

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

JOSE LUIS DE LA TORRE MERCADO, *Applicant*

vs.

WNU LLC dba PAPA JOHNS PIZZA, *Defendants*

**Adjudication Number: ADJ18122323; ADJ18875709
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant, acting in pro per,¹ seeks reconsideration of the Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ) on February 20, 2024.

Applicant appears to contend that he did not comprehend the settlement agreement.

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

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

Based on our review of the record, and as discussed below, we will dismiss the Petition as premature, and we will return this matter to the trial level for consideration of the Petition as one to set aside the OACR.

BACKGROUND

In case number ADJ18122323, applicant filed an Application for Adjudication, claiming injury to various body parts while employed by defendant as a delivery driver and "general work," during the period from March 29, 2022 to March 29, 2023.

¹ Applicant filed a Notice of Dismissal of Attorney on January 27, 2026.

As relevant herein, the parties entered into the following stipulations, using DWC-WCAB form 10214(c), revised May 2020:

The case numbers being settled were identified as ADJ18122323 and “UNASSIGNED.”

The body parts being settled in case number ADJ18122323 were described in Paragraph 1 as head, arm, hand, fingers, left ankle, back, and stress. (compromise and release (C&R), ¶ 1, p. 3.) The dates of the cumulative injury were the period from March 29, 2022 to March 29, 2023. (*Id.*) The location of the injury was “jobsite.” (*Id.*)

The body part being settled in the “unassigned” case number, which we note was filed in EAMS as case number ADJ18875709, were described in Paragraph 1 as neck, ankle, lumbar spine, cervicle (sic), and head. (C&R, ¶ 1, p. 4.) The date of injury was December 30, 2022. (*Id.*) The injury occurred at “Delivering pizzas and car hit by another vehicle.” (*Id.*)

Paragraph 3 states:

This 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.

Per Paragraph 6, no temporary disability indemnity or permanent disability indemnity was paid.

Paragraph 8 states:

Defendant agrees to pay, adjust, or litigate all lien claims of record with regard to the 03/29/2022 - 03/29/2023 CT date of injury related to herein only. Please see addendum A. There are no liens.

The comments section of Paragraph 9 states:

This settlement resolves all known claims at this employer. No other injuries are claimed at this employer other than contained herein. All claims for penalty and interest are waived if payment is made within 30 days of the date of service of the order approving. See incorporated addendum for additional conditions of settlement. Defendant is not liable and will not hold applicant harmless for any and all treatment outside of the employers MPN if applicable.

The parties are resolving this case without a final panel qualified medical evaluator report. The continous (sic) trauma case was denied on 11-2-23.

The specific 12-30-22 injury resulted in no lost time from work pursuant to 2-1-23 report from Concentra.

On February 5, 2024, applicant signed the compromise and release (C&R) with the assistance of a certified Spanish interpreter. The C&R was signed by applicant's attorney on February 6, 2024, and by defendant's attorney on February 15, 2024.

On February 15, 2024, defendant sent the fully executed C&R to the WCJ with an accompanying letter that states, in part:

The continuous trauma case under ADJ18122323 was denied on November 2, 2023. The specific injury of December 30, 2022, was an accepted no lost time non-litigated case, and therefore unassigned. The report from Dr. Truong at Concentra, dated February 1, 2023, is enclosed.

On February 20, 2024, without holding a hearing, the WCJ designated defendant to serve a joint Order Approving Compromise and Release (OACR).

On January 27, 2026, applicant filed a handwritten Petition for reconsideration, which was largely written in Spanish.

DISCUSSION

I.

Former Labor Code section² 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 in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under

² All statutory references are to the Labor Code unless otherwise stated.

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 February 4, 2026, and 60 days from the date of transmission is Sunday April 5, 2026. The next business day that is 60 days from the date of transmission is Monday April 6, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on April 6, 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 WCJ, the Report was served on February 4, 2026, and the case was transmitted to the Appeals Board on February 4, 2026. 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 February 4, 2026.

II.

Subject to the limitations of section 5804, “[t]he appeals board has continuing jurisdiction over all its orders, decisions, and 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.” (Lab. Code, § 5803.)

To safeguard injured workers from agreeing to unfair or unwise settlements, section 5001 provides that no settlement is valid unless the Workers’ Compensation Appeals Board or 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.

workers' compensation referee approves the settlement. (Lab. Code, § 5001; *Steller v. Sears, Roebuck & Co.* (2010) 189 Cal.App.4th 175, 180 [75 Cal.Comp.Cases 1146], see *Johnson v. Workmen's Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 973 [35 Cal.Comp.Cases 362].)

“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.) The worker's knowledge of and intent to release particular benefits must be established separately from the standard release language of the form. (*Claxton, supra*, 34 Cal.4th at p. 373.)

We note that while the parties may stipulate to the facts in controversy, the WCJ is not bound by the parties' stipulations and may make further inquiry into the matter “to enable it to determine the matter in controversy.” (Lab. Code, § 5702; see also *Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 790 [52 Cal.Comp.Cases 419]; *Turner Gas Co. v. Workmen's Comp. Appeals Bd. (Kinney)* (1975) 47 Cal.App.3d 286, 290-291 [40 Cal.Comp.Cases 253].)

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.) 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*, 134 Cal.App.3d 929.) Put another way, 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.)

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, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, 27; *County of San*

Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda) (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].)

Here, applicant appears to contend that he did not understand the settlement, which calls into question what applicant's understanding was at the time that the settlement was negotiated. If applicant did not understand the terms of the C&R, it calls into question whether a contract was created. Because no hearing was held, the WCJ did not have the opportunity to assess applicant's understanding of the proposed settlement agreement. Although the WCJ states that "There is a panel qualified medical examiner report (PQME) waiver attached [to the C&R]." (Report, p. 2.), there is no evidence in the record regarding who advised applicant about the waiver, nor is there evidence in the record regarding how the WCJ was aware of what applicant knew or understood and what applicant was told with respect to the adequacy of the settlement.

A WCJ's decision must be based on admitted evidence (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc)), and must be supported by substantial evidence (Lab. Code, §§ 5903, 5952(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. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 477.)

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 [65 Cal.Comp.Cases 805].) 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. (*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].)

The Appeals Board also has a constitutional mandate to “ensure substantial justice in all cases” and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The “Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee.” (*San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 937-938 [64 Cal.Comp.Cases 986].)

Here, it appears that applicant was a delivery driver, at least at the time of his specific injury. However, his other duties, if any, are unclear, particularly with respect to the cumulative injury. We observe that date of injury under section 5412 is separate and distinct from the period of injurious exposure. The record is not clear as to the period of injurious exposure with respect to his cumulative injury (ADJ18122323).

While the specific injury of December 30, 2022, was an accepted claim, the cumulative injury (ADJ18122323) was denied on November 2, 2023. Section 4060 provides for a medical-legal evaluation to determine compensability of a disputed claim, in accordance with the procedures set forth in section 4062.2.

Consequently, the scant record is insufficient, both as to the issue of what applicant understood regarding what body parts he was settling, whether he understood that he was settling both the December 30, 2022 injury (ADJ18875709) and the cumulative injury (ADJ18122323), whether he understood that he was settling future medical care, and crucially, whether the settlement was adequate.

Accordingly, we dismiss applicant’s Petition as premature and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, we recommend that the WCJ treat the Petition as a petition to set aside the OACR and conduct further proceedings and create a record. The WCJ may also consider the issue of whether medical-legal reporting is necessary in order to have an adequate record.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DISMISSED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 6, 2026

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

**JOSE LUIS DE LA TORRE MERCADO
ACCIDENT DEFENDERS
LAW OFFICE OF JEFFERI HAMILTON**

JB/pm

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