

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

PRINCESS OBIENU, *Applicant*

vs.

**COUNTY OF LOS ANGELES DEPARTMENT OF HEALTH SERVICES;
PSI and Administered by SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ9893776; ADJ9893770
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant, acting in pro per, seeks reconsideration of the May 21, 2021 Award issued by the workers' compensation administrative law judge (WCJ), approving the parties' Stipulations with Request for Award. Applicant also seeks reconsideration of the WCJ's August 18, 2021 Order Granting Motion to be Relieved as Attorney, whereby the WCJ granted applicant's former counsel's motion to be relieved as applicant's attorney of record.

Applicant argues that the evidence does not justify the stipulations, that the disability rating contained in the stipulations is too low, and that the WCJ's Stipulations Award should be set aside on account of newly discovered evidence and allegations that some elements of the stipulations, orders, decisions, and/or award were procured by fraud. Applicant also claims that her counsel should not be permitted to withdraw from representation, as she asserts that counsel "maliciously abandon[ed]" her cases and should be "asked to re-enter the case and clean up all complications that he created...." (Petition, pp. 3 & 6.)

We received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we dismiss applicant's Petition for Reconsideration (Petition) as untimely and meritless.

We have considered the Petition for Reconsideration, defendant's answer, and the contents of the Report with respect thereto. For the reasons discussed below, we will dismiss the Petition for Reconsideration, and return this matter to the trial level for further proceedings consistent with this opinion.

BACKGROUND

Applicant, while employed during the period of June 1, 2009 through July 6, 2018 as a health education assistant by the County of Los Angeles Department of Health Services, sustained injury arising out of and in the course of employment to psych, sleep, headaches, GERD, IBS, asthma, cervical spine, lumbar spine, bilateral wrists, and dental/bruxism. She claims to have sustained injury arising out of and in the course of employment to internal/rheumatological in the form of chronic fatigue syndrome.

On May 20, 2021, the parties filed Stipulations with Request for Award to settle applicant's claims. On May 21, 2021, the WCJ issued an Award approving the stipulations (Stipulations Award). On October 29, 2021, defendant filed a verified Answer to a Petition for Reconsideration, attached to which was a copy of applicant's Petition for Reconsideration (Petition) and proof of service dated October 15, 2021. The Petition was entered into EAMS on November 17, 2021.

DISCUSSION

While applicant filed a Petition for Reconsideration, it is clear that, in substance, applicant seeks to set aside the WCJ's Stipulations Award, claiming that she possesses newly discovered evidence regarding her injuries and that some elements of the stipulations, orders, decisions, and/or award were procured by fraud. A petition to set aside the WCJ's Stipulations Award would be based upon Labor Code section 5803,¹ which reads, in pertinent part, "[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.) A Stipulations Award is an order that may be reopened for "good cause" under section 5803. "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].)

At this time, the record is insufficient to allow a decision as to whether or not applicant has shown good cause to set aside the Stipulations Award. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. En banc); Lab. Code, §§ 5903, 5952(d).) Neither party

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

has had the opportunity to present their arguments and any supporting evidence on this issue at the trial level. (Lab. Code, § 5702; *County of Sacramento v. Workers' Comp. Appeals Bd.* (2000) 77 Cal.App.4th 1114, 1118-1121 [65 Cal.Comp.Cases 1] [to determine whether there is good cause to rescind awards and stipulations, the circumstances surrounding their execution and approval must be assessed].) Therefore, a Petition for Reconsideration is premature. As such, we will return this matter to the trial level with a recommendation that the WCJ set a hearing so that applicant can provide evidence in support of her “good cause” argument and create a record upon which a decision can be made by the WCJ. We note that, as the moving party, applicant has the burden of proof to show by a preponderance of the evidence that there is good cause to relieve her from the stipulations that she 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....”].)

As for applicant’s Petition for Reconsideration of the WCJ’s August 18, 2021 order allowing her former attorney to withdraw from representation, we note that this order is not a “final” order, decision, or award subject to reconsideration. (Lab. Code, § 5900.) Instead, we have analyzed a WCJ’s decision to grant counsel’s request to withdraw after a compensation award has been obtained under the removal standard pursuant to section 5310. (*Thompkins v. Citizens Telecom, Continental Insurance Co.* (June 27, 2017, ADJ4253500; ADJ3995771; ADJ2208886; ADJ4180846) [2017 Cal. Wrk. Comp. P.D. LEXIS 300].) Pursuant to WCAB Rule 10955, a petition to remove must be filed within 20 days after service of the order or decision, or of the occurrence of the action in issue. (Cal. Code Regs., tit. 8, § 10955.) As noted above, applicant’s petition was filed 58 days after the Order Granting Motion to be Relieved as Attorney was issued, and therefore fails for lack of timeliness. However, even if applicant’s claim had been timely asserted, and if we were to treat her petition as one for removal, we are not convinced that removal would be warranted.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155] (*Cortez*); *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133] (*Kleemann*)). The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal.

Code Regs., tit. 8, § 10955; see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955.)

Here, we do not see how applicant will incur significant prejudice or irreparable harm absent the requested relief, namely that her counsel be ordered to resume representation. The Court of Appeals has explained that a client is harmed and/or prejudiced if counsel “abandons” their client or withdraws at a “critical point” in their case. (*Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 915-916; see also Code Civ. Proc., §§ 284-286; Cal. Code Regs., tit. 8, § 10402(a).) The record shows that applicant’s attorney diligently and responsibly represented applicant throughout the proceeding and did not abandon applicant. Counsel’s actions during the proceeding are thoroughly set forth in the WCJ’s Report and need not be repeated here. (Report, pp. 5-9.) Ultimately, counsel secured applicant’s Stipulations Award, which stood unchallenged at the time that counsel sought to withdraw from representation in August 2021. As a result, at that point, the case was not at a critical stage such that withdrawal would have significantly prejudiced or irreparably harmed applicant. It also cannot be said that reconsideration would not be an adequate remedy to address any claimed error in a future final decision regarding whether “good cause” exists to set aside the Stipulations Award. Until the record is developed and a final decision issues, it is premature to assume that applicant, with or without counsel, will be aggrieved by any such decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the WCJ's May 21, 2021 Stipulations Award is **DISMISSED**.

IT IS FURTHER ORDERED that applicant's Petition for Reconsideration of the WCJ's August 18, 2021 Order Granting Motion to be Relieved as Attorney is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 7, 2022

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

**MERCADO AND ASSOCIATES
PRINCESS OBIENU**

AH/oo

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