

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

RAMIRO MELENDREZ, *Applicant*

vs.

**ANEMOSTAT, INC.;
LIBERTY MUTUAL INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ10643718, ADJ10643721
Los Angeles District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the December 10, 2021, Order Approving Compromise and Release (OACR) wherein the workers' compensation administrative law judge (WCJ) approved of the parties' settlement agreement. Applicant also made a request to set aside the order approving the compromise and release (C&R).

Applicant contends that the OACR failed to address the review of the Hartman formula addendum which was a part of the settlement documents. Applicant also contends that the OACR must specifically address the issue of workers' compensation Medicare set aside arrangements (MSA) and the proposed social security addendum.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Removal (Report), recommending that the Petition be granted, the OACR be vacated, and the matter remanded for further proceedings.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss applicant's Petition as premature and return this matter to the trial level for consideration of the Petition as one to set aside the OACR.

FACTS

In case ADJ10643718, applicant claimed injury to his ankle, head, and nervous system on March 4, 2016, while employed by defendant as a driver. In case ADJ10643721, applicant claimed

injury to his neck, back, head, and nervous system on August 3, 2016, while employed by defendant as a driver.

The parties signed the C&R and agreed to a settlement amount of \$343,707.07 with deductions from that amount for an Employment Development Department (EDD) lien, seed money for the MSA, to Pacific Life and Annuity to fund the MSA annually, and attorney's fees for the applicant's attorney. The C&R contained a number of addendums regarding the characterization of the settlement funds, based on the Hartman formula, and the administration of the MSA.

The WCJ issued the OACR approving the C&R, without holding a hearing,¹ on December 10, 2021. The WCJ approved the amounts for the EDD lien, the seed money for the MSA, the annuity to fund the MSA annually, and the applicant's attorney's fees. However, the WCJ did not check the box on the OACR stating that the Court had reviewed the proposed MSA and found that it adequately considered the interests of Medicare in the settlement.

DISCUSSION

Applicant contends that the OACR is silent as to review of the Hartman formula addendum which is a crucial part of the settlement documents that must be specifically considered and addressed in the OACR. Applicant also contends that the OACR must specifically address the issue of the workers' compensation MSA and the proposed social security addendum.

“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).) We observe that contract principles apply to settlements of workers' compensation disputes. Stipulations between the parties must be interpreted to give effect to the mutual intention of the parties it existed at the time of contracting, so far as the same is ascertainable and lawful. (*County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193], citing Civ. Code, § 1636.)

Additionally, there must be a complete record for our review of the case. “[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further

¹ Based on a review of the record, no Minutes of Hearing or Summary of Evidence (MOH/SOE) were filed.

appeal, to understand the basis for the decision.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Bd. en banc).) The Appeals Board’s record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.)

Furthermore, all parties in workers’ compensation proceedings retain their 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] (*Rucker*).) 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*, 82 Cal.App.4th at pp. 157-158, citing *Kaiser Co. v. Industrial Acc. Com.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710-712 [57 Cal.Comp.Cases 230].)

Because no hearing was held, the WCJ did not have the opportunity to assess the basis of the parties’ understanding of the C&R. There is no MOH/SOE in the record. Therefore, we cannot make a decision without giving the parties an opportunity to be heard and for the WCJ to create a complete record for our review.

Accordingly, we will dismiss the Petition as premature, and return this matter to the trial level.² Upon return of this matter to the trial level, we recommend that the WCJ treat the Petition as a petition to set aside and set a hearing so applicant can provide evidence in support of the arguments contained in the Petition and create a record upon which a decision can be made by the WCJ.

² We note that as the WCJ filed the Report within 15 days of the timely filing of a petition for reconsideration, the WCJ had the option to rescind the OACR and either initiate further proceedings within 30 days or issue an amended OACR. (Cal. Code Regs., tit. 8, § 10961(b), (c).)

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the December 10, 2021, OACR is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 18, 2022

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

**RAMIRO MELENDREZ
LEVIN & NALBANDYAN
BRADFORD & BARTHEL**

JMR/pc

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