WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FELIPE MARTINEZ, Deceased, *Applicant*

vs.

ONE WORLD VENTURES, LLC;
ALASKA NATIONAL INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ13831424
San Diego District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on September 16, 2022, wherein the WCJ found good cause to set aside an Order approving compromise and release (OACR), with credit to defendant for settlement funds already paid.

Defendant contends that the OACR precludes applicant from proceeding with a petition for "serious and willful" (S&W) misconduct pursuant to Labor Code section 4553. Defendant also contends that it is entitled to repayment of the settlement funds.

We have not received an answer from applicant.

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

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

On December 12, 2022, we issued an Opinion and Order Granting Reconsideration (Opinion), however, it came to our attention that the Opinion contained clerical errors. Thereafter, we notified the parties that the Opinion contained errors and was being withdrawn, and we then

issued an Opinion and Order Granting Petition for Reconsideration (Grant for Study)[1] to allow us time to further study the factual and legal issues in this case, which was served on the parties. As our Decision After Reconsideration, we will issue an order vacating the Opinion and issue a corrected Opinion as follows.

Based on our review of the record, for the reasons stated in the WCJ's Report, which is adopted and incorporated herein, and for the reasons discussed below, we will amend the F&O to strike Finding 5. Otherwise, we will affirm the F&O.

BACKGROUND

We will briefly review the relevant facts.

Applicant claims that injured worker Felipe Martinez (decedent) was occupationally exposed to COVID-19 while employed by defendant, tested positive on May 22, 2020, and subsequently passed away on June 16, 2020. Applicant is decedent's spouse Guadalupe Navarro.

On October 21, 2020, applicant, acting in pro per, executed a C&R on DWC Form 10214(d) (rev. 11/2008) to settle the dependency claim. Applicant has a limited working knowledge of the English language, but the C&R was executed without the assistance of a certified Spanish interpreter.

Pursuant to ¶ 1 of the C&R, decedent sustained injury arising out of and in the course of such employment as follows: "was exposed and tested positive for Covid-19." (C&R, ¶ 1, p. 2.)

Pursuant to ¶ 9 of the C&R, the reason for the compromise is as follows:

> The parties have reached a resolution of the dependency claim based upon the documentation provided by spouse Guadalupe Navarro who wishes to have a full lump settlement.
> (C&R, ¶ 9, p. 4.)

The standard language in ¶ 11 of DWC Form 10214(d) (rev. 11/2008) is as follows:

> Upon the approval of this compromise agreement as provided by law, and payment in accordance with the provision of the said order of approval, said applicants and each of them do hereby release and forever discharge said employer and said insurance company of and from all claims, demands, actions or causes of action, of every kind or nature whatsoever on account of, or by

[1] Labor Code section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (Lab. Code, § 5909.) Section 5315 provides the Appeals Board with 60 days within which to confirm, adopt, modify or set aside the findings, order, decision or award of a workers' compensation administrative law judge. (Lab. Code, § 5315.) Here, we timely issued the Grant for Study and we therefore retain jurisdiction. (Lab. Code, §§ 5301, 5302.)

> reason of injury and death sustained as aforesaid by the employee, and in particular of any, all and every claim or cause of action which the undersigned, heirs, executors, representatives, and administrators may have had, now have, or shall hereafter have against said employer, said insurance carrier, and each of them under Division 4 of the Labor Code of the State of California.
> (C&R, ¶ 11, p. 4.)

On October 22, 2020, the claims examiner signed the C&R.

On October 22, 2020, the claims examiner submitted the executed C&R to the WCJ for approval by way of regular mail. Defendant also submitted supporting documentation.

On November 10, 2020, the WCJ approved the C&R and an Order approving the C&R (OACR) issued on November 13, 2020.

On March 24, 2021, applicant served notice of substitution of attorneys.

On April 16, 2021, applicant filed a petition to set-aside the C&R and re-open the case. Applicant contends that she agrees with the basic terms of the C&R with regards to the dependency claim but did not wish to release all other causes of action in the underlying case, specifically the claim for benefits under serious and willful misconduct by the employer.

On April 16, 2021, applicant also filed a petition for award for serious and willful misconduct.

On May 25, 2021, the parties proceeded to a status conference. The minutes state the following:

> AA filed pet to set aside C&R/OAC&R. issue is whether the C&R settled out S&W which is now filed. At first call, parties had agreed the C&R was just for dependency; now def says no and wants to proceed to trial on issue of pet to set-aside. DA to file Notice of rep TODAY.
> (Minutes, May 25, 2021, status conference, p. 1.)

On August 18, 2022, the matter proceeded to trial on the following issues:

> 1. Whether Applicant can proceed with the Serious and Willful petition in light of the provisions of the Compromise and Release agreement, specifically whether paragraph 11 of the Compromise and Release precludes Applicant from proceeding with the Serious and Willful petition without setting aside the complete Compromise and Release.
> 2. Whether to grant the petition to set aside the Compromise and Release.
> 3. Whether Applicant needs to reimburse the settlement funds if the Petition to Set Aside is granted.
> (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 18, 2022, trial, served September 6, 2022, pp. 2-3.)

The parties stipulated as follows:

> 1. Felipe Martinez, born [], while employed on May 22, 2020, at Brawley, California, by One World Ventures, LLC, sustained injury arising out of and in the course of employment in the form of contracted Covid resulting in death on June 16, 2020.
> 2. At the time of injury, the employer's workers' compensation carrier was Alaska National Insurance Company.
> 3. Applicant has received the death benefit in the amount of $222,978.97.
> (MOH/SOE, August 18, 2022, trial, p. 2.)

Applicant testified at trial as follows:

> She was married to Felipe Martinez. Mr. Martinez passed on June 11, 2020. Following his passing, she was contacted by the insurance company representing the employer. She spoke with the insurance company approximately five or six times.
>
> The insurance company sent her paperwork to sign. They told her what it was about, and then they sent it. They told her the documents were for her because she asked for all of the money in full.
> (MOH/SOE, August 18, 2022, trial, p. 3.)
> ***
> She can write some things in English, like short sentences. She does not know what a Petition for Serious and Willful Misconduct is. Ms. Nunez did not explain what a Petition for Serious and Willful Misconduct is.
> ***
> The witness did speak with [senior claims examiner Laura Nunez] on multiple occasions. Some of the discussions with the daughter were in English. However, when Ms. Nunez spoke to the witness directly, it was only in Spanish.
> (MOH/SOE, August 18, 2022, trial, p. 4.)
> ***
> She did sign the documents on October 21, 2020, before a notary. The notary did not ask if she knew what she was signing.
> (MOH/SOE, August 18, 2022, trial, p. 6.)

Laura Nunez, employed by defendant as a senior claims examiner, was called as a defense witness. She testified in pertinent part as follows:

> The witness is currently employed with CopperPoint Insurance Company, a division of Alaska National Insurance Company. She has been there since November of 2019; so approximately three years. Her current position is that of senior claims examiner. She has been that title the entire time at Alaska National. In total she has adjusted claims for over 20 years and maybe even over 25 or longer.
> ***

Over the years, she has handled death cases. She believes that, to her best estimate, she has handled less than five over her years. For her it has not been a very common occurrence. She believes, as to unrepresented spouses, there have been three, including this one.
(MOH/SOE, August 18, 2022, trial, p. 7.)
***
Over the course of the claim, she believes she had many conversations with Ms. Navarro and gives approximately 20 different times or more as her best estimate. All of the conversations were in Spanish.
(MOH/SOE, August 18, 2022, trial, p. 8.)
***
The witness discussed with Ms. Navarro that, if settling out the death benefit, the amount is over her authority, and she would need to get authority from the supervisor before doing anything further.
***
They discussed that she did receive the authority and status of the settlement.
(MOH/SOE, August 18, 2022, trial, p. 9.)
***
They discussed that they were settling by Compromise and Release and would settle any and all claims related to the death and the witness would send out the settlement documents with the amount listed, which was less benefits already paid.
***
The witness asked that, if Ms. Navarro had any questions or needed an interpreter to go over the documents, that Ms. Navarro should let her know and she could make arrangements.
(MOH/SOE, August 18, 2022, trial, p. 10.)
***
The witness is the one that prepared the settlement documents.
***
In all of her years as an adjuster, the witness saw maybe two Serious and Willfuls. She does not get much information regarding Serious and Willfuls because it is not part of coverage. They would give that information to the employer for further handling, she would not handle the Serious and Willful part of the case because the insurance company does not insure for Serious and Willfuls,
***
When reaching the value of the Compromise and Release for Ms. Navarro, it was valued as one sole full dependent in the Labor Code, which tells you that the maximum amount of money is $250,000, you take that amount and discount it to the present value. The only other thing that was used in consideration was the State website to calculate for the commutation.
(MOH/SOE, August 18, 2022, trial, p. 11.)
***
It is an advantage to the insurance company to settle by lump sum because the money is then paid out and you have a closed file with no further exposure.

> ***
> It is not common practice for the insurance company to have Spanish speaking injured workers sign a Compromise and Release without an interpreter. The witness testified that she has handled approximately 15 to 20 Compromise and Release cases where there were Spanish speakers who signed without interpreters.
> ***
> When asked how she got 15 to 20 cases that were settled, she noted that maybe they used their own interpreter because there was an attorney on the case. If there is a claim representative or an attorney, that person would go over the documents with the client. If they have Spanish speaking people in the office or the attorney speaks Spanish, they will have an interpreter sign it as well.
> (MOH/SOE, August 18, 2022 trial, p. 12.)

DISCUSSION

Subject to the limitations of Labor Code[2] 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.)

"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).) 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.)

We observe that contract principles apply to settlements of workers' compensation disputes. The legal principles governing compromise and release agreements are the same as those governing other contracts. (*Burbank Studios v. Workers' Co. Appeals Bd*. (1982) 134 Cal.App.3d 929, 935.) For a compromise and release agreement to be effective, the necessary elements of a

[2] All further statutory references are to the Labor Code, unless otherwise noted.

contract must exist, including an offer of settlement of a disputed claim by one of the parties and an acceptance by the other. (*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.) The essential elements of contract also include consideration. (Civ. Code, §§ 1550, 1584, 1595, 1605, et seq., 1659.) Since a compromise and release is a written contract, 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, Inc. v. Fireman's Fund Ins. Co*. (2006) 40 Cal.4th 19, 27 (*TRB Investments*).) 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, supra,* at 27; *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].)

Based on the record before us, there is no evidence that the parties settled S&W benefits. Pursuant to the plain language of the C&R, the parties intended "a resolution of the dependency claim ...." (C&R, ¶ 9, p. 4.) Applicant testified that she did not know what a claim for S&W was at the time she executed the release. (MOH/SOE, August 18, 2022, trial, p. 4.) The claims examiner testified that the insurer does not cover S&W claims (MOH/SOE, August 18, 2022, trial, p. 11) and the minutes from the May 25, 2021, status conference state that the "parties had agreed the C&R was just for dependency." (Minutes, May 25, 2021, status conference, p. 1).

We also note that the WCJ was not apprised of the fact that applicant had a limited working knowledge of the English language prior to the issuance of the OACR. Because no hearing was held, the WCJ did not have the opportunity to assess applicant's understanding of the proposed settlement agreement. If applicant did not understand the terms of C&R and did not have the benefit of a certified interpreter, it calls into question whether the parties mutually agreed upon the same thing, which then calls into question whether a valid contract was formed.

Defendant's reliance on *Jefferson v. Department of Youth Authority* (2002) 28 Cal.4th 299 [67 Cal.Comp.Cases 727] is misplaced. *Jefferson* is distinguishable from the facts before us for several reasons, most notably that the injured worker in Jefferson was represented by counsel and

the parties included specific language in their settlement agreement that made clear their intent to settle matters outside the scope of the pre-printed C&R form. (*Jefferson v. Department of Youth Authority* (2002) 28 Cal.4th 299, 302 [67 Cal.Comp.Cases 727].)

Applicant does not appear to have brought a claim for benefits which may have accrued prior to decedent's passing. However, it is well settled that a dependent's right to the statutory death benefit is a right independent of and severable from the injured worker's claim for disability compensation. (*Bianco v. Industrial Acci. Com*. (1944) 24 Cal. 2d 584, 589 [9 Cal.Comp.Cases 206]; *Berkebile v. Workers' Comp. Appeals Bd*. (1983) 144 Cal.App.3d 940, 944 [48 Cal.Comp.Cases 438]; *Zenith Insurance Co. v. Workers' Comp. Appeals Bd. (Thweatt*) (1981) 124 Cal.App.3d 176, 187 [46 Cal.Comp.Cases 112].) While the amount of the death benefit is statutorily defined in section 4702, section 4702 also anticipates that a dependent may independently pursue a S&W claim. The amount for one total dependent and no partial dependents is set forth in section 4702(a)(3) as follows:

> (a) **Except as otherwise provided in this section and Sections 4553**, 4554, 4557, and 4558, and notwithstanding any amount of compensation paid or otherwise owing to the surviving dependent, personal representative, heir, or other person entitled to a deceased employee's accrued and unpaid compensation, the death benefit in cases of total dependency shall be as follows:
>
> > (3) In the case of one total dependent and no partial dependents, ... and for injuries occurring on or after January 1, 2006, two hundred fifty thousand dollars ($250,000).
>
> (Lab. Code, § 4702(a)(3) [emphasis added].)

The method of calculating an award under section 4553 is also statutorily defined, as follows:

> The amount of compensation otherwise recoverable shall be increased one-half, together with costs and expenses not to exceed two hundred fifty dollars ($250), where the employee is injured by reason of the serious and willful misconduct of any of the following:
>
> > (a) The employer, or his managing representative.
> > (b) If the employer is a partnership, on the part of one of the partners or a managing representative or general superintendent thereof.
> > (c) If the employer is a corporation, on the part of an executive, managing officer, or general superintendent thereof.
>
> (Lab. Code, § 4553.)

Compensation for an employer's serious and willful misconduct "is clearly separate and distinct from the ordinary compensation benefits provided for under Section 3700" of the Labor Code and a compromise and release of these normal benefits cannot defeat and does not settle the claim for serious and willful misconduct benefits. (*Rodgers v. Real Prop. Mgmt. Co*. (1984) 49 Cal.Comp.Cases 561, 564-565, quoting *Ray v. IAC (Wolgamott)* (1956) 146 Cal. App.2d 393 [21 Cal.Comp.Cases 327].) Here, the value of the settlement is roughly equivalent to the present value of the statutory death benefit allowable to one total dependent. There is no evidence of consideration paid in exchange for settling a claim for increased benefits contemplated by sections 4553 and 4702. (Lab. Code, §§ 4553, 4702.) The insurer assumed liability for compensation and thus stepped into the shoes of the employer with respect to settling the statutory death benefit. (Lab. Code, § 3753, et seq.) The insurer does not cover S&W claims (MOH/SOE, August 18, 2022, trial, p. 11; see also Ins. Code, § 11661) and the only parties to the C&R were applicant and the insurer. Thus, while the employer may rely on the insurer to settle the death benefit, the employer remains personally liable for any potential S&W claim.

It is well established that a WCJ's opinions regarding witness credibility are entitled to great weight. (*Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500, 505]; *Sheffield Medical Group v. Workers' Comp. Appeals Bd. (Perez)* (1999) 70 Cal.App.4th 868 [64 Cal.Comp.Cases 358]; *Nash v. Workers' Comp. Appeals Bd*. (1994) 24 Cal.App.4th 1793 [59 Cal.Comp.Cases 324]; *Greenberg v. Workmen's Comp. Appeals Bd*. (1974) 37 Cal.App.3d 792 [39 Cal.Comp.Cases 242].) Based upon our review of the record, we see no reason to question the WCJ's opinions as to the credibility of applicant Guadalupe Navarro or claims examiner Laura Nunez, both of whom testified at trial.

Finally, while we conclude on the record before us that applicant and defendant did not resolve any claim other than the dependency claim in the C&R, based on the circumstances surrounding its execution, we agree with the WCJ that there was good cause to set aside the OACR.[3] Thus, we decline to reissue the OACR. To the extent that defendant contends that it is

[3] 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].) To determine whether there is good cause to rescind the awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Lab. Code, § 5702; *Weatherall, supra*, at 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].) "Good

entitled to "repayment" of the settlement proceeds distributed under the C&R, we direct defendant to section 4909, which allows a defendant to seek a credit under certain circumstances. (Lab. Code, § 4909; see *Maples v. Workers' Comp. Appeals Bd*. (1980) 111 Cal.App.3d 827 [45 Cal.Comp.Cases 1106].)

Section 4909 provides, in relevant part:

> Any payment, allowance, or benefit received by the injured employee during the period of his incapacity, or by his dependents in the event of his death, which by the terms of this division was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be an admission of liability for compensation on the part of the employer, but any such payment, allowance, or benefit may be taken into account by the appeals board in fixing the amount of the compensation to be paid. The acceptance of any such payment, allowance, or benefit shall not operate as a waiver of any right or claim which the employee or his dependents has against the employer.

As noted above, on December 12, 2022, we issued an Opinion, however, it came to our attention that the Opinion contained clerical errors. Thereafter, we notified the parties that the Opinion contained errors and was being withdrawn and we then issued a Grant for Study. As our Decision After Reconsideration, we issue a corrected Opinion as follows to amend the F&O to strike Finding 5. Otherwise, we affirm the F&O of September 16, 2022.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Opinion and Order Granting Reconsideration issued by the Workers' Compensation Appeals Board on December 12, 2022, is **VACATED**.

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cause" to set aside or amend an order or stipulation 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]), but those grounds do not exhaust all possible equitable grounds for rescinding an order approving a compromise and release. What constitutes "good cause" must necessarily depend upon the facts and circumstances of each case. (*Moyles v. Workers Compensation Appeals Bd*. (1982) 47 Cal.Comp.Cases 328, 332-333; *Bartlett Hayward Co. v. Indus. Acc. Com*. (1928) 203 Cal. 522, 532.) It is "well settled that any factor or circumstance unknown at the time the original award or order was made which renders the previous findings and award 'inequitable,' will justify the reopening of a case and amendment of the findings and award. (citations)" (*LeBoeuf v. Workers' Comp. Appeals Bd*. (1983) 34 Cal.3d 234, 242 [48 Cal.Comp.Cases 587].)

IT IS FURTHER ORDERED that the Findings and Order of September 16, 2022, is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant, Felipe Martinez, while employed on May 22, 2020, at Brawley, California, by One World Ventures, LLC, sustained injury arising out of and in the course of employment in the form of contracted COVID resulting in death on June 16, 2020.
2. At the time of injury, the employer's workers' compensation carrier was Alaska National Insurance Company.
3. Applicant has received the death benefit in the amount of $222,978.97.
4. An Order Approving Compromise and Release dated November 10, 2020, issued settling the dependency claim.
5. * * *
6. Applicant's petition to set-aside the Compromise and Release is granted.
7. Applicant is not required to reimburse the defendant any of the previous funds paid from the prior Order.
8. Defendant shall receive a credit for any benefits paid to date to the applicant.

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 19, 2022

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

JB/mc

SERVICE LIST

GUADALUPE NAVARRO
LAGORIO LAW GROUP
LAUGHLIN, FALBO, LEVY & MORESI
OGLETREE, DEAKINS, NASH, SMOAK & STEWART

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

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ13831424

FELIPE MARTINEZ (DECEASED) vs. ONE WORLD VENTURES; ALASKA NATIONAL WALNUT CREEK.

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE: Alicia D. Hawthorne

DATE: October 14, 2022

Petition for Reconsideration Filed By: Defendant, One World Ventures, LLC., and Alaska National Insurance Company

Attorney for Petitioner: Laughlin, Falbo, Levy & Moresi; Attorney, Stephen K. Nakata, Esq.

Applicant: Felipe Martinez, DEC'D

Attorney for Applicant: Lagorio Law Group; Attorney, Zlatan Muminovic, Esq.

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

On October 11, 2022, defendant, One World Ventures, LLC, and Alaska Nation Insurance Company, by and through their attorney of record, Laughlin, Falbo, Levy & Moresi, filed a timely, verified petition for reconsideration on the standard statutory grounds, from the court's Findings and Order, dated September 16, 2022, pleading that:

(1) The WCJ acted in excess of her power.

(2) That the evidence does not justify the findings of fact.

(3) That the findings of fact do not support the Award. Specifically, that 1) the WCJ erred in finding Good Cause to set aside the Order Approving and 2) the WCJ erred in not requiring the applicant's widow to reimburse the settlement funds by relying solely on applicant's statement that she does not have any of the settlement funds left.

FACTUAL BACKGROUND

Applicant, Felipe Martinez, while employed on May 22, 2020, at Brawley, California, by One World Ventures, LLC, sustained injury arising out of and in the course of employment in the form of contracted COVID resulting in death on June 16, 2020.

At the time of injury, the employer's workers' compensation carrier was Alaska National Insurance Company. The parties submitted to the undersigned a Compromise and Release on October 22, 2020. (EAMS DOC ID 34253048) The undersigned issued an Order Approving dated November 10, 2020. (EAMS DOC ID 73505173) Applicant has received the death benefit in the amount of $222,978.97.

Applicant filed a Petition to Set Aside Compromise and Release and Re-Open the Case. (EAMS DOC ID 36344383)

This matter proceeded to trial on the issue of the Petition to Set Aside on multiple dates from 10/6/21 through 8/18/2022. The undersigned issued a Findings and Order dated September 16, 2022.

DISCUSSION

Defendant contends that since applicant, Ms. Navarro, declined the use of an interpreter and was given the opportunity to ask questions of an Information & Assistance Officer, her English speaking daughter and the claims examiner, there is no good cause to set aside the Order approving. Defendant further argues that the handling claims examiner was experienced. This WCJ disagrees. As noted in the Opinion on Decision, the claims examiner credibly testified that she has handled less than five death cases and for her death cases are not a very common occurrence. In addition, she believes unrepresented spouses in the death cases she has handled may have totaled three, including the instant claim. In addition, in all of her years as an adjuster, she saw maybe two Serious and Willful misconduct cases. The adjuster testified that Serious and Willful misconduct

is not part of coverage nor would she handle the Serious and Willful part of the case because the insurance company does not insure for it. (MOH/SOE, page 11, lines 13-16) The adjuster also confirmed that she was the one who prepared the settlement documents. The adjuster testified that at the time of execution of the settlement documents, the petition for Serious and Willful had yet to be filed. (MOH/SOE, page 12, lines 20-21) While the claims examiner may have many years of experience handling more "common occurrence" claims, she does not have extensive knowledge of death cases with unrepresented spouses that solely speak Spanish or serious and willful cases.

As noted in the Opinion on Decision, the case law addressing when to set aside an Order Approving relies on whether or not there is good cause. One of those standards are showing that some ground exists, not within the knowledge of the Board when the original order was made, which rendered the original Order "inequitable." Here, this WCJ was never informed by either party at the time of the request for an Order approving that the applicant, Ms. Navarro, was solely a Spanish-speaking individual. In the normal course of business, this WCJ can sometimes ascertain this status by referencing medicals in the file indicating that the applicant presented to their medical appointments with an interpreter. That was not the case here as the applicant, Mr. Martinez was deceased such that no medicals were presented into evidence, nor would they have indicated that his widow only speaks Spanish. Had this critical information been disclosed to this WCJ, this WCJ would have issued an Order Suspending Action and set the matter for status conference to discuss the fact that the Compromise and Release had not been interpreted to the applicant by a certified interpreter.

In addition, as noted in the Opinion on Decision, agreements which provide for release of an employer from all future liability are to be approved only where it appears that a reasonable doubt exists as to the rights of the parties or where approval is in the best interest of the parties. Such an inquiry carries out the legislative objective of protecting workers who might agree to unfortunate compromises because of economic pressure or lack of competent advice. Furthermore, while the defendant argues that the examiner was available to answer all of the applicant's questions, it is still true that the examiner is not an impartial individual in this case. While this WCJ appreciated her assistance with Ms. Navarro during a difficult time, and was at all times respectful and kind, the examiner still has a vested interest in getting the case resolved for her client; specifically, the defendant.

This safeguard against improvident releases places a workers' compensation release on a higher plane than a private contractual release. Here, the parties acknowledged and stipulated that the applicant, Mr. Martinez, died in the course and scope of his employment. This was an accepted case. There was no doubt that the applicant, Ms. Navarro, is entitled to the full death benefit. The amount bargained for in the Compromise and Release reflected solely the present value of the full death benefit. Nothing more was added to the value of the Compromise and Release indicating to this WCJ that neither party took into consideration a bargain for amount for any additional outstanding issues that may have arisen from applicant's death; specifically a potential serious and willful claim.

Defendant looks to the case of *Aguirre v. Workers' Compensation Appeals Bd*., 47 Cal. Comp. Cases 1098 (writ denied) (1982) for the precedent that although applicant did not have an interpreter in Spanish, the Compromise and Release was not set aside. However, the main fact in Aguirre was that applicant was represented by counsel at the time of the Compromise and Release. That fact is not present in the current matter. Again, this applicant was in pro per at the time of the execution of the Compromise and Release. Finally, it is improper to put the onus on the injured worker to determine whether or not she wants an interpreter present. The examiner, with all of her years of experience, should have provided the interpreter because this was a legal document being executed and presented to the Court to finalize such a significant case.

Defendant further argues that applicant had multiple opportunities to discuss the settlement with the Information and Assistance officer. Again, it is well established that the role of the Information and Assistance officer is not to give legal advice and is prohibited from doing so. As the DWC website explains, "The DWC Information and Assistance Unit provides information and assistance to employees, employers, labor unions, insurance carriers, physicians, attorneys and other interested parties concerning rights, benefits and obligations under California's workers' compensation laws." Therefore, defendant's contention that the Information and Assistance officer would have recommended the use of an interpreter cannot be substantiated. The Information and Assistance officer would not have been present at the execution of the Compromise and Release, and there is no evidence to establish that any Information and Assistance Officer was present. Therefore, this WCJ's position remains that there was good cause to set aside the Order Approving Compromise and Release.

Defendant's next contention is that this WCJ found that Ms. Navarro should not be ordered to reimburse the settlement funds, based on only the testimony of Ms. Navarro. Defendant relies on the argument that this WCJ should have taken in evidence as to how the settlement funds were used and when they were used. However, this argument is flawed. First, this WCJ assessed Ms. Navarro's credibility and found her to be credible when she indicated she no longer had the funds. Second, there is nothing in the record to reflect that this WCJ did not allow into evidence any proposed exhibits, testimony, or any other forms of evidence being proffered by any party. If the defendant felt that the information regarding where and when Ms. Navarro spent the funds was relevant to the issue of whether or not the funds should be reimbursed, the defendant's burden was to offer that discovery into evidence. Legal strategy is solely within the purview of the parties, including what evidence to present at trial for the judge's review. This WCJ can rule on admissibility, but that was not an issue presented at this trial. Parties bear the burden of proof and it is well established that the role of the WCJ is to determine whether or not the party has met such burden.

Finally, defendant argues that Ms. Navarro may receive a windfall if she is not required to pay back all the funds. They argue that Ms. Navarro should only receive the death benefit bi-weekly and if she passes before 2026, the maturity date of the benefit, the benefit would have ended upon her death. Currently, she has a significant portion of the death benefit for which the defendant can only take credit for. This brings up a very strong point as to why the Order Approving should be set aside. At no time has either party stated that Ms. Navarro is NOT entitled to the death benefit. In fact, the original amount bargained for was the present value of the sole beneficiary amount owed to Ms. Navarro. The defendant wished to avoid paying this amount over time and applied a 3% discount when paying the benefit as a lump sum. The parties are still free to negotiate and settle out the death benefit. However, if the parties attempt to do so, they are now advised to do so in such a matter that there is no good cause to set aside the newly executed agreement and can take into consideration all outstanding issues relevant to this case. Finally, as noted in the Opinion on Decision, although prior Decisions on this issue are not binding on this WCJ, the undersigned found their determinations to be persuasive; specifically that public policy and equities are to be considered before restitution of settlement proceeds. Here, there is no doubt Ms. Navarro is entitled to the death benefit.

RECOMMENDATION

It is respectfully recommended that defendant's Petition for Reconsideration be denied.

DATE: October 14, 2022

s/ Alicia D. Hawthorne

Alicia D. Hawthorne
Workers' Compensation Judge