WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROBERT WEATHERS, ***Applicant***

vs.

NEW ENGLAND PATRIOTS;
TRAVELERS INDEMNITY COMPANY, ***Defendants***

Adjudication Number: ADJ13591101
Anaheim District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the "Findings of Fact" (Findings) issued on June 24, 2025. The workers' compensation administration law judge (WCJ) found that applicant's claim herein is barred by res judicata as there was a prior Order Approving Compromise and Release (OACR) approved on November 16, 2011 in a separate case.

Applicant argues that the prior compromise and release (C&R) did not list body parts in paragraph 1 of the C&R as required by the form, making the addendum listing body parts contrary to the form of the C&R and therefore prohibited by paragraph 3.

Defendant filed "Defendant Travelers' Response in Opposition to Applicant's Petition for Reconsideration" (Response) arguing that res judicata does bar the instant claim as addenda are acceptable where the language does not in fact contradict specific language in the body of the C&R. They also argue that applicant's qualified medical evaluator (QME) reports do not address the issues at bar and are not substantial medical evidence.

WCJ filed a Report and Recommendation (Report) recommending denial of applicant's petition.

We have considered the allegations of the Petition for Reconsideration, defendant's answer, and the Report of the WCJ. Based on our review of the record, and as discussed below,

we will grant reconsideration, rescind the Findings, and return this matter to the WCJ for further proceedings consistent with this decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the new decision.

FACTS

In applicant's prior case (ADJ7804822), settled by way of a C&R in 2011, he alleged injury while employed with the New England Patriots during the period of June 15, 1982 through July 30, 1988 while playing football. The amount of compensation in the C&R totaled $175,000.00. In paragraph 1 on page 3, no body parts were listed specifically, but language stating "See Addendum A" was hand written. In paragraph 9 the following was typed: "See Addenda "A," "B" [and] "C," which are attached hereto and incorporated by reference as though fully set forth herein." Addendum A includes a list of claimed body parts as follows: "head, neck, back, spine, shoulders, hips, elbows, wrists, hands, legs, knees, ankles, feet, internal, ENT/TMJ, psyche, hearing, vision, sleep, chronic pain." The settlement was approved on November 16, 2011 with the OACR stating "Addenda A, B, and C are incorporated."

On September 14, 2020, applicant filed a new Application for Adjudication of claim bearing case number ADJ13591101, alleging a cumulative injury for the same period of time, with the same employer, and in the same occupation as the previous application. The Application lists "head, brain, nervous system-stress, and nervous system-psyche." The DWC-1 form accompanying the Application identifies "psych/stress, neuro, head, brain, nervous system" and continues, "sustained numerous concussive and sub-concussive blows to his head resulting in latent, progressively deteriorating brain and neurological conditions." Initially the Application identified "CIGA Glendale" as the claims administrator without an insurance carrier. On March 28, 2023, the Application was amended to list Travelers Indemnity Company as the insurance carrier.

The trial on May 20, 2025, was set on a number of issues, but was ultimately bifurcated and reduced to the sole issue of "res judicata." (MOH, 2:17.) The MOH also noted, "that the Court will take judicial notice of all pleadings and medicals in ADJ7804822, applicant's prior claim." (MOH, 2:22-24.) None of the evidence in ADJ7804822 was identified or admitted as evidence in ADJ13591101.

No testimony was taken, and three medical reports were admitted into evidence. Applicant submitted a report dated May 21, 2022, by Dr. Rosabel Young, "applicant's QME" in neurology.[1] (Exhibit 1.) Dr. Young diagnosed applicant with: chronic traumatic encephalopathy rom concussions in professional football, multiple facial fractures including nasal, sleep disorder, severe depression and anxiety, left L5 radiculopathy, orthopedic injuries with chronic pain, diabetes mellitus, hypercholesterolemia, and prostate cancer. (*Id.* at p. 21.) Dr. Young provided ratings per the AMA Guides for headaches, cognitive impairment, lapses of awareness and involuntary movements, sleep, personality changes due to brain disfunction, and facial injuries. (*Id.* at p. 22-26.) Dr. Young defers to other specialties for psyche, orthopedics, ophthalmology, otolaryngologist (*Id.* at p. 26.) Applicant also submitted the report of Dr. Ted Greenzang, "applicant's QME" in psychiatry, dated October 20, 2021. (Applicant's 2.) This report diagnoses depressive disorder, anxiety disorder, and probable cognitive disorder. (*Id.* at p. 13.) Neither doctor reviewed the reporting from the prior claim.

Defendant submitted a "consult report" (defendant's QME) by neurologist Dr. Daniel Franc, dated November 10, 2024. Dr. Franc reviewed the prior medical reporting as well as the reports from Dr. Young and Dr. Nudleman. Dr. Franc did not evaluate applicant and there are no independent diagnoses apart from agreeing with the prior evaluators.

DISCUSSION

I

Former Labor Code section 5909[2] 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.

[1] At this time, no determination has been made as to whether the previous QME procedure, which applies to dates of injury up to December 31, 2004, is applicable here.

[2] All further statutory references will be to the Labor Code unless otherwise indicated.

(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 July 23, 2025 and 60 days from the date of transmission is Sunday, September 21, 2025. The next business day that is 60 days from the date of transmission is Monday, September 22, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Monday, September 22, 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 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 July 23, 2025 and the case was transmitted to the Appeals Board on July 23, 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 23, 2025.

II

Res judicata refers to both claim preclusion and issue preclusion. "Claim preclusion, the 'primary aspect' of res judicata, acts to bar claims that were, or should have been, advanced in a

[3] 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.

previous suit involving the same parties. Issue preclusion, the 'secondary aspect' historically called collateral estoppel, describes the bar on relitigating issues that were argued and decided in the first suit." (*Hudson v. Foster* (2021) 68 Cal.App.5th 640, fn. 10 [283 Cal.Rptr.3d 822].) Issue preclusion, applies to bar a party from relitigating an issue if the following requirements are met: (1) "the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding"; (2) "this issue must have been actually litigated in the former proceeding"; (3) "it must have been necessarily decided in the former proceeding"; (4) "the decision in the former proceeding must be final and on the merits"; and (5) "the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." *Branson v. Sun-Diamond Growers of California*, 24 Cal.App.4th 327, (1994) (quoting *Lucido v. Superior Court*, 51 Cal.3d 335, 341, (1990), cert. denied, 500 U.S. 920 (1991)).) Claim preclusion (res judicata) and issue preclusion (collateral estoppel) are affirmative defenses to applicant's current claim, and it is therefore defendant's burden to establish their elements. (Lab. Code, § 5705 ["The burden of proof rests upon the party or lien claimant holding the affirmative of the issue."]; *Johnson v. Workers' Comp. Appeals Bd.* (1970) 2 Cal.3d 964 [35 Cal.Comp.Cases 362]; see *Morales v. Universal Furniture, American Home Assur. Co.*, 2017 Cal. Wrk. Comp. P.D. LEXIS 591.)

"An approved workers' compensation compromise and release rests 'upon a higher plane than a private contractual release; it is a judgment, with "the same force and effect as an award made after a full hearing."'"(*Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1169 [50 Cal.Comp.Cases 311], quoting *Johnson v. Workmen's Comp. App. Bd.* (1970) 2 Cal.3d 964, 973.) Consequently, after the five year period has expired, an order approving a compromise and release constitutes a final judgement with the full effect of res judicata. (*Smith v. Workers' Comp. Appeals Bd*., *supra*, 168 Cal.App.3d at p. 1169.)

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 432].) For a compromise and release agreement to be effective, the necessary elements of a contract must exist, which includes the mutual consent of the parties. (Civ. Code, §§ 1550, 1565, 1580; *Yount, supra*.) 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; *Sieck v. Hall* (1934) 139 Cal.App. 279, 291; *American Can Co. v. Agricultural Ins. Co*. (1909) 12 Cal.App. 133, 137.)

Since a compromise and release is a written contract, the parties' intention should be ascertained from the writing alone and, unless an absurdity is involved, the clear language of the contract governs its interpretation. (Civ. Code, §§ 1638, 1639; *TRB Investments, Inc. v. Fireman's Fund Ins. Co*. (2006) 40 Cal.4th 19, 27.) 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, supra,* at 27; *County of San Joaquin v. Workers' Compensation Appeals Bd.* (*Sepulveda*) (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) The court has limited the settlement to the express terms, body parts, or conditions of the C&R as outlined in paragraph 1 of the C&R, and has allowed adjudication of later filed claims that arose out of the same injurious exposure. (*Mansville v. Workers' Comp. Appeals Bd.* (*Cooper*) (2016) 81 Cal.Comp.Cases 2016 (writ denied).)

We agree with the WCJ that addenda are generally allowed where incorporation of the document is clear and unequivocal, brought to the attention of the other party, consented to by the other party, and the terms must be known or easily available to the contracting parties. (*Shaw v. Regents of the University of CA*, 58 Cal.App.4th 444) However, we emphasize that addenda may be excluded where the terms of the addenda are contrary to paragraph 1 and 3 of the form C&Rs and where they are beyond the purview of the jurisdiction of this court. (*Camacho v. Target Corp.* (2018) 24 Cal.App.5 th 291 [83 Cal.Comp.Cases 1014]; *Corrales v. Kimpton Hotel & Rest. Grp.* (2016) Cal. Wrk. Comp. P.D. LEXIS 144; *Whitson v. Dept. of Social Services* (2017) Cal. Wrk. Comp. P.D. LEXIS 507; *Arellano v. Lamkone Restaurants. Inc.*, 2016 Cal. Wrk. Comp. P.D. LEXIS 279). In this case, we do not see that there was contrary language in the addenda from paragraph one because all the body parts at issue were simply listed in one location. However, because there was no testimony, there is no evidence of what applicant knew was settled in the C&R and/or what was settled by the addenda. Moreover, evidence was not submitted at trial as to what body parts were evaluated by a physician and the medical opinion as to injury to each of the claimed body parts. Thus, there is simply not enough evidence to conclude which body parts were settled and whether the addenda is appropriate.

The primary question is whether the settlement reached in 2011 is identical to and resolved the issues currently raised in the newly filed Application. It is defendant's burden to prove the elements of issue preclusion outlined above. Specifically, whether injury to additional and newly plead body parts was contemplated and resolved in the prior claim. We note that the C&R did not list injury to the brain, neuro, or nervous system, and therefore this case cannot be an identical claim for the purposes of a complete bar by res judicata.

Looking at the substance of the prior C&R, we are also tasked with determining whether it meaningfully addressed the newly plead body parts. As noted previously, the medical evidence from applicant's prior case was not identified, submitted and/or admitted into evidence in this case. The preliminary question is whether there was evidence in ADJ7804822 to support the value of the C&R. It is understood that the claim was denied, however evidence must be reviewed to understand what at first blush appears to be a seemingly substantial discount and the inclusion of many body parts without any clear indication of whether injury to those body parts was actually claimed. Without testimony or a proper record, the intention of the parties cannot be ascertained at this point to preclude the new claim.

Another consideration in this matter is whether the claimant has a newly diagnosed injury unrelated to the body parts resolved in the prior C&R. In *Cooper*, the subsequent (death) claim was not precluded because the prior settlement addressed and referred to injury to the lungs and respiratory system whereas the death was from peritoneal mesothelioma, a cancer in the lining of his abdominal cavity. (*Cooper*, *supra*, 81 Cal.Comp.Cases 216) Although the injury mechanism was similar—exposure to asbestos—the resulting injuries were different. Here, there is some evidence by way of applicant's QME that there is a new injury. The physician did not review the prior medical records, so the reporting is likely not substantial for determining whether there is a new injury, but without such an analysis, issue preclusion for the purposes of a res judicata analysis is incomplete.

In order to reach a decision, the evidence from the prior injury must be admitted into evidence in this case. WCAB Rule 10700 (a) only requires the parties to file the relevant medical reports and any other documents that are relevant to determining adequacy at the time of approval of a C&R. WCAB Rule 10670 further clarifies that "The filing of a document does not signify its receipt in evidence and, except for the documents listed in rule 10803, only those documents that have been received in evidence shall be included in the record of proceedings on the case." (Cal. Code Regs., tit. 8, § 10670.) While medical evidence is deemed admitted when a C&R is submitted for approval so that the WCJ may determine adequacy, in order for it to be admitted in this case, the cases either had to be consolidated and each item of evidence identified on the record at trial, or the evidence had to be separately identified on the record at trial and admitted into the record. In sum, while identified evidence is still part of the record of proceedings, all evidence that is the basis for a decision must be separately identified on the record and admitted into the record.

A decision "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) Though the WCJ here took judicial notice of the prior case, no evidence from that case was marked or admitted as evidence in the current case. Without evidence by applicant as to which body parts he believed were settled by the prior C&R, medical evidence to support which body parts were settled by the prior C&R, and medical evidence to support which body parts are claimed in the instant case, we are unable to determine whether defendant met its burden.

Finally, section 4062.2(a) provides that when a medical evaluation is required "to resolve any dispute arising out of an injury or a claimed injury occurring on or after January 1, 2005. . . the evaluation shall be obtained only as provided in this section." While we do not render any opinion as to whether section 4062.2(a) applies here, as the issue was not raised in the first instance at trial, based on our preliminary review, it appears that it will apply since applicant's section 5412 date of injury is likely after January 1, 2005. If the WCJ so determines, then the parties must proceed with obtaining QME panels; under those circumstances, the medical evidence submitted by applicant is likely still admissible within the parameters set forth in sections 4064(d) and 4605, but defendant's "consult" report would not be.

Accordingly, we grant the Petition for Reconsideration, rescind the findings, and return the matter to the WCJ for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved party may timely seek reconsideration.

For the foregoing reasons,

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

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the WCJ's Findings of Fact of June 24, 2025 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 22, 2025

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

ROBERT WEATHERS
GLENN, STUCKEY & PARTNERS
DIMACULANGAN & ASSOCIATES

TF/md

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