

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

BESSIE TRIPLETT, *Applicant*

vs.

**PACIFIC BELL TELEPHONE COMPANY;
OLD REPUBLIC INSURANCE COMPANY administered by SEDGWICK CLAIMS
MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ12518707; ADJ12518708; ADJ12518731
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration in order to study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration in response to the Orders Approving Compromise and Release (OACRs) issued by the workers' compensation administrative law judge (WCJ). On August 4, 2022, the WCJ approved the parties' three Compromise and Releases (C&Rs) and issued three orders approving them.

Applicant, now in pro per, contends that medical records had previously been provided to her attorney; that she had "cancelled" the case but her attorney reopened it; and that she did not know what she was signing.

We received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration and/or Removal (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report of the WCJ with respect thereto. For the reasons discussed below, we will rescind the WCJ's three August 4, 2022, OACRs, and return these matters to the trial level for further proceedings consistent with this opinion.

FACTS

Applicant filed three workers' compensation claims for industrial injuries sustained while working as a sales consultant. In ADJ12518707, applicant claimed a cumulative injury to her eye,

body system, nervous system, stress, and psych due to stress which caused vision problems from July 6 to August 17, 2017. In ADJ12518708, she claimed a specific injury to her head, eye, mouth, arm, back, hips, and shoulders on February 7, 2018, when a co-worker opened a door and struck her with the door. In ADJ12518731, she claimed cumulative injury to her respiratory system, chest, body system, nervous system, and stress from January 27 to March 4, 2019, due to standing outside in the cold weather and catching pneumonia.

On September 25, 2019, the Employment Development Department (EDD) filed a Notice and Request for Allowance of Lien (Lien) in all three cases for the State Disability Insurance (SDI) or family temporary disability insurance that the EDD had provided to the applicant. The EDD had paid SDI a weekly rate of \$1,058.00 to applicant starting on February 28, 2019, with the total benefit amount not to exceed \$55,016.00. (Lien, p. 8.)

On October 15, 2020, defendant filed a petition to compel applicant's attendance at the panel qualified medical-legal examination, claiming that applicant refused to be seen by Dr. Mark Hyman. The WCJ granted this request on October 16, 2020, and issued an order compelling applicant's attendance at defendant's medical-legal examination with Dr. Hyman on November 18, 2020. Applicant filed a petition for an order vacating the court's order compelling applicant attendance at the panel qualified medical evaluation by Dr. Hyman on November 13, 2020, due to a lack of due process and an opportunity to be heard regarding the evaluation. Applicant did not want to see Dr. Hyman due to disciplinary actions against him based on allegations of gross negligence and sexual relations with a patient. (Petition to Vacate, Exs 7-8.)

On October 7, 2021, defendant filed a Declaration of Readiness to Proceed (DOR) and requested that the WCJ set a mandatory settlement conference because applicant had not appeared at her deposition. On October 18, 2021, applicant objected to the DOR and stated that she was not yet permanent and stationary. On December 13, 2021, defendant filed a motion to compel attendance at deposition and petition to suspend proceeding and benefits. On December 14, 2021, the WCJ issued an order to compel attendance at deposition of applicant scheduled for February 1, 2022. Applicant filed her objection to the motion to compel on January 6, 2022.

At the mandatory settlement conference on January 13, 2022, the WCJ ordered the case taken off calendar (OTOC). On April 22, 2022, defendant filed a motion to dismiss based on applicant's failure to cooperate with discovery and failure to comply with the order compelling her to attend her deposition. On August 2, 2022, the parties filed a joint request for an OACR

(Joint Request for OACR). The parties stated that they did not obtain any medical reports in this matter and simply wanted to resolve the claims.

The parties filed three separate C&Rs instead of filing one C&R to cover all three cases. Paragraph six in all three C&Rs states that the temporary disability indemnity paid is “according to proof” and that the permanent disability indemnity paid is also “according to proof.” (C&Rs, ¶ 6.) Paragraph seven of all three C&Rs lists an identical amount of \$9,076.03 “payable to Sedgwick for excess credit” is to be deducted from the settlement amount. (C&Rs, ¶ 7.) In Paragraph eight in all three C&Rs, defendant agrees to pay, adjust, or litigate all lien claims of record with regard to the CT injuries of January 27-March 4, 2019, July 6-17, 2017, and February 7, 2018, only. (C&Rs, ¶ 8.) Paragraph nine in all three C&Rs contains very small typewritten notes along with some illegible handwritten notes. (C&Rs, ¶ 9.)

In ADJ12518707, the total settlement amount is \$16,000.00, consisting of \$9,076.03 to the administrator Sedgwick Claims Management for excess credit, \$2,400.00 in attorney’s fees to the applicant’s attorney, and \$4,523.97 to the applicant.

In ADJ12518708, the total settlement amount is \$17,000.00, consisting of \$9,076.03 to the administrator Sedgwick Claims Management for excess credit, \$2,520.00 in attorney’s fees, and \$5,403.97 to the applicant.

In ADJ12518731, the total settlement is \$17,000.00, consisting of \$9,076.03 to the administrator Sedgwick Claims Management for excess credit, \$2,550.00 in attorney’s fees, and \$5,373.97 to the applicant.

All three C&Rs contain Addenda A, B, and D. In Addendum A in each C&R, the parties agreed that the right to supplemental job displacement benefits is abrogated by the C&R and that the applicant is barred from any further benefits pursuant to section 4658.7. In Addendum B in each C&R, the parties made a request for a specific finding of no injury AOE/COE to all dates of injury. In Addendum D in each C&R, applicant waived her right to a final medical report from a Primary Treating Physician, Panel QME, or AME, which would explain the nature and extent of the applicant’s disability and need for future treatment.

On August 23, 2022, applicant filed a Notice of Dismissal of Attorney, stating that she had dismissed Frank Cantor as her attorney.

DISCUSSION

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 that existed at the time of contracting, as long as it is ascertainable and lawful. (Civ. Code, § 1636; *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) For a compromise and release agreement to be effective, the necessary elements of a contract must exist, including an offer of settlement of a disputed claim by one of the parties, and an acceptance by the other. (*Burbank Studios v. Workers' Comp. Appeals Bd.* (1982) 134 Cal.App.3d 929, 935 [47 Cal.Comp.Cases 832].) There can be no contract unless there is a meeting of the minds and the parties mutually agree. (Civ. Code; §§ 1550, 1565; *Sackett v. Starr* (1949) 95 Cal.App.2d 128, 133.)

The WCJ must approve any C&R by the parties. (Lab. Code, § 5001; *Johnson v. Workmen's Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 973 [“A tort release is effective upon execution, but a compromise and release of workmen's compensation liability is invalid until approved by the Workmen's Compensation Appeals Board”].) When filing the C&R, the filing party must file all agreed medical evaluator reports, qualified medical evaluator reports, treating physician reports, and any other that are relevant to a determination of the adequacy of the C&R that have not been filed previously. (Cal. Code Regs, tit. 8, § 10700.) The WCJ must inquire into the adequacy of all C&Rs, 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.) This inquiry should carry out the legislative objective of “protecting workmen who might agree to unfortunate compromises because of economic pressure or lack of competent advice.” (*Johnson v. Workmen's Comp. Appeals Bd.*, *supra*, at p. 973.)

Further, a WCJ's decision must be based on admitted evidence and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 283 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd. (Garza)* (1970) 3 Cal.3d 312, 317-318 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 634-637 [35 Cal.Comp.Cases 16].) “It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, at p. 475.) The WCJ is “charged with the responsibility

of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Id*; see also Lab. Code, § 5313.)

Here, the WCJ failed to determine the adequacy of the settlement. (Cal. Code Regs, tit. 8, § 10700.) In the Report, the WCJ only discusses good cause to set aside the OACRs but does not discuss the adequacy of the C&Rs. (Report, pp. 3-4.) Additionally, it is not possible for us to evaluate the adequacy of the C&R on the record currently before us. “A proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.)

Without the benefit of a hearing, medical reports, or discussion by the WCJ regarding adequacy, the C&Rs are not adequate for many reasons. For example, the parties did not submit any medical evidence or reports or attach any to the C&R; the parties stated that they did not obtain any medical reports in this case at all. (Joint Request for OACR, p. 2.) Therefore, neither the WCJ nor the Appeals Board has any medical evidence or reports to evaluate the adequacy of the C&Rs.

Further, there is no explanation as to why there are three nearly identical C&Rs instead of one C&R covering all of the injuries. Additionally, Paragraph six in all three C&Rs states that the temporary disability indemnity paid is “according to proof” and that the permanent disability indemnity paid is also “according to proof.” (C&Rs, ¶ 6.) However, there is no relevant “proof” anywhere in the record nor is there any explanation as to how these credits are to be determined. The \$9,076.03 credit to Sedgewick is identical in all three cases for a combined total credit of over \$27,000.00 without any explanation. (C&Rs, ¶ 7.)

It is particularly concerning that Paragraph nine in all three C&Rs is illegible; a portion is in tiny print and another portion of that paragraph is in undecipherable handwriting. (C&Rs, ¶ 9.) It is simply not possible for a C&R to be considered adequate when it cannot be read.

Additionally, all three C&Rs contain three addenda. However, Paragraph three of the C&Rs state that the agreement was limited to the settlement of the body parts, conditions, or systems and for the dates of injury set forth in Paragraph one and further explained in Paragraph nine despite any language to the contrary elsewhere in the C&R or any addendum. (C&Rs, ¶ 3.) Further, Paragraph four states that the approval of the C&R releases any and all claims of applicant’s dependents to death benefits related to the injuries in the C&R, and that any addendum duplicating this language pursuant to *Sumner v. WCAB*, 48 Cal.Comp.Cases 369, is unnecessary and shall not be attached. (C&Rs, ¶ 4.)

The Addenda are not consistent with those requirements set out in Paragraphs three and four in the C&Rs. For example, Addendum A states that “The parties by this agreement intend to settle all claims the applicant may have for industrial injuries while in the employ of defendant employer, whether occurring on any specific date of or over a period of time, and whether or not specifically recited herein above.” (C&Rs, Addendum A, p. 1.) Addendum A continues on to state that it includes not just the date listed in Paragraph one but also “any and all other specific dates of injuries and/or any continuous, cumulative or repetitive trauma type trauma/claims during the course and scope of applicant’s employment with defendants employer.” (C&Rs, Addendum A, p. 1.) Addendum A further states that the settlement is intended to include and settle injuries to “all parts of applicant’s body, including but not limited to” the body parts listed in Paragraph one and “all other body parts mentioned in the medical records and incorporated herein by reference.” (C&Rs, Addendum A, p. 1.)

Paragraph three of the compromise and release form limits resolution to only those claims listed in Paragraph one notwithstanding an addendum with contrary language. (See *Whitson v. Dept. of Social Services-In Home Supportive Services* (2017) 83 Cal.Comp.Cases 596, 600-601 [2017 Cal. Wrk. Comp. P.D. LEXIS 507].) Those statements in Addendum A are in direct conflict with Paragraph three of the C&Rs which limit the settlement to the body parts, conditions, or systems and for the dates of injury set forth in Paragraph one and further explained in Paragraph nine despite any language to the contrary elsewhere in the C&R or any addendum. (C&Rs, ¶ 3.)

Addendum A also includes a statement that, pursuant to *Sumner v. WCAB* and another case, the applicant’s dependents have no further rights of action on account of the injuries. (C&Rs, Addendum A, p. 2.) This conflicts with Paragraph four’s statement that the approval of the C&R releases any and all claims of applicant’s dependents to death benefits related to the injuries in the C&R, and that any addendum duplicating this language pursuant to *Sumner v. WCAB*, 48 Cal.Comp.Cases 369, is unnecessary and shall not be attached. (C&Rs, ¶ 4.)

Finally, in Addendum A, the parties improperly settled the supplemental job displacement benefits (SJDB) in the C&Rs. (C&Rs, Addendum A, p. 3.) However, settlement or commutation of a claim for the supplemental job displacement benefit is not be permitted.¹ (Cal. Lab. Code, § 4658.7(g); see also *Hernandez v. Burgerim* (Sept. 30, 2019, ADJ11280423) [2019 Cal.Wrk.Comp.

¹ We note that the case of *Beltran v. Structural Steel Fabricators* (2016) 81 Cal. Comp. Cases 1224 [2016 Cal. Wrk. Comp. P.D. LEXIS 366] conflicts with this Labor Code section but *Beltran* is a panel decision and therefore not binding.

P.D. LEXIS 392, *1, *4-5] [affirming the WCJ's decision declining to approve C&R that included language WCJ viewed as impermissible settlement of SJDB].) Thus, the C&Rs are not adequate on this basis as well.

Therefore, we rescind the OACRs and return the matter to the WCJ. We recommend that the WCJ hold a hearing to take evidence to determine whether the agreement should be approved or disapproved. (Cal. Code Regs., tit. 8, § 10700.)

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the August 4, 2022, OACR in ADJ12518707 is **RESCINDED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the August 4, 2022, OACR in ADJ12518708 is **RESCINDED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the August 4, 2022, OACR in ADJ12518731 is **RESCINDED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 13, 2023

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

**BESSIE TRIPLET
ALBERT AND MACKENZIE**

JMR/pc

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