

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

**THOMAS FASOLETTI, *Applicant***

**vs.**

**CALIFORNIA DEPARTMENT OF TRANSPORTATION, legally uninsured,  
adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ16808767; ADJ17438570  
Sacramento District Office**

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

Applicant, acting in pro per,<sup>1</sup> seeks reconsideration of an Award, issued by the workers' compensation administrative law judge (WCJ) on July 25, 2023, wherein the WCJ approved a stipulated settlement agreement in case number ADJ16808767. We note that the WCJ also issued an Order dismissing case number ADJ17438570 on July 25, 2023.

Applicant contends that because the notice of hearing listed him as deceased, he thought it was notice of a settlement hearing for his estate. Applicant further contends he did not understand that the purpose of the hearing was to settle his workers' compensation claim and that he was unaware that his claim was settled until he received a letter from an adjuster, dated July 27, 2023, outlining the settlement. Applicant also contends that his attorney agreed to a settlement without consulting him. Finally, applicant contends that he did not receive proper representation because his attorney was unresponsive to applicant's texts, emails, and phone calls after May 4, 2023.

We received an answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be granted and the case sent back for a hearing to determine if there is good cause to set aside the settlement.

---

<sup>1</sup> Applicant filed a Notice of Dismissal of Attorney on August 15, 2023, the same day he filed his Petition for reconsideration.

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

Based on our review of the record, the WCJ's recommendation, and for the reasons discussed below, we will grant the Petition, rescind the July 25, 2023 Award in case number ADJ16808767, rescind the Order dismissing case number ADJ17438570, and return the matter to the WCJ for further proceedings consistent with this opinion.

### **BACKGROUND**

In case number ADJ16808767, applicant filed an application for adjudication on October 12, 2022, claiming that he sustained a specific injury to his back on May 29, 2020, while employed by defendant as an electrician.

In case number ADJ17438570, applicant filed an application for adjudication on March 16, 2023, claiming a cumulative injury to his back while employed by defendant as an electrician during the period from May 29, 2019 to May 29, 2020.

In case number ADJ16808767, the parties executed a Stipulations with Request for Award, signed by applicant on March 4, 2023, by applicant's attorney on March 8, 2023, and by defendant's claims adjuster on March 10, 2023. In pertinent part, the parties entered into the following stipulations:

The body part being settled was described in Paragraph No. 1 as 420 back (lumbar spine). (Stipulations with Request for Award, ¶ 1, p. 5.) The parties stipulate that they are settling a cumulative injury, with a date of injury spanning May 29, 2019 through May 29, 2020. (*Id.*)

a) Both parties agree that this stipulation resolves all issues regarding compensation of medical temporary disability and permanent disability through the date of approval by the WCAB.

b) Interest and penalties to be waived if paid within thirty (30) days of receipt of award by State Compensation Insurance Fund.

c) Both parties agree that settlement is based on the report of Dr. Stuart Rubin dated 01/14/2021, 05/07/2021, and 06/17/2022.

d) Parties agree that permanent disability is based on the following formula:  
lumbar spine:

15.03 01.00 - 10 - 14 - 380H - 18 - 24

e) Parties agree applicant had no time loss, therefore, applicant is not entitled to supplemental job displacement benefit.

(Stipulations with Request for Award, ¶ 9, p. 7, original in uppercase.)

On June 13, 2023, defendant filed a declaration of readiness (DOR) in case number ADJ16808767, which states in pertinent part as follows:

The parties have agreed to settlement, however, defendant has not received any response to attempted communication with applicant's counsel regarding the settlement status. Board intervention is requested.

(June 13, 2023 declaration of readiness, p. 7, original in uppercase.)

On July 25, 2023, attorneys for applicant and defendant attended a mandatory settlement conference (MSC). The minutes do not indicate whether or not applicant was present at the MSC.

(July 25, 2023 minutes, p. 1.) The minutes state as follows:

In ADJ16808767, Stipulation with Request for Award is approved; Award issued separately. In ADJ17438570, Stip & Order approved<sup>2</sup> and issued separately.

(July 25, 2023 minutes, p. 1.)

In case number ADJ16808767, the WCJ issued an Award approving the Stipulations with Request for Award. (July 25, 2023 Award, in case number ADJ16808767, p. 1.)

In case number ADJ17438570, the WCJ issued an Order approving stipulations, as follows:

Having waived provision of Labor Code § 5313, the parties stipulate as follows:

WCAB CASE NUMBER ADJ17438570 IS DISMISSED WITH PREJUDICE AS IT IS DUPLICATIVE OF ADJ168<sup>3</sup> FUND CLAIM NUMBER 06555872.

(July 25, 2023 Stipulation and Order in case number ADJ17438570, p. 1.)

---

<sup>2</sup> After a review of FileNet in case number ADJ17438570 and case number ADJ16808767, we do not find proposed stipulations regarding the dismissal of case number ADJ17438570.

<sup>3</sup> The document was not scanned properly and portions of the right side are missing. It appears that case number ADJ16808767 was added later. There appears to be text missing prior to "FUND CLAIM NUMBER 06555872."

## DISCUSSION

Subject to the limitations of Labor Code<sup>4</sup> 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.)

We observe that contract principles apply to settlements of workers’ compensation disputes. The legal principles governing compromise and release agreements, and by extension, stipulations with request for award, 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. (*Id.*)

The essential elements of contract include the mutual consent of the parties and 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 (*TRB Investments*); *County of San Joaquin v. Workers’ Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) The parties’ intention should be ascertained, if possible, from the writing alone, and the clear language of the contract governs its interpretation if an absurdity is not involved. (Civ. Code, §§ 1638, 1639; *TRB Investments, supra*, at 27.) The essential elements of contract also include consideration. (Civ. Code, §§ 1550, 1584, 1595, 1605, et seq.)

“A stipulation is ‘An agreement between opposing counsel . . . ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,’ (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves ‘to obviate need for proof or to narrow range of litigable issues’ (Black’s Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding.” (*County of*

---

<sup>4</sup> All further statutory references are to the Labor Code, unless otherwise noted.

*Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [65 Cal.Comp.Cases 1].) Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*Weatherall, supra*, at 1121.) “Good cause” to set aside an order or stipulations depends upon the facts and circumstances of each case and 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, 850 (writ den.); *City of Beverly Hills v. Workers' Comp. Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691, 1692 (writ den.); *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp.Cases 311].) To determine whether there is good cause to rescind awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Lab. Code, § 5702; *Weatherall, supra*, 1118-1121; *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].)

Here, applicant filed two separate claims, one with a date of injury of May 29, 2020 (case number ADJ16808767) and the other with a date of injury of May 29, 2019 to May 29, 2020 (case number ADJ17438570). Based on the Stipulations with Request for Award, it appears that the parties have conflated the two cases. The parties purport to be settling case number ADJ16808767, which has a May 29, 2020 date of injury. However, they state that they are settling a cumulative injury with a date of injury spanning May 29, 2019 through May 29, 2020. (Stipulations with Request for Award, ¶ 1, p. 5.)

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 *Weatherall, supra*, at 1119; *Turner Gas Co. v. Workers' Comp. Appeals Bd. (Kinney)* (1975) 47 Cal.App.3d 286 [40 Cal.Comp.Cases 253].) Moreover, “[t]he 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*, at 373.)

Based on the record before us, it is unclear whether the WCJ had an opportunity to assess applicant's understanding of the proposed settlement agreement, as the minutes from the MSC are silent as to whether applicant attended the MSC. (July 25, 2023 minutes, p. 1.) However, if applicant did not understand the terms of the settlement in case number ADJ16808767, it calls into question whether the parties mutually agreed upon the same thing, which then calls into question whether a valid contract was formed.

The Appeals Board's record of proceedings is maintained in the adjudication file and includes: the pleadings, minutes of hearing, summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits identified 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.)

Turning to case number ADJ17438570, the right side of the Stipulation and Order dismissing case number ADJ17438570 is cut off. As a result, the language of the contract is not clear and the parties' intention cannot be ascertained from the writing. (Civ. Code, §§ 1638, 1639; *TRB Investments, supra*, at 27.) Based on the record before us, it is unclear whether applicant consented to dismiss case number ADJ17438570, or indeed whether he was aware of this other case. (Civ. Code, §§ 1550, 1565.)

The WCJ's decision "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*)). An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall ". . . make and file findings upon all facts involved in the controversy[.]" (Lab. Code, § 5313; *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on

decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Hamilton, supra*, at 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

While applicant contends that he did not understand that the purpose of the MSC was to settle his workers’ compensation claim and that his attorney agreed to a settlement without consulting him, no evidence has been admitted on these issues. Consequently, the record is insufficient as to the issues of whether applicant understood the agreement he signed on March 4, 2023, whether a contract was formed, and, if a contract was formed, whether the settlement in case number ADJ16808767 was adequate.

Although the Order dismissing case number ADJ17438570 suggests that it is being dismissed because it is duplicative, there is no evidence cited in support of this conclusion. Moreover, the adjudication file does not contain a Minutes of Hearing and Summary of Evidence and there is no evidence admitted into the record. (Cal. Code Regs., tit. 8, §§ 10670, 10759, 10787.)

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].)

Accordingly, we grant applicant’s Petition, rescind the July 25, 2023 Award in case number ADJ16808767, rescind the Order dismissing case number ADJ17438570, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

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

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 25, 2023 Award in case number ADJ16808767 is **RESCINDED**.

**IT IS FURTHER ORDERED** that the July 25, 2023 Order in case number ADJ17438570 is **RESCINDED**.

**IT IS FURTHER ORDERED** that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

**I CONCUR,**

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



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

**OCTOBER 16, 2023**

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

**THOMAS FASOLETTI  
LAW OFFICE OF MARTIN J. BEAVER  
STATE COMPENSATION INSURANCE FUND**

**JB/cs**

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

CS