

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

ROBERT LYONS, *Applicant*

vs.

**SIMS MANAGEMENT COMPANY;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ4412314 (STK 0184149)
Stockton District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant, in pro per, seeks reconsideration of the Order Approving Compromise and Release (Order) issued by the workers' compensation administrative law judge (WCJ) on March 14, 2012. By the Order, the WCJ approved the settlement agreement between the parties to resolve applicant's claim with an open medical award for \$525,000.00.

Applicant makes allegations of fraud by defendant to induce him to enter into the settlement.

We did not receive an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of applicant's Petition for Reconsideration and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will dismiss applicant's Petition and return this matter to the trial level for further proceedings consistent with this opinion.

FACTUAL BACKGROUND

Applicant claims injury to multiple body parts while employed as a sales manager on January 2, 2003 by Cochran & Celli.

The matter proceeded to a hearing on March 14, 2012. The Minutes of Hearing indicate that a settlement agreement was approved. The parties agreed to settle applicant's claim for

\$525,000.00 (with an open medical award) with deductions for an attorney’s fee lien, child support and permanent disability advances. The WCJ issued the Order approving the settlement and took the matter off calendar.

A second Order Approving Compromise and Release was issued on October 15, 2013, approving a settlement in the amount of \$400,000.00 with a deduction to fund a Medicare Set-Aside.

On October 15, 2018, applicant filed a petition to reopen his case. In his petition, applicant alleged that defendant used fraudulent and illegal tactics to force him to settle in 2012.

Applicant filed his Petition for Reconsideration on March 5, 2021, wherein he raises the allegations previously raised in his 2018 petition to reopen.

DISCUSSION

“The 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.)¹

Additionally, decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corp. (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Id.* at p. 475; Lab. Code, § 5313.)

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 [65 Cal.Comp.Cases 805].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant . . .” (*Id.* at p. 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

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

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 pp. 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].)

Section 5702 states that:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

(Lab. Code, § 5702.)

Stipulations are binding on the parties. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) The parties may stipulate to the facts in controversy and agree to resolve a claim by compromise and release. "The legal principles governing compromise and release agreements are the same as those governing other contracts." (*Burbank Studios v. Workers' Comp. Appeals Bd. (Yount)* (1982) 134 Cal.App.3d 929, 935 [47 Cal.Comp.Cases 832].) "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] (writ den.), internal citations and quotations omitted.)

Applicant contends that defendant used fraudulent and illegal tactics to induce him to settle his case in 2012. He had previously raised these allegations in his 2018 petition to reopen as well. However, there has been no evidence or testimony under oath admitted into the record regarding applicant's allegations, i.e., there is no evidence upon which we could base a decision and the matter is premature for reconsideration.

Upon return of this matter to the trial level, we recommend that the WCJ treat applicant's Petitions as a petition to set aside including setting a hearing so applicant can provide evidence in support of his arguments and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, either party may then timely seek reconsideration of that decision.

Accordingly, we will dismiss applicant's Petition for Reconsideration as premature.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Order Approving Compromise and Release issued by the WCJ on March 14, 2012 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 4, 2021

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

**ROBERT LYONS
STATE COMPENSATION INSURANCE FUND**

AI/pc

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