

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

MINERVA TOMKA, *Applicant*

vs.

PACIFIC GAS ELECTRIC, PACIFIC GAS ELECTRIC – SAN FRANCISCO, *Defendants*

**Adjudication Number: ADJ9840613
Sacramento District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the June 2, 2025 Findings, and Order (RF&O) wherein the workers' compensation administrative law judge (WCJ) denied applicant's Petition to Set Aside and found, in relevant part, that the Stipulations with Request for Award, which was approved by the WCJ on January 2, 2025, did not result from misrepresentation, fraud, duress, or mutual mistake, and applicant did not lack the requisite capacity to enter into the legal agreement. (RF&O, p. 2.)

Applicant contends that the Stipulations with Request for Award should be set aside as it was "procured by [f]raud" and defendant was "acting in bad faith" in failing to provide the DEU Consultative Rating to the WCJ. (Petition for Reconsideration (Petition), p. 2.) Applicant further contends that her occupation was misrepresented, and her occupational group should reflect a combination of 112, 211, and 214 to represent her various job duties. Lastly, she requests corrections to various clerical errors, including her date of injury.

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

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition,

rescind the RF&O, and substitute it with a new RF&O which reflects that applicant's occupational group number is 214 and provides corrections to various clerical errors.

FACTS

Applicant claimed that, while employed by defendant as a data entry clerk through October 27, 2014, she sustained an injury arising out of and in the course of employment (AOE/COE) to her right shoulder.

The parties proceeded with discovery and retained Dr. James D. Mays as the orthopedic panel Qualified Medical Evaluator (PQME). Dr. Mays evaluated applicant on July 7, 2015, and September 28, 2016, with corresponding reports issuing thereafter, including a permanent and stationary report dated January 16, 2017.

The parties ultimately agreed to settle the claim via Stipulations with Request for Award. The settlement was based upon a 17% permanent disability rating for the right shoulder. The Stipulations with Request for Award were approved by the WCJ on April 17, 2017. Per the ratings string listed on page 7 of the Stipulations with Request for Award, applicant's occupational group is 214.

On December 15, 2017, applicant filed a Petition to Reopen for New and Further Injury. (Court Exhibit 3.)

On May 8, 2019, applicant completed a reevaluation with Dr. Mays.

On August 10, 2020, after several failed attempts to depose Dr. Mays and schedule a reevaluation, defendant filed a "Petition for Dismissal of PQME and Issuance of a New Panel." Defendant's request was granted, a new QME panel was issued, and Dr. John Foley was selected as the replacement PQME.

Dr. Foley evaluated the applicant on January 5, 2023, and March 7, 2024, with corresponding reports issuing thereafter, including a permanent and stationary report with findings regarding impairment and apportionment. (Applicant Exhibit 2; Court Exhibit 7.)

Dr. Christian Foglar, applicant's primary treating physician, issued his own findings regarding impairment and apportionment in a report dated June 13, 2024. (Applicant Exhibit 6, p. 1.)

Upon issuance of the above reports, the parties once again proceeded to settle the claim via Stipulations with Request for Award. The new settlement was based upon a 25% permanent disability, which was a compromise "between [the] QME and PTP reports[.]" and inclusive of the

prior 17% permanent disability. (Court Exhibit 5, Stipulations with Request for Award, p. 7.) The Stipulations with Request for Award was approved by the WCJ on January 2, 2025. (Court Exhibit 6.)

On January 21, 2025, applicant filed a “Petition to Set Aside Stipulations” alleging that the “information provided by the Defendant” with respect to the permanent disability ratings “was incorrect or misleading.” (Petition to Set Aside Stipulations, p. 1.)

On June 2, 2025, the WCJ issued a RF&O which held, in relevant part, that the Stipulations with Request for Award did not result from misrepresentation, fraud, duress, or mutual mistake and applicant did not “lack the capacity to enter into a legal agreement.” (RF&O, p. 2.) The WCJ denied applicant’s Petition to Set Aside the Stipulations with Request for Award. (*Ibid.*)

DISCUSSION

I.

Preliminarily, former Labor Code¹ 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, 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 under the Events tab in the Electronic Adjudication Management System (EAMS). Specifically, in Case

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

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 July 7, 2025, and 60 days from the date of transmission is September 5, 2025. This decision was issued by or on September 5, 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 and Recommendation shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on July 7, 2025, and the case was transmitted to the Appeals Board on July 7, 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 July 7, 2025.

II.

Turning now to the merits of the Petition, pursuant to *County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [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. As defined in *Weatherall*, “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.)

The party seeking to set aside an agreement after it has become final must make a showing of good cause. Good cause includes fraud, duress, undue influence, mutual mistake of fact, mistake of law, invalidity of execution, incompetency, or minority at the time of execution of the agreement. (See California Workers’ Compensation Law (Cont. Ed. Bar 4th Ed.) §§ 16.61 et seq.; see also *Argonaut Ins. Exch. v. Industrial Acc. Com. (Bellinger)* (1958) 49 Cal.2d 706 [23

Cal.Comp.Cases 34]; *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160 [50 Cal.Comp.Cases 311]; *Carmichael v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 311 [30 Cal.Comp.Cases 169]; *Silva v. Industrial Acc. Com.* (1924) 68 Cal. App. 510 [11 IAC 266]; *City of Beverly Hills v. Workers' Comp. Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691 (writ den.); *Bullocks, Inc. v. Industrial Acc. Com.* (1951) 16 Cal.Comp.Cases 253 (writ den.); *Pac. Indem. Co. v. Industrial Acc. Com. (Forrest)* (1946) 11 Cal.Comp.Cases 117 (writ den.).)

Whether good cause exists is case specific. The circumstances surrounding the execution and approval of the agreement must be assessed. (See § 5702; *Weatherall, supra*, 77 Cal.App.4th at pp. 1118-1121; *Robinson v. Workers' Comp. Appeals Bd. (Robinson)* (1987) 199 Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers' Comp. Appeals Bd. (Huston)* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].)

As the moving party, applicant has the burden of proof to show, by a preponderance of the evidence, she should be relieved from the settlement agreement that was entered into with defendant. (See Lab. Code, § 5705 [the burden of proof rests upon the party with the affirmative of the issue]; see also Lab. Code, § 3202.5 ["All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence"].)

Here, applicant alleges that the Stipulations with Request for Award was "procured by [f]raud" and that defendant was "acting in bad faith" when they failed to provide the DEU Consultative Rating to the WCJ. (Petition, p. 2.) Pursuant to WCAB Rule 10166(b), however, consultative ratings are not admissible in judicial proceedings. (Cal. Code Regs., tit. 8, § 10166(b).) Further, we find no evidence of fraud, duress, undue influence, mutual mistake of fact, mistake of law, invalidity of execution, or incompetency herein.

Applicant contends that the WCJ's finding of occupational group 112 is improper. According to the initial Stipulations with Request for Award, which were approved by the WCJ on April 17, 2017, applicant's occupational group number is 214. As the occupational group number was previously agreed upon and approved by the WCJ, the fact that occupational group number 112 is listed on the stipulations page in the March 17, 2025 Pretrial Conference Statement is irrelevant. We also find it important to note that the stipulations page from the March 17, 2021 Pretrial Conference Statement was not signed by all parties.

Lastly, the end date of the cumulative injury is incorrectly listed as October 27, 2024 in the Findings of Fact portion of the RF&O. As noted above, and conceded by the WCJ, the correct date

is October 27, 2014. (Report, p. 2.) We note additional clerical errors in the Rulings on Evidence portion of the RF&O, including the April 17, 2027 date for the Award (Court Exhibit 2), the December 15, 2027 filing date for the Petition to Reopen (Court Exhibit 3), and the February 7, 2023 date for Dr. Foley's report (Court Exhibit 7). We will correct these to reflect the proper dates of April 17, 2017, December 15, 2017, and January 5, 2023, respectively.

Accordingly, we will grant the Petition, rescind the RF&O, and substitute it with a new RF&O which reflects that applicant's occupational group number is 214 and provides corrections to the above-noted clerical errors.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the June 2, 2025 Rulings, Findings, and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the June 2, 2025 Rulings, Findings, and Order is **RESCINDED** and the following **SUBSTITUTED** therefor:

RULINGS ON EVIDENCE

1. The Stipulations with request for Award dated 4-17-2017 are part of the Board record and are marked as Court Exhibit 1.
2. The Award issued 4-17-2017 is part of the Board record and is marked as Court Exhibit 2.
3. The Petition to Reopen filed 12-15-2017 is part of the Board record and is marked as Court Exhibit 3.
4. The Pre-Trial Conference Statement dated 11-18-2024 is part of the Board record and is marked as Court Exhibit 4.
5. The Stipulations with Request for Award dated 1-2-2025 are part of the Board record and are marked as Court Exhibit 5.
6. The Award dated 1-2-2025 is part of the Board record and is marked as Court Exhibit 6.
7. The Medical-legal report of Dr. John Foley, M.D. dated 1-5-2023 is admitted into evidence as Court Exhibit 7.
8. The report of PIP Dr. Christian Foglar, M.D. dated 6-13-2024 is admitted into evidence as Court Exhibit 8.
9. Applicant's proposed Exhibit 7, Letter from Sedgwick LTD dated 9-25-2020 was

not located in EAMS and is not admitted into evidence. It remains marked for identification only.

10. Applicant's proposed Exhibit 8, Sedgwick LTD e-mail from Ana Nazario dated January 2025 was not found in EAMS and is not admitted into evidence. It remains marked for identification only.
11. Applicant's proposed Exhibit 9, E-mail by Donovan Wisdom from EDD dated 1-3- 2025 was not found in EAMS and is not admitted into evidence. It remains marked for identification only.

FINDINGS OF FACT

1. Applicant, Minerva Tomka, was fifty-five (55) years old on October 27, 2014, the last day of the cumulative trauma period, and employed in Occupational Group Number 214 at Salinas, California by Pacific Gas & Electric (Employer/Defendant) when she sustained an injury arising out of and in the course of employment to her bilateral shoulders.
2. The settlement entered into and approved on January 2, 2025, was not shown to have been the result of misrepresentation, fraud or duress.
3. The settlement entered into and approved on January 2, 2025, was not shown to have been the result of a mutual mistake.
4. Applicant was not shown to lack the necessary capacity to enter into a legal agreement on January 2, 2025.
5. The stipulations of the parties are adopted and incorporated herein.

ORDER

Applicant's Petition to Set Aside the Stipulations with Request for Award, and the Award issued January 2, 2025, is denied.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 28, 2025

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

**MINERVA TOMKA
SAMUELSEN, GONZALEZ, VALENZUELA & BROWN**

RL/cs

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