

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

CRESENCIO PANTOJA, *Applicant*

vs.

**UNITED PARCEL SERVICE;
LIBERTY MUTUAL INSURANCE, *Defendants***

**Adjudication Numbers: ADJ13684015; ADJ12299056
San Jose District Office**

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

Defendant seeks reconsideration of the Opinion and Decision After Reconsideration (Opinion) issued by the Appeals Board on June 19, 2026, wherein the Appeals Board rescinded the June 4, 2021 Findings and Orders (F&O) of the workers compensation administrative law judge (WCJ), and substituted a new F&O that found that applicant's claim for industrial injury to the cervical spine in ADJ13684015 is not barred as a result of the language in the settlement in ADJ12299056, and deferred all other issues.

Defendant contends that the Appeals Board has misconstrued the clear intention and language in the Compromise and Release (C&R) in case ADJ12299056 to completely resolve any known injuries that resulted from the cumulative trauma claims, and that included any potential neck injury.

We did not receive an Answer from applicant.

We have considered the Petition for Reconsideration (Petition) and have reviewed the record in this matter. Based on our review of the record and for the reasons stated in our prior Opinion, which we incorporate herein, and for the reasons discussed below, we will grant defendant's Petition, solely to correct Finding of Fact No. 1 to comport with the stipulations of the parties at trial as to the claimed dates of injury in each case, and otherwise affirm our prior decision.

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909¹, which states 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 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 14, 2026 and 60 days from the date of transmission is Saturday, September 12, 2026. The next business day that is 60 days from the date of transmission is Monday, September 14, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, September 14, 2026, 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 shall be notice of transmission.

¹ All further references are to the Labor Code, unless otherwise stated.

² 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.

Here, according to our review of the record, we did not receive a Report by the WCJ. However, a notice of transmission was served by the district office on July 14, 2026, which is the same day as the transmission of the case to the Appeals Board on July 14, 2026. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1), and consequently they had actual notice as to the commencement of the 60-day period on July 14, 2026.

II.

We now turn to the merits. Paragraph No. 3 of the C&R, states “[t]his agreement is limited to settlement of the body parts, conditions, or systems and for the dates of injury set forth in Paragraph No. 1 and further explained in Paragraph No. 9 despite any language to the contrary elsewhere in this document or any addendum.” (C&R, p. 5, para. 3; Petition, at p. 11.) Defendant asserts that this language controls over the preprinted language requiring settled body parts be expressly stated. As discussed in our Opinion, Paragraph No. 1 requires that the parties “State with specificity the date(s) of injury(ies) and what part(s) of body, conditions or systems are being settled.” This language in Paragraph No. 1 requiring specificity is an integral part of Paragraph No. 3, not separate from it. We find that language requiring specificity in Paragraph No. 1 and incorporated into Paragraph No. 3 of the C&R is not superfluous, and it supersedes the parties’ drafted broad release language in the settlement document. The plain language of the parties’ August 27, 2020 C&R does not evidence the inclusion of the applicant’s neck with specificity. (Joint Exhibit 106.) Accordingly, defendant’s contention about Paragraphs No. 1 and No. 3, “While the C&R at issue does instruct the parties to ‘[s]tate with specificity the date(s) of injury(ies) and what part(s) of body, conditions or systems are being settled,’ it does not state the consequence for ignoring that instruction” (Petition, at p. 6:22-24) is particularly concerning because broad release language does not include parts of body otherwise presumed and contemplated as settled, and would hamper a WCJ’s obligation to make a proper adequacy determination had the parties intended to include the neck in the settlement. We cannot “ignore” the language in the compromise and release settlement document that requires industrial injuries be identified with specificity because adequacy is a keystone issue in workers’ compensation.

In our recent en banc decision, *Gaines v. ABM Aviation, Inc.*, (2026) 91 Cal.Comp.Cases 613 (Appeals Board en banc), we further considered the importance of a review of adequacy in C&R settlements:

It has long been held that a C&R must provide fair compensation to the injured worker equivalent to what the injured worker would expect to receive from an award:

A tort release is effective upon execution, but a compromise and release of workmen's compensation liability is invalid until approved by the Workmen's Compensation Appeals Board. (Lab. Code, § 5001; see *Chavez v. Industrial Acc. Com.* (1958) 49 Cal.2d 701, 702 [321 P.2d 449].) . . . This inquiry by the referee should carry out the legislative objective of "protecting workmen who might agree to unfortunate compromises because of economic pressure or lack of competent advice." (*Chavez v. Industrial Acc. Com.*, *supra*, 49 Cal.2d at p. 702.) These safeguards against improvident releases place a workmen's compensation release 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." (*Raischell & Cottrell, Inc. v. Workmen's Comp. App. Bd.* (1967) 249 Cal.App.2d 991, 997 [58 Cal.Rptr. 159].)

(*Johnson v. Workmen's Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 973 [35 Cal.Comp.Cases 362]; see also, *Camacho v. Target* (2018) 24 Cal.App.5th 291, 301-302 [83 Cal.Comp.Cases 1014].)

In addition to the protection of injured workers, another purpose of adequacy review is to protect the public interest. (*Department of Rehabilitation v. Workers' Comp. Appeals Bd.* (2003) 30 Cal.4th 1281, 1286 [68 Cal.Comp.Cases 831] ["The purpose of an award is not to make the employee whole for the loss which he or she has suffered, but to prevent the employee and his or her dependents from becoming public charges during the period of disability."].) Workers' compensation was created, in part, to prevent an injured worker from becoming a public ward. (*Ibid.*) Where benefits are due, they should be paid and the WCJ should ensure that payable benefits are not inappropriately shifted onto public systems, for example, Medicare, Medi-Cal, EDD, and Social Security. Adequacy review has the dual purpose of ensuring that an injured worker is appropriately paid benefits, which in turn benefits the public.

WCAB Rule 10700 states, in pertinent part:

(b) 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.

(c) Agreements that provide for the payment of less than the full amount of compensation due or to become due and undertake to release the employer from all future liability will be approved only where it appears that a reasonable doubt exists as to the rights of the parties or that approval is in the best interest of the parties.

(Cal. Code Regs., tit. 8, § 10700(b).

The WCAB's jurisdiction is over claims for benefits provided in the Labor Code, and the WCAB has jurisdiction to approve settlement of claims for benefits that are provided by the Labor Code. The injured worker must have knowledge of each of the benefits that they may be entitled to, and they must intend to release those claims for benefits. Mere execution of the form is not sufficient. (*Camacho, supra*, 24 Cal.App.5th at p. 301.) The preprinted form does not release claims that are outside of workers' compensation, and even if a separate document is executed by the parties, the WCAB cannot approve a settlement of claims that are outside of the Labor Code. To determine whether benefits are adequately paid, a WCJ requires information. The WCJ may not simply approve any settlement filed. The WCJ must independently review the settlement and determine that the settlement is adequate.

A proposed contract to settle a claim is in lieu of an award of compensation and the WCAB must determine whether it is valid. (§§ 5000-5003.) Contract principles apply to settlements of workers' compensation disputes, and "[t]he 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].) "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. [Citation.]" (*Id.*; see Civ. Code, §§ 1550, 1565, 1580; *German Sav. & Loan Soc. v. McLellan* (1908) 154 Cal. 710, 716; *Sackett v. Starr* (1949) 95 Cal.App.2d 128, 133.) "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. [Citations.]" (*County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].)

Thus, where the terms of the agreement are unclear or contradictory, or include provisions that are outside the Labor Code, the issue is whether a true contract has been formed.

(*Gaines, supra*, 91 Cal.Comp.Cases at pp. 628-630.)

Finally, defendant asserts that, if applicant is allowed to proceed with his neck claim, such claim must be pursued under the back claim (ADJ12299056) in part because we found the same dates of injury for both body parts, April 4, 2018 through January 28, 2019. Upon further review, we note that the parties stipulated at the trial of April 1, 2021, that in ADJ12299056, applicant claims to have sustained an injury AOE/COE to his low back and bilateral lower extremities during the period April 4, 2018 through January 28, 2019, and in ADJ13684015, applicant claims to have sustained a cervical spine and lower extremities injury during the period from April 4, 2018

through January 15, 2019. (Minutes of Hearing and Summary of Evidence, April 1, 2021, p. 2:8-11.) Therefore, our Finding of Fact No. 1 contains a clerical error regarding applicant's claimed dates of injury, and we will amend our Opinion solely to reflect both of applicant's claimed dates of injury as stipulated by the parties in ADJ12299056 as well as ADJ13684015, and otherwise affirm our prior decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Opinion and Decision After Reconsideration issued on June 19, 2026 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant, Cresencio Pantoja, while employed during the period April 4, 2018 through January 28, 2019, as to ADJ12299056, and during the period April 4, 2018 through January 15, 2019, as to ADJ13684015, as a driver, Occupational Group Number 350, in San Jose, California, by United Parcel Service, claims to have sustained an injury arising out of and in the course of employment to the low back and bilateral lower extremities as to ADJ12299056 and to the neck as to ADJ13684015.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 14, 2026

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

**CRESENCIO PANTOJA
FLETCHER BROWN
WITKOP LAW GROUP
SL/abs**

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