

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

MARIA VAZQUEZ, *Applicant*

vs.

**HOLIDAY INN LOS ANGELES GATEWAY;
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA,
administered by ESIS, *Defendants***

**Adjudication Numbers: ADJ19408921, ADJ19408487, ADJ19408920
Los Angeles District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Defendant has filed a petition to set aside, and also seeks reconsideration, of the Order Approving Compromise & Release (OACR) issued by a workers' compensation administrative law judge (WCJ) on February 25, 2025.

Defendant contends that the parties mistakenly failed to take applicant's age into account in the settlement agreement and that a Medicare set aside may be appropriate.

We did not receive an answer from applicant.

We received a Report and Recommendation (Report) from the WCJ that recommends that we deny the Petition.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and for the reasons stated in the WCJ's report, we will dismiss the petition.

FACTS

Applicant claimed industrial injury to various body parts on January 24 and March 29, 2018, and on March 28, 2024, while working as a housekeeper for defendant.

The parties signed a Compromise and Release (C&R), and the OACR issued on February 25, 2025, following a walkthrough by defendant. Addendum A to the C&R, signed by the parties on January 13, 2025, stated "Applicant hereby certifies that she is not on SSDI, nor a

Medicare beneficiary at this time. Further, applicant certifies that she has not applied for Medicare or SSDI benefits and that she is not within 30 months of being eligible for said benefits.” (C&R, Addendum A, ¶ g.)

On March 13, 2025, defendant filed a Motion to Set Aside Compromise and Release claiming that the parties signed the C&R without taking into consideration the applicant’s age at the time of settlement and that she “was clearly a Medicare beneficiary at the time of settlement.”

On March 17, 2025, defendant filed their Petition for Reconsideration, making a similar argument as in their Motion to Set Aside Compromise and Release.

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 April 15, 2025, and 60 days from the date of transmission is Saturday, June 14, 2025. The next business day that is 60 days from the date of transmission is Monday, June 16, 2025. (See Cal. Code Regs.,

tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, June 16, 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 March 24, 2025, and the case was transmitted to the Appeals Board on April 15, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under Labor Code section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on April 15, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by Labor Code section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on April 15, 2025.

II.

Medicare may not pay for a beneficiary's medical expenses when payment "has been made or can reasonably be expected to be made under a workers' compensation plan." (42 U.S.C. § 1395y(b)(2); Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide, Version 4.3, dated April 7, 2025 (CMS Guide), p.2; see also *Alvarenga v. Scope Indus.* (2016) 81 Cal.Comp.Cases 850, 853.) A workers' compensation Medicare Set-Aside (MSA) allocates a portion of the workers' compensation settlement for all future work-injury-related medical expenses that are covered and otherwise reimbursable by Medicare. (CMS Guide, p. 4.)

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.

Any claimant who receives a workers' compensation settlement, judgment, or award that "includes an amount for future medical expenses must take Medicare's interest with respect to future medicals into account." (*Id.*) Therefore, the legal duty of the parties and the WCAB is to consider Medicare's interests.

The Appeals Board has continuing jurisdiction to "rescind, alter, or amend any order, decision, or award," if a petition is filed within five years of the date of injury and "good cause" to reopen is alleged and shown. (Lab. Code, §§ 5803, 5804.)² An order approving compromise and release is an order that may be reopened for "good cause" under section 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].) Although defendant filed the petition as one for reconsideration, we treat it as a petition to set aside the OACR. (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 925 [72 Cal.Comp.Cases 778]; *Rubio v. Workers' Comp. Appeals Bd. (Rubio)* (1985) 165 Cal.App.3d 196, 200-201 [50 Cal.Comp.Cases 160].)

Further, 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).) We observe that contract principles apply to settlements of workers' compensation disputes. Stipulations between the parties must be interpreted to give effect to the mutual intention of the parties 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], citing Civ. Code, § 1636.)

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

Additionally, there must be a complete record for our review of the case. “[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).) The Appeals Board’s record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.)

Finally, 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].)

The OACR initially issued following a walkthrough C&R. Because no hearing was held with the WCJ, the WCJ did not have the opportunity to assess the basis of the parties’ understanding of the C&R nor consider whether applicant was or would soon be eligible for or a beneficiary of Medicare. There is no Minutes of Hearing or Statement of Evidence in the record. Therefore, we cannot make a decision without giving the parties an opportunity to be heard and for the WCJ to create a complete record for our review.

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 consider defendant’s motion to set aside and set a hearing so the parties can provide evidence regarding the necessity of considering Medicare’s interests and any other relevant issues 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.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 16, 2025

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

**MARIA VAZQUEZ
GUERRA & CASILLAS
NEWHOUSE AND CREAGER**

JMR/abs

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