DOR, dated October 8, 2024, p. 7, original in all-caps.)

On October 28, 2024, the matter proceeded to a hearing. Minutes and an Order taking the conference off calendar are dated October 29, 2024. The minutes state that it was a joint request for an OTOC. According to the minutes, applicant was present at the hearing. The comments state: "Settlement agreement reached at the hearing. OTOC pending settlement finalization." (Minutes, dated October 29, 2024, p. 1.)

On October 31, 2024, applicant's attorney signed the Compromise and Release (C&R).

On November 1, 2024, applicant signed the C&R.

On November 21, 2024, defendant's attorney signed the C&R.

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<sup>2</sup> We note that "800 body system" and "stress" are not body parts.

On November 25, 2024, defendant submitted the signed C&R to the WCJ for approval by way of e-filing and served it by way of mail.

On December 6, 2024, the WCJ signed an Order approving the C&R (OACR), designating defendant to serve the OACR.

On December 26, 2024, applicant filed a Petition for Reconsideration. Although no dismissal of attorney has been filed, it appears that applicant filed the Petition for Reconsideration in pro per.

## **DISCUSSION**

### **I.**

Former Labor Code section<sup>3</sup> 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 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 January 8, 2025, and 60 days from the date of transmission is Sunday, March 9, 2025. The next business day that is 60 days from the date of transmission is Monday, March 10, 2025. (See Cal. Code Regs.,

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<sup>3</sup> All statutory references are to the Labor Code unless otherwise stated.

tit. 8, § 10600(b)).<sup>4</sup> This decision is issued by or on Monday, March 10, 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 January 8, 2025, and the case was transmitted to the Appeals Board on January 8, 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 January 8, 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.)

We observe that contract principles apply to settlements of workers’ compensation disputes. 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 [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.*) The essential elements of contract include the mutual consent of the parties. Thus, 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,

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<sup>4</sup> 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.

1565, 1580; *Sackett v. Starr* (1949) 95 Cal.App.2d 128, 133; *Sieck v. Hall* (1934) 139 Cal.App. 279, 291; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.)

The plain language of a contract is the first step in determining the intent of the parties. (Civ. Code, §§ 1638, 1639.) The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage. (Civ. Code, § 1644.) 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, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, 27 (*TRB Investments*); *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].)

“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.” (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [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. (*Weatherall, supra*, at 1121.) 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].)

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 v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].) “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]; *Santa Maria Bonita School District v. Workers' Comp. Appeals Bd. (Recinos)* (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.).)

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).) 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.)

To the extent that applicant contends that he is entitled to additional temporary disability indemnity, applicant appears to have received the statutory maximum of 104 weeks. (Lab. Code, § 4656(c)(2).) Applicant’s injury occurred in 2022, and is subject to the statutory cap of 104 compensable weeks for aggregate temporary disability payments, per section 4656(c)(2). (Lab. Code, § 4656(c)(2).) The parties stipulated that temporary disability indemnity was paid for the period September 15, 2022 to October 1, 2024, which exceeds 104 weeks. (C&R, paragraph 6, p. 5.) The parties also stipulated that defendant asserted a credit back for overpayment of temporary disability indemnity from September 18, 2024 to October 1, 2024. (C&R, p. 7, paragraph 9, comments.)

In light of applicant’s contentions, we note that applicant raised the non-receipt of temporary disability indemnity checks in applicant’s DOR dated August 27, 2024. Applicant also raised the issue of “back-owed temporary disability” in applicant’s DOR dated October 8, 2024. While the C&R indicates that the parties intended to settle the amount of temporary disability indemnity, based on the record before us, we cannot determine what applicant understood with respect to the alleged missing checks.

Additionally, the benefits printout (BPO) referenced in minutes dated September 11, 2024, does not appear in the electronic adjudication file. (Minutes, dated September 11, 2024, p. 1.) As such, we are unable to review any evidence regarding benefits paid. (See Cal. Code Regs., tit. 8, § 10803.)

Here, the WCJ stated that “Applicant did not clarify the final order which triggered the Petition for Reconsideration and the court defaults to the OACR for this Report and Recommendation.” (Report, p. 2.) While we are sympathetic to the WCJ’s apparent frustration, 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].) The “essence of due process is simply notice and the opportunity to be heard.” (*San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936.)

Sections 5313 and 5815 require the WCJ to make determinations on all issues in controversy, to provide a statement of the reasons or grounds upon which those determinations were made, and to do so in a manner that is “expeditiously, inexpensively, and without encumbrance of any character.” (Cal. Const., art. XIV, § 4; Lab. Code, §§ 5313, 5815.) The 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, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*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].)

When applicant filed the Petition for Reconsideration, the WCJ could have treated it as a Petition to set-aside the OACR, set the matter for hearing to allow the parties the opportunity to frame the issues and any stipulations, provide evidence, make their legal arguments, and create a record upon which a decision can be made by the WCJ. (Lab. Code, § 5313; Cal. Code Regs., tit. 8, §§ 10750, 10758, 10759, 10832.) Upon return of this matter to the trial level, we recommend that the WCJ treat applicant’s Petition as a petition to set aside, hold a hearing to allow the parties to frame the issues and any stipulations, submit exhibits as evidence, call witnesses, if necessary, make their legal arguments, and create a record upon which a decision can be made by the WCJ.

Accordingly, we dismiss the Petition for Reconsideration.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

**I CONCUR,**

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



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

**March 10, 2025**

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

**EARNEST MCINTOSH  
LIEBERT LAW  
DA FIRM**

***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*