

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

**RACHELLE MARTINEZ, *Applicant***

**vs.**

**CALIFORNIA MEDICAL FACILITY;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ10330860**

**Sacramento District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will dismiss the Petition.

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 December 24, 2024 and 60 days from the date of transmission is Saturday, February 22, 2025. The next business day that is 60 days from the date of transmission, is Monday, February 24, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>1</sup> This decision is issued by or on Monday, February 24, 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 December 24, 2024, and the case was transmitted to the Appeals Board on December 24, 2024. 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 December 24, 2024.

Accordingly, we dismiss the Petition for Reconsideration. Upon return, as recommended in the Report, the WCJ can set a hearing and address the Petition as one to set aside.

---

<sup>1</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.

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/ CRAIG SNELLINGS, COMMISSIONER**

**JOSEPH V. CAPURRO, COMMISSIONER**  
**CONCURRING NOT SIGNING**



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

**February 24, 2025**

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

**CCPOA BENEFIT TRUST FUND, LIEN CLAIMANT  
DAN ESCAMILLA c/o LEGAL SERVICE BUREAU FOR CCPOA  
STATE COMPENSATION INSURANCE FUND, LEGAL  
TICHY LAW**

**AS/mc**

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

**REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**  
**&**  
**NOTICE OF TRANSMISSION TO THE APPEALS BOARD**

**INTRODUCTION**

Issue:

This issuance of an award, following submission of stipulations with request for award, which did not adequately a lien.

Date of Order:

December 18, 2024

Petitioner:

Lien Claimant-CCPOA

Timeliness of Petition:

Timely

Verification of Petition:

Verified

**PETITIONER'S CONTENTION(S):**

Following this issuance of an award, based on Stipulations with Request for Award filed by the parties, lien Claimant CCPOA-Benefit Trust Fund (hereinafter CCPOA) seeks reconsideration of a December 18, 2024, Award issued by a workers compensation judge (WCJ). CCPOA asserts that its lien was not properly considered by the parties.

**FACTUAL BACKGROUND:**

Applicant, Rachelle Martinez is a 55-year-old, right-hand dominant female who has worked for California Medical Facility for the past 17 years. Her job duties as a correctional officer include, but are not limited to, wearing safety equipment and belt, pushing and pulling cell doors, physically restraining inmates, dragging and carrying inmates, stooping and bending, standing, climbing, searching inventory.

Applicant describes that on August 17, 2015, she was at work (a facility with approximately 200 inmates) where there was a situation with an inmate wherein Applicant sustained a black eye. For this reason, an inmate was required to "roll up" his property, which is packing all their possessions in a box. Applicant then had to move and examine the contents of these boxes.

Because she was already dealing with an injured back, she could not lift the box to the destination. Therefore, Applicant shuffled the 50-pound box along by sweeping it along the floor with her right leg. This adduction maneuver was carried out for numerous boxes for a distance of about 50 feet. During this process, she heard a "pop" in her right hip. She was able to continue but with more walking and more moving of boxes, the pain about the right hip intensified. It started as a burning sensation and tightness then felt like a tear. The pain was manifested around the right proximal, lateral thigh region. She finished her shift.

The next day at work at 5 AM, she heard a loud noise with visible smoke. She was instructed to report to the third floor urgently. In doing so; she ran full speed up three flights of stairs with gear on her person. When she arrived on the scene, the area was flooded with water 12-inches deep with humall waste and broken glass. In this wet situation, her right leg buckled and she began to experience right lateral hip pain that was burning in nature. She reported this to the supervisor, who did not respond. Therefore, she sought medical care through Kaiser. On September 12, 2015, she was taken off work.

After many years of litigation which included hearings and prior petitions for reconsideration, the parties were able to reach a settlement by way of Stipulations with Request for Award. The lien of CCPOA was not adequately addressed in the settlement documents. An award was issued on December 18, 2024 which is the subject of the petition for reconsideration. The objection to the settlement was filed by CCPOA on December 19, 2024.

## **DISCUSSION**

Pursuant to Labor Code section 5803, "The appeals board has continuing jurisdiction over all its orders, decisions, alld 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." 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(6).) The legal principles governing settlement agreements are the same as those governing other contracts. (Burbank Studios v. Workers' Comp. Appeals Bd. (1982) 134 Cal.App.3d 929,935.) 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.) 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. Stai-r (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.)

Stipulations between the parties must be interpreted 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. (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.) Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) 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 Diet. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Diet. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (Weatherall, supra, at 1118.)

Once it is determined that an agreement is final, the party seeking to set aside the agreement 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.* (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 !AC 266]; *City of Beverly Hills v. Workers' Comp. Appeals Bd.* (1997) 62 Cal.Cori.1p.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.* (1946) 11 Cal.Comp.Cases 117 (writ den.).) In addition, the failure to appropriately address a lien may warrant a finding of "good cause[.]" 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.* (1987) 199 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].)

As the moving party, lien claimant has the burden of proof to show, by a preponderance of the evidence, that the award should be set aside based on the allegations that its lien was not properly addressed. (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, lien claimant seeks to set aside the Stipulations with Request for Award, but no evidence of good cause has been admitted into the record. In the absence of evidence, neither the undersigned nor the WCAB are able to evaluate lien claimant's contentions. The Petition for Reconsideration is therefore premature.<sup>2</sup>

As explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473,476 [33 Cal.Comp.Cases 350-351], a decision "must be based on admitted evidence in the record" (Id. at p. 478) and must be supported by substantial evidence.(§§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *Levesque v.*

*Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Aside from providing assurance that due process is being provided, this "enables the parties, and the Board if

---

<sup>2</sup> The lien claimant should have filed a petition to set aside the stipulations with request for award.

reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (Hamilton, supra, at 476, citing Evans v. Workmen's Comp. Appeals Bd. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Further, 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 [97 Cal Rptr. 2d 852, 65 Cal.Comp.Cases 805].) A fair hearing is" ... one of 'the rudiments of fair play' assured to every litigant ... " (Id at 158.) As stated by the California Supreme Court in Carstens v. Pillsbury (1916) 172 Cal. 572, "the commission ... must find facts and declare and enforce rights and liabilities, " in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (Id. at p. 577.) 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. (See 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].)

Accordingly, there is currently no evidence admitted into the record regarding Lien claimant's allegations, and to ensure all parties, including lien claimant are provided due process, The Petition for Reconsideration should be dismissed and the matter returned to the trial level so that the Petition for Reconsideration can be treated as a petition to set aside the Stipulations with Request for Award so that a hearing can be set in order to provide lien claimant with the opportunity to provide evidence in support of its arguments. This will result in the creation of a record upon which a decision cm1 be made by the WCJ. After the WCJ issues a decision, either party may then timely seek reconsideration of that decision.

### **RECOMMENDATION**

For the foregoing reasons, it is recommended that the lien claimant's Petition for Reconsideration of the December 18, 2024, Award be DISMISSED and that this matter be RETURNED to the trial level for further proceedings and a decision by the WCJ from which any aggrieved party can file a new petition for reconsideration.

### **NOTICE OF TRANSMISSION:**

Pursuant to Labor Code, Section 5909, the parties and the appeals board are hereby notified that this matter has been transmitted to the appeals board on the date set out below.

Peter M. Wilkens  
WORKERS' COMPENSATION JUDGE

Dated: December 24, 2024