

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

PATRICIA McKENZIE, *Applicant*

vs.

**COUNTY OF LOS ANGELES DEPARTMENT OF HEALTH SERVICES, permissibly
self-insured, adjusted by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ297660 (LAO 0792751); ADJ6645919
Los Angeles District Office**

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

Defendant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on November 6, 2023, wherein the WCJ found in pertinent part the WCAB retains jurisdiction over proposed lien settlements between defendant and lien claimants Park Compounding and Pro Rx Management; that defendant did not meet its burden of showing that stipulations with request for award should be set-aside based on mutual mistake of fact, unilateral mistake of fact, or fraud; and that the settlement agreements between lien claimants and defendant are valid and enforceable.

Defendant contends that the F&O is void because the WCJ did not have subject matter jurisdiction. Defendant also contends that the stipulations entered into by the parties are not valid because mutual mistake of fact or unilateral mistake of fact existed at the time they were entered and/or they are based on fraud.

We received an answer from lien claimant.

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

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

Based on our review of the record, and for the reasons discussed below, we will grant defendant's Petition, rescind the November 6, 2023 F&O, and return the matter to the WCJ for further proceedings consistent with this decision.

In the Report, the WCJ stated in pertinent part as follows:

FACTS

APPLICANT, PATRICIA MCKENZIE, aged 50 on the first date of injury, while employed as a health facility nurse at Commerce, California by the COUNTY OF LOS ANGELES DEPT OF HEALTH SERVICES, sustained injury arising out of and in the course of said employment on 01 December 2000 and 21 March 2008 to her neck, hernia, back and shoulders.

The applicant's case-in-chief in in case number ADJ297660 was resolved by Stipulation with Request for Award which was approved on 12 August 2009 at the Los Angeles Board. In ADJ6645919 another Stipulation with Request for Award was approved on 22 February 2012 at the Long Beach Board. In the latter case, the applicant filed a Petition to Reopen on 12 March 2013 which was dismissed on 06 May 2015.

The lien of PARK COMPOUNDING was filed on 14 December 2012 in ADJ297660 and included the \$ 100.00 filing fee. The lien log in EAMS shows this lien to be unresolved. The lien of PRO-RX was filed on 14 January 2016 in ADJ6645919 and included the \$ 150.00 filing fee. The lien log in EAMS shows this lien to be "[d] dismissed pursuant to 4903.05(c.)

On or about 14 January 2021, the two lien claimants entered into an agreement assigning all the rights of PARK COMPOUNDING to SICM GROUP, the owner of the other lien claimant PRO-RX. Included in this agreement was a declaration under penalty of perjury that PARK COMPOUNDING had ceased doing business pursuant to Labor Code section 4903.8 (a.) See Joint Exhibit X.

On 06 December 2021, the SICM GROUP filed a Declaration of Readiness to Proceed (DOR) in both cases and the matter was set for the Oxnard Lien Conference Calendar on 28 February 2022. The Minutes for that day reflect that the lien claimant provided defendant with additional documentation and that the defendant needed time to review. The matter was continued to 19 April 2022 at which the parties came to an agreement to settle. The documentation of that agreement consisted of two letter agreements both of which were signed by both parties, the defense attorney signing for the defendant. (See Exhibits 1 & 2.) Both agreements were dated 19 April 2022 so one can infer that both documents were signed and exchanged via email or fax on the date of hearing as all lien conferences were (and are) held by teleconference at that point in time. The agreements both indicated that the defendant had 30 days to pay, or the lien

claimants would have the right to rescind the contract. No provision was made for the defendant to have the right to rescind the agreement.

At some point the defendant refused to pay the agreements. The details of this fact are set forth in the Response (Answer) to the Petition for Reconsideration filed by the lien claimants. This document states that after the expiration of the 30 days to pay, the lien claimants called the defense adjuster on 09 June 2022 by telephone and that the adjuster stated that “they do not pay for compound medications.” No written denial or objection to the settlement agreements was served until the preparation of the Stipulations and Issues on 08 December 2022. No attempt appears to have been made to rescind the agreement in writing until the Stipulations and Issues were prepared on 08 December 2022.

(November 28, 2023 Report, pp. 2-3)

A lien trial was on April 13, 2023 and October 4, 2023. In case number ADJ297660, the following issues were framed:

1. Whether the WCAB has subject matter jurisdiction.
2. Whether the settlement agreements are valid and enforceable.
 - a) Whether ProRx is void ab initio for illegality.
 - b) Whether Defendant waived subject matter jurisdiction.
 - c) Whether Defendant’s agreement to settle ProRx was induced by intentional misrepresentation and unilateral mistakes and is voidable at Defendant’s option.
 - d) Whether Defendant’s agreement to settle Park Compounding was based on mutual mistake and is voidable.
3. Whether the settlement agreements are valid and enforceable.
4. Whether Defendant owes penalties and interest.
5. Whether Defendant owes costs and sanctions and fees.
6. Whether Defendant waived any defenses and whether they should be allowed to relitigate the issues.
7. Whether Defendant has presented any evidence of mutual mistake of fact.
8. Whether Defendant demonstrated that the evidence was not available or could not be discovered prior to the stipulated agreements.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), April 13, 2023 trial, p. 3.)

The issues framed for trial in case number ADJ6645919 were as follows:

1. Whether the WCAB has subject matter jurisdiction.
2. Whether the settlement agreements are valid and enforceable.
 - a) Whether ProRx is void ab initio for illegality.
 - b) Whether Defendant waived subject matter jurisdiction.
 - c) Whether Defendant’s agreement to settle ProRx was induced by intentional misrepresentation and unilateral mistakes and is voidable at Defendant’s option.

- d) Whether Defendant's agreement to settle Park Compounding was based on mutual mistake and is voidable.
3. Whether the settlement agreements are valid and enforceable.
 4. Whether Defendant owes penalties and interest.
 5. Whether Defendant owes costs and sanctions and fees.
 6. Whether Defendant waived any defenses and whether Defendant should be allowed to relitigate the issues.
 7. Whether Defendant has presented any evidence of mutual mistake of fact.
 8. Whether Defendant demonstrated that the evidence was not available or could not be discovered prior to the stipulated agreements.

(MOH/SOE, April 13, 2023 trial, p. 4.)

At trial, defendant called Sergio Ibarra, the hearing representative for the lien claimants. No other witnesses were called to testify. (MOH/SOE, April 13, 2023 trial, p. 1; MOH/SOE October 4, 2023 trial, p. 1.)

At trial, the WCJ admitted the following exhibits into evidence:

- Ex. X: Assignment of Park Compounding, dated 15 January 2021.
- Ex. 1: Stipulation and order to pay lien of Park Compounding, dated 19 April 2022.
- Ex. 2: Stipulation to pay lien of ProRx, dated 19 April 2022.
- Ex. A: Notice and Request for Allowance of Lien, dated 14 January 2016.
- Ex. B: Letter on State letterhead indicating that the original document was not uploaded into EAMS due to a regulation that was in force at the time, dated 14 January 2016.
- Ex. C: Declaration which was attached to the lien per Labor Code Section 4903.8(d), dated 14 January 2016.

(MOH/SOE April 13, 2023 trial, p. 5.)

DISCUSSION

Subject to the limitations of Labor Code¹ 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 note that contract principles apply to settlements of workers' compensation disputes. The legal principles governing compromise and release agreements, and by extension stipulations

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

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].) An overriding goal of contract interpretation is to give effect to the mutual intention of the parties at the time of contracting, so far as the same is ascertainable and lawful. (Civ. Code, § 1636.) The language of a contract governs its interpretation, if the language is clear and explicit, and does not involve an absurdity. (Civ. Code, § 1638; *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].)

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 Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [65 Cal.Comp.Cases 1].) “‘Stipulations are designed to expedite trials and hearings and their use in workers’ compensation cases should be encouraged. [Citation.] If one party could, as a matter of right, withdraw from a stipulation at any time before it was acted upon by the WCJ or the WCAB, other parties could not rely upon the stipulation and, rather than being expedited, hearings would be subject to uncertainty and disruption in order for the parties to gather and present evidence on issues thought to have been laid to rest by the stipulation.’” (*Weatherall, supra*, at 1121, quoting *Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 791 [52 Cal.Comp.Cases 419].)

However, if there is a showing of good cause, the parties may be permitted to withdraw from their stipulations. (*Id.*) Whether “good cause” exists to set aside a settlement depends upon the facts and circumstances of each case. “Good cause” 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 the awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See

Labor Code § 5702; *Weatherall, supra*, at 1118-1121; *Robinson, supra*, at 790-792; *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].)

Labor Code section 5702 provides:

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.)

Here, the WCJ set the matter for hearing to take evidence and testimony before approving the parties' stipulations. Defendant does not dispute that it entered into a stipulation to pay the lien of Park Compounding "to settle the lien filed by Park Compounding in the amount of \$12,546.17 for the sum of \$11,006.67 as full and final satisfaction for dates of service on 1/10/2012 - 4/28/2014, any or all dates of service." which was memorialized in correspondence signed by Sergio Ibarra on April 19, 2022. (Ex. 1, MOH/SOE April 13, 2023 trial, p. 5.) Defendant also does not dispute that it entered into a stipulation to pay the lien of ProRx Management "settle the outstanding balance of \$7,351.73 on behalf of ProRx Management, LLC in the sum of \$6,439.62 as full and final satisfaction for dates of service on 4/6/2010 - 7/15/2014, any or all dates of service." which was memorialized in correspondence signed by Sergio Ibarra on April 19, 2022. (Ex. 2, MOH/SOE April 13, 2023 trial, p. 5.) The only testimony at trial was that of Sergio Ibarra, representative for lien claimant. (MOH/SOE, April 13, 2023 trial, p. 1; MOH/SOE, October 4, 2023 trial, p. 1.)

Pursuant to section 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) "All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence." (Lab. Code §3202.5) Here, defendant seeks to withdraw from their stipulations and as such, it is defendant's burden of proof. With respect to whether the stipulations were based on mutual mistake of fact, we note that defendant did not present evidence that a mutual mistake of fact existed at the time the parties entered into the stipulations.

However, the WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to

the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).)

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 v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) Moreover, the WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Id.*)

Here, the parties framed numerous issues for trial, in two separate cases. While the WCJ articulates the basis for his findings on several of the issues, he did not make and file findings on each issue framed for trial. Because the findings were not explicitly made as to each issue, the Opinion on Decision will likely require additional analysis. (Lab. Code, § 5313; *Blackledge, supra.*)

In the absence of Findings and an Opinion on Decision that comply with the requirements of section 5313, we are unable to evaluate the basis of the WCJ’s Order. Therefore, we must return this matter to the trial level for further proceedings.

Accordingly, we defendant’s Petition, rescind the November 6, 2023 Findings and Order, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that defendant’s Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, that the Findings and Order issued by the WCJ on November 6, 2023 in case number ADJ297660 is **RESCINDED** and this matter is **RETURNED** to the trial level.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued by the WCJ on November 6, 2023 in case number ADJ6645919 is **RESCINDED** and this matter is **RETURNED** to the trial level.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 16, 2024

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

**PARK COMPOUNDING AND PRORX MANAGEMENT
SICM GROUP
TOBIN LUCKS**

JB/cs

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