

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

HOMERO BALDERAS, *Applicant*

vs.

CHEEMA TRANSPORT, INC.;
STATE COMPENSATION INSURANCE FUND, *Defendants*

**Adjudication Number: ADJ12989988
Fresno District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR RECONSIDERATION**

Lien claimant, applicant's prior attorney, seeks reconsideration of the Order Approving Compromise & Release (OACR) of June 3, 2025. Lien claimant contends that he was not afforded his due process rights as an interested party in the case and that the Appeals Board acted without or in excess of its powers by issuing the OACR.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration and (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the report of the WCJ with respect thereto. Based on our review of the record, for the reasons discussed below, we will dismiss the Petition as one for reconsideration and return the matter to the WCJ to treat the Petition as a petition to set aside the OACR.

FACTS

Applicant claimed industrial injury to multiple body parts while employed by defendant as a truck driver due to an injury that occurred on March 15, 2019. Applicant was represented by lien claimant at the time he filed his application for adjudication in late 2019. On June 27, 2022,

applicant dismissed his prior attorney, the lien claimant, as his attorney and substituted his current attorneys.

On June 27, 2022, lien claimant filed a Notice and Request for Allowance of Lien for attorney's fees.

On June 2, 2025, the case was resolved by way of a C&R in the amount of \$5,000,000.00, designating \$750,000.00 as attorneys' fees. Applicant, applicant's current attorney, defendant, and defendant's attorney signed the C&R; applicant's prior attorney did not sign the C&R. As relevant here, in paragraph 8, they agreed that:

PRIOR AA LIEN FILED 06/27/22 FOR \$100,000.00. AS SUCH, STATE FUND TO HOLD \$100,000.00 OF ATTORNEYS FEES IN TRUST PENDING RESOLUTION OF PRIOR AA LIEN BY WRITTEN AGREEMENT.

On June 3, 2025, the WCJ issued the OACR, approving it on the walkthrough calendar. The OACR approved \$750,000.00 of the settlement amount for attorney's fees and \$100,000.00 of the attorney's fees to be held in trust by defendant State Compensation Insurance Fund pending resolution of the lien from the previous applicant's attorney with the remainder to the current applicant's attorney.

On June 24, 2025, lien claimant filed an amended notice of lien. On the same date, the lien claimant filed a Declaration of Readiness to Proceed (DOR) for a lien conference and the Petition for Reconsideration of the OACR.

DISCUSSION

I.

Former Labor Code 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 June 25, 2025, and 60 days from the date of transmission is Sunday, August 24, 2025. The next business day that is 60 days from the date of transmission is Monday August 25, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday August 25, 2025, 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 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 June 25, 2025, and the case was transmitted to the Appeals Board on June 25, 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 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 June 25, 2025.

¹ 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.

II.

The Appeals Board has continuing jurisdiction to “rescind, alter, or amend any order, decision, or award.” (Lab. Code, § 5803.) Whether “good cause” exists to set aside a settlement 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]; *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.); *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp. Cases 311].)

Labor Code sections 5000 through 5003 provide:

No contract, rule, or regulation shall exempt the employer from liability for the compensation fixed by this division, but nothing in this division shall . . . [i]mpair the right of the parties interested to compromise, subject to the provisions herein contained, any liability which is claimed to exist under this division on account of injury or death.

(Lab. Code, § 5000(a).)

Compensation is the measure of the responsibility which the employer has assumed for injuries or deaths which occur to employees in his employment when subject to this division. No release of liability or compromise agreement is valid unless it is approved by the appeals board or referee.

(Lab. Code, § 5001.)

A copy of the release or compromise agreement **signed by both parties** shall forthwith be filed with the appeals board. Upon filing with and approval by the appeals board, it may, without notice, of its own motion or on the application of either party, enter its award based upon the release or compromise agreement.

(Lab. Code, § 5002, emphasis added.)

Every release or compromise agreement shall be in writing and **duly executed**, and the signature of the employee or other beneficiary shall be attested by two disinterested witnesses or acknowledged before a notary public.

(Lab. Code, § 5003 emphasis added.)

As a part of our inquiry, 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].) Thus, for a compromise and release agreement to be effective, the necessary elements of a contract must exist including an offer and an acceptance. (*Id.*) The essential elements of a contract include mutual consent and consideration. (Civ. Code, §§ 1550, 1565, 1580, 1584, 1595, 1605, et seq.) 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, 133; *Sieck v. Hall* (1934) 139 Cal.App. 279, 291; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App.133, 137.) Pursuant to case law and section 1636 of the Civil Code, 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; *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].)

Here, by the plain language of the C&R, applicant's current attorney agrees that lien claimant should receive \$100,000.00 in fees, but since lien claimant was not a party to the C&R, the C&R is not enforceable with respect to lien claimant. The filing of the lien is not an "offer" by the prior attorney for the current attorney to accept. And, to the extent that applicant's current attorney argues that the lien amount was an agreement between the current and former attorneys, we observe that any stipulation between the parties in workers' compensation cases must be approved by the WCJ before it can be enforceable. (Lab. Code, § 5001; *Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291, 301 [83 Cal.Comp.Cases 1083].) In short, there is simply no evidence in the record of an agreement regarding division of fees between applicant's prior and current attorneys.

Moreover, the amount claimed on the lien is irrelevant. Only a WCJ can determine the amount of a lien, and only a WCJ can determine an attorney's fee. In calculating attorney's fees, our basic statutory command is that the fees awarded must be "reasonable." (Lab. Code, §§ 4903, 4906(a) & (d); Cal. Code Regs., tit. 8, § 10844.) Pursuant to Labor Code 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.) Here, there is nothing in the record to indicate how the WCJ determined that the division of the fees was appropriate.

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] (*Rucker*).) 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*, 82 Cal.App.4th at pp. 157-158, citing *Kaiser Co. v. Industrial Acc. Com.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710-712 [57 Cal.Comp.Cases 230].) "[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc); see Cal. Code Regs., tit. 8, § 10803.)

As the C&R was presented to the WCJ through a walkthrough procedure and no hearing was held, the WCJ did not provide an explanation as to the appropriate division of the fees and did not have the opportunity to hear from lien claimant or consider any evidence. In order for the Appeals Board to conduct review, there must be a complete record.

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 lien claimant 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.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the June 3, 2025 Order Approving Compromise & Release is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 22, 2025

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

**HOMERO BALDERAS
TINA ODJAGHIAN LAW GROUP
CALIFORNIA WORKERS COMP
STATE COMPENSATION INSURANCE FUND**

JMR/abs

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