

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

**EARNEST MCINTOSH, *Applicant***

**vs.**

**SAIA LTL FREIGHT; ACE AMERICAN INSURANCE COMPANY, administered by  
BROADSPIRE, *Defendants***

**Adjudication Numbers: ADJ16936069; ADJ15085332  
Sacramento District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR RECONSIDERATION**

Applicant, in pro per, seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on September 25, 2025, wherein the WCJ denied applicant's Petition to Set Aside the December 6, 2024 Order Approving Compromise and Release (OACR) on case ADJ16936069. The WCJ found, in pertinent part, that the Compromise and Release (C&R) executed by applicant on November 1, 2024 was not shown to have been the result of misrepresentation, fraud, or duress (Finding 10), mutual mistake (Finding 11), undue influence or procedural irregularities (Finding 12), and that it was not shown that applicant lacked the capacity to enter into a legal agreement. (Finding 13).

Applicant contends that the WCJ erred in finding that applicant's retroactive temporary total disability benefits were paid in full as part of the C&R. (Finding 8.) Applicant also contends that the WCJ erred in finding that applicant was paid all temporary total disability benefits owed. (Finding 9.)

We have not received an Answer from defendant or from applicant's prior legal counsel.

Due to the unavailability of the WCJ who issued the Findings of Fact and Orders in this matter, the Presiding Workers Compensation Judge (PWCJ) filed a Report and Recommendation on Petition for Reconsideration (Report) pursuant to WCAB Rule 10962, recommending denial of the Petition for Reconsideration. (See Cal. Code Regs., tit. 8 § 10962.)

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record, for the reasons stated in the PW CJ's Report, which is adopted and incorporated to the extent attached, and for the reasons discussed below, we will deny applicant's Petition for Reconsideration.

### **BACKGROUND**

The relevant factual background is set forth in the WCJ's September 25, 2025 Opinion on Decision (Opinion), as follows:

...

[T]he parties appeared for trial on August 28, 2025, entered into stipulations, framed issues, and submitted both documentary and testimonial evidence. (Minutes of Hearing, Summary of Evidence (MOH), August 28, 2025.) The issues listed were 1) Applicant's Petition to Set-aside the Order Approving Compromise & Release, and 2) Defendant's request for restitution if a finding that the Order Approving Compromise & Release is rescinded. (MOH, August 28, 2025, page 3.)

Earnest McIntosh (Applicant) sustained an injury on September 7, 2022, to his mouth, respiratory system, and lungs. His total medical bills were \$10,000.00. He was temporarily totally disabled for 103 weeks, with a TTD rate of \$1,382.38.

The parties proceeded with discovery and utilized AME Dr. Greenberg. Applicant treated with Dr. Realyvasquez, who initially found the injury to be industrial. Applicant received temporary total disability (TTD) payments from September 15, 2022, through November 4, 2023.

On November 4, 2023, TTD payments were stopped after PTP Realyvasquez concluded the COPD/respiratory injury was non-industrial, although he deferred to the AME for confirmation. Based on AME Greenberg's subsequent report, temporary disability benefits resumed on April 18, 2024, and continued until Applicant was found permanent and stationary on September 11, 2024.

Applicant was paid a weekly TTD rate of \$1,382.38, based on an average weekly wage of \$2,073.57. The disputed TTD period from November 5, 2023, to April 17, 2024 (23 weeks and 3 days), amounted to \$32,387.18. Applicant had already been paid \$118,884.68 in temporary disability benefits and was owed an additional \$25,870.24 in retroactive TTD benefits, per AME Greenberg.

Dr. Greenberg's reporting confirmed the TTD periods, resulting in a maximum medical improvement (MMI) date of September 11, 2024, with a total TTD award of \$144,754.92.

On November 1, 2024, Applicant signed a Compromise and Release (C&R) for \$155,000.00 and received payment of \$128,985.24. An Order Approving C&R issued on December 6, 2024.

On December 27, 2024, Applicant filed a Petition for Reconsideration, which the WCAB ordered to be treated as a Petition to Set Aside the OACR.

(Opinion, dated September 25, 2025, at pp. 4-5.)

Pursuant to the executed C&R which was filed on November 26, 2024, along with the September 11, 2024 medical reporting of Agreed Medical Evaluator (AME) Andrew McClintock Greenberg, M.D., settlement of the case is based on the reporting of Dr. Greenberg. (Joint Ex. AA, at p. 7.)

On December 6, 2024, the WCJ issued an OACR. Service of the OACR was delegated to defendant. On December 27, 2024, applicant filed a petition for reconsideration of the OACR.

The petition was dismissed by the Appeals Board as premature in an Opinion and Order Dismissing Petition for Reconsideration (Opinion and Order) dated March 10, 2025, and the matter was returned to the trial level for consideration of the Petition as one to set aside the OACR. (Opinion, March 10, 2025.)

On August 28, 2025, the matter proceeded to trial on the issue of applicant's Petition to Set-aside the OACR.

On September 25, 2025, the WCJ issued the Finding and Order at issue in applicant's Petition for Reconsideration.

## **DISCUSSION**

### **I.**

Former Labor Code section<sup>1</sup> 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.

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<sup>1</sup> All statutory references are to the Labor Code unless otherwise stated.

(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 November 5, 2025, and 60 days from the date of transmission is Sunday, January 4, 2026. The next business day that is 60 days from the date of transmission is Monday, January 5, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, January 5, 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.

Here, according to the proof of service for the Report by the PWCJ, the Report was served on November 5, 2025, and the case was transmitted to the Appeals Board on November 5, 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 November 5, 2025.

## II.

In addition to the reasons set forth in the Report, we note the following:

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<sup>2</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.

“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).) This inquiry should carry out the legislative objective of safeguarding the injured worker from entering into unfortunate or improvident releases as a result of, for instance, economic pressure or lack of competent advice. (*Claxton v. Waters* (2004) 34 Cal.4th 367, 373 [69 Cal.Comp.Cases 895]; *Sumner v. Workers’ Comp. Appeals Bd.* (1983) 33 Cal.3d 965, 972-973.)

WCAB Rule 10700(a) states:

When filing a Compromise and Release or a Stipulations with Request for Award, the filing party shall file all agreed medical evaluator reports, qualified medical evaluator reports, treating physician reports, and any other that are relevant to a determination of the adequacy of the Compromise and Release or Stipulations with Request for Award that have not been filed previously.

Further, WCAB Rule 10803, which defines the record of proceedings maintained in the adjudication file states, in pertinent part:

...

(b) Upon approval of a Compromise and Release or Stipulations with Request for Award, all medical reports that have been filed as of the date of approval shall be deemed admitted into evidence and part of the record of proceedings.

(Cal. Code Regs., tit. 8, § 10803(b).)

Pursuant to the C&R, settlement is based on the reporting of Dr. Greenberg, the AME in pulmonology and internal medicine, whose medical reporting of September 11, 2024 supports the WCJ’s approval of the settlement. Dr. Greenberg found industrial causation, permanent disability, and the need for future medical care relating to applicant’s chronic obstructive pulmonary disease. (Report of Dr. Greenberg, 9/11/24, at p. 11-12.). Because the parties selected Dr. Greenberg for his expertise and neutrality, his opinion should ordinarily be followed unless there is a good reason to find that opinion unpersuasive, and here we can discern no reason to overturn the findings of the WCJ. (See *Power v. Workers’ Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782-784 [51 Cal.Comp.Cases 114].)

Thus, based on our review of the record, and for the reasons set forth by the PWCJ, we deny applicant's Petition for Reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



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

**JANUARY 5, 2026**

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

**EARNEST MCINTOSH (pro per)  
LIEBERT LAW  
DA FIRM**

***JB/pm***

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

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**INTRODUCTION**

1.     Applicant's Occupation:     Fork Lift Driver  
       Applicant's Age at Injury:  56.  
       Date of Injury:            September 7, 2022.  
       Body Parts:                Mouth, respiratory system and lungs.
  
2.     Identity of Petitioner:     Applicant  
       Timeliness:                Applicant's petition should be deemed as timely filed.  
       Verification:               Applicant's petition was properly verified.
  
3.     Date of Issuance of Findings and Order: September 25, 2025.
  
4.     Petitioners Contentions:

A. Petitioner's contentions are difficult to discern from the current petition, but it appears that applicant believes that the order approving compromise and release should be set aside because Dr. Realyvasquez's did not release applicant back to work. Couple this petition with applicant's first Petition for Reconsideration, it appears that applicant also believes he is owed five and half months of back pay (temporary disability) that was separate from the money paid in the Compromise and Release.

**FACTS**

On December 6, 2025, Judge Coze approved a Compromise and Release between the parties resolving applicant's September 7, 2022, injury to his mouth, respiratory system and lungs. The \$155,000.00 settlement was based upon the reporting of AME Dr. Greenberg and by the terms of the agreement resolved all issues between the parties including the issue of temporary disability (Compromise and Release, filed on November 26, 2024, at page 6).

On December 26, 2024, applicant filed a Petition for Reconsideration noting that the reason for reconsideration is that he did not receive his back pay from October 2023 through March 2024.

On January 8, 2025, Judge Coze issued her Report and Recommendation on Reconsideration recommending that reconsideration be denied.

On March 10, 2025, the Workers' Compensation Appeals Board dismissed applicant's Petition for Reconsideration noting that the WCJ could have treated the Petition for



Reconsideration as a Petition to Set Aside, and return the matter to the trial level so that a record could be created upon which a decision could be made.

On June 23, 2025, the applicant, who was now unrepresented, and defendant completed the Pre-Trial Conference Statement, and the matter was set for trial. Applicant claimed he was owed back temporary disability and defendant claimed that the retro-temporary disability was part of the settlement amount.

On August 28, 2025, the parties appeared in front of Judge Coze for trial on the issue of applicant's Petition to Set-aside the Order Approving Compromise and Release. The stipulations and issued were read into the record, documentary evidence was received and the applicant and his former attorney testified (Minutes of Hearing and Summary of Evidence, August 28, 2025).

On September 25, 2025, Judge Coze issued her Finding of Facts, Order and Opinion on Decision. Judge Coze found that the compromise and release signed by applicant on November 1, 2024, was: 1) not shown to have been the result of misrepresentation, fraud or duress; 2) not shown to have been the result of mutual error; and 3) not shown to have been the result of undue influence or procedural irregularities (Finding of Facts, Order, Opinion on Decision, September 25, 2025, at pages 2-3). Additionally, Judge Coze found that applicant failed to show that he lacked the capacity to enter into a legal agreement on November 1, 2024 (Finding of Facts, Order, Opinion on Decision, September 25, 2025, at page 3). Judge Coze also found that applicant's retroactive temporary disability were paid in full as part of the compromise and release (Finding of Facts, Order, Opinion on Decision, September 25, 2025, at page 2, Finding #8). Judge Coze denied applicant's Petition to Set Aside the Order Approving Compromise and Release (Finding of Facts, Order, Opinion on Decision, September 25, 2025, at page 3).

On October 20, 2025, applicant attempted to file his Petition for Reconsideration in ADJ16936069. In the late afternoon, applicant was at the Sacramento District Office completing his petition and attempted to hand the petition to the information and assistance officer at 5 p.m. The information and assistance officer told applicant that he needed to file the petition at the front counter. Due to a misunderstanding the front office did not accept the petition. Applicant returned the following day to file his petition. However, it is noted that applicant attached additional exhibits to his petition in violation of Rule §10945(c) (the attachments are identified in EAMS as Document ID 79687988, 79687986, and 79687985)

On October 29, 2025, applicant filed a typed letter that appears to set forth additional reasons for requesting the order approving be set aside (EAMS Document ID 79719954). Though no medical reports were offered into evidence, applicant appears to allege that Judge Coze's description of the reports from Dr. Greenberg and Dr. Realyvasquez are inaccurate and require correction (see Finding of Facts, Order, Opinion on Decision, September 25, 2025, at pages 4-5).

As of November 4, 2025, defendant has not filed an answer.

### DISCUSSION

It is well-settled that a request to set aside an Order Approving Compromise and Release after it has become final will not be granted, absent a showing of good cause. Such a showing must generally consist of the existence of fraud, mutual mistake of fact, duress or undue influence. (See *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]. See also *City of Beverly Hills v. Workers' Comp. Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691 (writ denied); *Bullocks, Inc. v. Industrial Acc. Com.* (1951) 16 Cal.Comp.Cases 253 (writ denied); *Pac. Indem. Co. v. Industrial Acc. Com. (Forrest)* (1946) 11 Cal.Comp.Cases 117 (writ denied).)

In this case, Judge Coze correctly determined that there was no good cause to set aside the order approving. Judge Coze set forth her opinion as follows:

"At trial pro per Applicant sought to set aside the compromise and release asserting as good cause that he was to be paid additional "back pay" and that he was mentally compromised when he signed the compromise and release.

To determine whether there is good cause to rescind awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Labor Code § 5702; [*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118-1121 [65 Cal.Comp.Cases 1]]; *Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 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].)

"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.)

As the moving party, Applicant has the burden of proof to show, by a preponderance of the evidence, he 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”].)

Applicant testified on his own behalf, in pro per, in person, at trial on August 28, 2025. Applicant testified that he wanted was promised on his back pay. He signed the settlement documents, compromise and release (C&R), based on what his attorney told him. (MOH/SOE.) He confirmed his signature on the C&R.

Applicant testified that he believes he was mentally compromised when he signed the compromise and release with depression, stress, and anxiety, he also affirmed that he was not institutionalized for any psychiatric disability at the time he signed the Compromised & Release. He was not on any disability payment or other government benefit for a psychiatric injury at the time he signed the Compromise & Release. Applicant did not provide medical evidence of incapacity. (MOH/SOE and Joint Exhibit AA C&R.)

Although the Labor Code does not define incompetency, the Appeals Board has previously considered “incompetency” in workers’ compensation proceedings. In *County of Santa Clara v. Workers Compensation Appeals Bd. of California (McMonagle)* (1992) 57 Cal.Comp.Cases 377, (writ denied.), the Appeals Board noted that the “incompetency” an applicant was required to show to establish good cause to set aside an Order of Dismissal is “the lack of ability or fitness to make the decision to request dismissal of her workers’ compensation claim at the time she made that request.” (*McMonagle, supra* at 378.) Based on the record in *McMonagle*, the Appeals Board defined incompetency “as not insanity, but rather inability to properly manage or take care of oneself or property without assistance.” (*McMonagle, supra*, at 379.)

Moreover, a finding of incompetence must be supported by substantial medical evidence. (*Lamin v. City of Los Angeles* (2004) 69 Cal.Comp.Cases 1002, 1005; see also Lab. Code, § 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workers’ Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

Without substantial medical evidence of Applicant’s inability to properly manage or take care of themselves, without assistance, they are presumed competent.

There are three exhibits of record in this matter. Applicant's exhibit is various documents and communications with his attorney. The documents include a claims benefit printout with run date of November 13, 2023. (Applicant Exhibit 1,

pages 3-4.) The most recent document is a text communication with his attorney dated September 12, 2024, in which Applicant writes in part "Good morning Mike thanks again for your help I got the check today now If I can get that back pay so I can get me vehicle that would Excellent." (Applicant Exhibit 1, page 5 (sic).)

On November 1, 2024, Applicant signed a compromise and release for \$155,000.00 from which he netted \$129,985.25 subject to reduction for permanent disability advances from October 1, 2024. The net was after deductions for a temporary disability overpayment of \$2,764.76 and attorney fee of \$23,250.00. (Joint Exhibit AA, page 6, p. 7.) The compromise and release included additional language that "settlement resolves all issues between the parties including medical treatment, prescriptions, mileage, TD, PD, LC 5710 fees, and loss of earnings. (Joint Exhibit AA, page 6, p. 8.) Applicant's signature was witnessed by a notary public, in San Joaquin County, where Applicant resided. (Joint Exhibit AA, pages 8-9.) Order approving compromise and release issued December 6, 2024. (Joint Exhibit BB.)

Applicant's prior attorney, M. Liebert testified that he negotiated an excellent settlement for Applicant with defense counsel. M. Liebert further testified that the final Compromise and Release included payment of the past-owed temporary disability. (Joint Exhibit AA, C&R). He believed the Applicant fully understood. He never told Applicant there would be a separate payment outside the monies from the Compromise and Release.

Applicant did not provide evidence of a lack of capacity, mutual mistake, fraud, duress, fraud, undue influence, or procedural irregularities. Applicant did not establish good cause to set aside the OACR by a preponderance of the evidence. For the reasons set forth, the Order Approving Comprise and Release is not set aside."

(Opinion on Decision, September 25, 2025, pages 6-9)

The additional exhibits attached to applicant's petition seem to document the stress applicant was under after temporary disability was terminated (see EAMS as Document ID 79687988, 79687986, and 79687985). The undersigned does acknowledge that neither the reports from Dr. Greenberg nor Dr. Realyvasquez were admitted into evidence despite being listed on the Pre-Trial Conference Statement.

...

[However], [a]s Judge Coze noted in her decision, temporary disability payments were stopped after Dr. Realyvasquez concluded that applicant's COPD was non-industrial (Finding of Fact, Order, Opinion on Decision, September 25, 2025, at page 5). Again, this retro-temporary disability, as confirmed by Dr. Greenberg, was found by Judge Coze to be part of the \$155,000.00 compromise and release (Finding of Facts, Order, Opinion on Decision, September 25, 2025, at page 2, finding #8).

There is nothing this record or in applicant's Petition for Reconsideration that could establish good cause to set aside the order approving compromise and release.

#### RECOMMENDATION

It is respectfully recommended that applicant's Petition for Reconsideration be DENIED.  
**NOTICE OF TRANSMISSION:** Pursuant to Labor Code section 5909, these cases were transmitted to the Workers' Compensation Appeals Board on November 5, 2025.

Date: November 5, 2025

**NOAH W. TEMPKIN**  
WORKERS' COMPENSATION JUDGE