WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JERONE YOUNG, *Applicant*

vs.

SELECT STAFFING; LX INSURANCE AMERICA, administered by BROADSPIRE, *Defendants*

Adjudication Number: ADJ11418272
Los Angeles District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on August 22, 2023, wherein the WCJ found in pertinent part that defendant is entitled to credit for permanent disability advances paid through the date of the Order Approving Compromise and Release (OACR) in the amount of $3,480.00.

Applicant contends that the WCJ erred in finding that defendant is entitled to credit for permanent disability advances, because the language "defendant to take full credit for all PDA'S [permanent disability advances] paid through the date of the OACR" is ambiguous.

We received an answer from defendant.

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, the answer, and the contents of the Report with respect thereto.

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 deny reconsideration.

DISCUSSION

As a preliminary matter, we note 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*. (*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].)

"Stipulations are designed to expedite trials and hearings and their use in workers' compensation cases should be encouraged." (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1120 [65 Cal.Comp.Cases 1], quoting *Robinson v. Workers' Comp. Appeals Bd*. (1987) 194 Cal.App.3d 784, 791 [52 Cal.Comp.Cases 419].) 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." (*Weatherall, supra*, at 1118.) Here, the parties stipulated that "defendant to take full credit for all PDA's paid through the date of the OACR. (Compromise and release (C&R), dated August 19, 2022, ¶ 9, p. 7 [all-caps in original].)

However, pursuant to Labor Code section 5001, no release of liability or compromise agreement is valid unless it is approved by the Appeals Board or WCJ. (Lab. Code, § 5001.) "An approved workers' compensation compromise and release rests upon a higher plane than a private contractual release; it is a judgment, with the same force and effect as an award made after a full hearing." (*Smith v. Workers' Comp. Appeals Bd*. (1985) 168 Cal.App.3d 1160, 1169 [50 Cal.Comp.Cases 311]; *Johnson v. Workmen's Comp. App. Bd.* (1970) 2 Cal.3d 964, 973 [35 Cal.Comp.Cases 362]; *Raischell & Cottrell, Inc. v. Workers' Comp. Appeals Bd*. (1967) 249 Cal.App.2d 991, 997 [32 Cal.Comp.Cases 135].) Here, the OACR clearly states that "Defendant may take credit for all advances paid through DATE OF OACR, (subject to proof.)"

Petitioner cites *Nared v. Hertz Rent a Car*, 2020 Cal. Wrk. Comp. P.D. LEXIS 354 in support of the contention that the term "all permanent disability advances" is ambiguous and thus

defendant should not receive credit for <u>any</u> permanent disability advances. As noted by the WCJ, *Nared* is a panel decision and thus not binding precedent on WCJs or other Appeals Board panels. (See *Gee v. Workers' Comp. Appeals Bd*. (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].)

We also note that the case before us is factually distinguishable from *Nared* and the legal analysis and cases cited do not support applicant's arguments. In *Nared*, there were several issues at play, including that the language of the OACR did not accord with the C&R. With respect to the dispute over the amount of permanent disability advances, the parties stipulated in paragraph 6 of the Compromise and Release (hereafter *Nared* C&R) that a specific amount of permanent disability had been paid ($12,760.00) for the period September 14, 2018 to July 19, 2019. Paragraph 6 provides that if facts in paragraph 6 are disputed, the parties should state what each party contends under paragraph 9. In *Nared*, there was no discussion of permanent disability advances in paragraph 9. Applicant executed the *Nared* C&R on July 29, 2019. In paragraph 7, the parties in *Nared* stipulated as follows: "The following amounts are to be deducted from the settlement amount: $12,760.00 for permanent disability advances through (According to Proof)." The WCJ determined that the *Nared* C&R accurately reflected the amount of permanent disability advances at the time applicant executed it. However defendant did not execute the *Nared* C&R until January 13, 2020 and continued to make permanent disability payments to September 27, 2019.

Based on the specific facts in *Nared*, the WCJ there determined that "According to Proof" was susceptible to two interpretations: 1) that the $12,760 paid at the time that applicant executed the C&R must be justified by further evidence of the amounts actually paid, or 2) that the C&R was uncertain as to time, and credit could be taken for the total amount of permanent disability paid, according to proof. In *Nared*, the WCJ found that "According to Proof" in paragraph 7 did not support a finding that defendant was entitled to <u>additional</u> credit, particularly in light of the clear language in paragraph 6 of the *Nared* C&R. We underscore <u>additional</u> because in *Nared*, the ambiguities did not automatically preclude credit for all permanent disability advances. We note that petitioner here does not dispute that permanent disability advances were paid.

Turning to the other cases cited in the Petition, they do not lend support to petitioner's contentions.

In *Sepulveda*, the C&R addressed the PDA's in two ways. First, a specific amount was entered in the section of paragraph 6 provided for that purpose. Second, a handwritten notation indicating the possibility of further advances, and giving the employer credit therefor, was added to the end of paragraph 6. The court of appeal found that the meaning of the language in *Sepulveda* was to give credit for "further" PDA's, beyond the amount stated, if the employer proved such had been paid. (*Sepulveda, supra*, at 1184 [emphasis in original].)

In *May Dep't Stores Co. v. Workers Compensation Appeals Bd. (Brown)* (1998) 64 Cal.Comp.Cases 107 (writ den.), the parties made several amendments to the C&R before signing it. The court of appeal summarized the pertinent history as follows:

> Under the heading "payments made by employer or insurance carrier," Paragraph 6 of the C&R originally contained the statement that such payments of PD indemnity were to be "according to proof," but this phrase was crossed out and [108] the word "none" was substituted by Applicant's attorney. Similarly, at the bottom of the first page of the C&R, the settlement amount of $16,500 was to be "less PDAs," but each attorney added to this their own qualifying clauses. Applicant's attorney wrote, "defendant represents that no PDA's have been made as of 2/3/97." Defendant's attorney wrote, "PDAs have been made and an accounting will be provided to applicant." Similarly, Addendum "B" to the C&R originally included language that stated "Notwithstanding Paragraph 2 of the Compromise and Release, it is agreed that credit will be taken for all permanent disability advances made." Applicant's attorney added the phrase "after 2/3/97." On 5/5/97, a joint OACR was issued by the WCJ in the amount of $16,500, less the sum of $2,475 payable to Applicant's attorney "less advances made per proof after 2/3/97." No party filed a Petition for Reconsideration or requested any clarification of the OACR.

(*Brown, supra*, at 107-108.)

While the C&R in *Brown* may have been poorly drafted, the OACR clearly stated that the settlement amount was "less advances made per proof after 2/3/97." Noting that "no release of liability or compromise agreement is valid unless approved by the appeals board or referee" (Lab. Code, § 5001), the Appeals Board found that "even if the C&R were ambiguous, the OACR was not, since it clearly stated that the settlement amount [] was to be less an attorney's fee of $2,475 and "less advances made per proof after 2/3/97." (*Brown, supra*, at 109.) Thus, defendant was entitled to credit for permanent disability advances, but based on the record, this was limited to advances made after February 3, 1997. (*Id.*) As here, the parties in *Brown* did not seek reconsideration of WCJ's OACR.

In *Oltan*, an addendum to the C&R contained the boilerplate language "credit for all PD advanced, if any," but in the C&R itself, the parties stipulated that no permanent disability indemnity had been paid. Based on the parties' express language regarding the amount of permanent disability payments (i.e., no payments), the WCJ in *Oltan* found that there was no provision for credit for permanent disability advances. (*Olton v. Workers Compensation Appeals Bd*. (1991) 56 Cal. Comp. Cases 141, 141-142 (writ den.).) Thus, *Oltan* does not support applicant's argument that "the term all permanent disability advances is ambiguous." (Petition, p. 3.)

"An ambiguity arises when language may be applied in more than one way. To say that language is ambiguous is to say there is more than one semantically permissible candidate for application, though it cannot be determined from the language which is meant. ..." [Citations] (*Sepulveda, supra*, at 1185.) Here, paragraphs 6 and 7 are blank. In paragraph 9, the parties stipulated that defendant to take full credit for all permanent disability advances paid through the date of the OACR. (C&R, dated August 19, 2022, ¶ 9, p. 7 [all-caps in original].) Here, as in *Sepulveda*, there is no alternative candidate of meaning, thus there is no ambiguity. Moreover, as the court of appeal noted in *Sepulveda*, the norm is to give the employer credit for permanent disability advances. (*Sepulveda, supra*, at 1187.)

Here, the OACR clearly states that defendant may take credit for all advances paid through the date of OACR, (subject to proof.) Based on the record before us, we do not find evidence of any ambiguity with respect to defendant's entitlement to credit for permanent disability advances.

Accordingly, we deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 14, 2023

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

JERONE YOUNG
SOLOV AND TEITELL
THE OAKS LAW GROUP

JB/*cs*

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I INTRODUCTION

Applicant JERONE YOUNG, by and through his attorneys of record, has filed a timely Petition for Reconsideration challenging the Findings and Order of WCJ Keith N. Pusavat dated 08/21/2023, alleging that the WCJ acted in excess of his powers, that the evidence does not justify the Findings of Fact, and that the Findings of Fact do not support the Order.

II STATEMENT OF FACTS

Applicant Jerone Young, born [] sustained a specific low back injury on 06/03/2018 arising out of and in the course of employment with Defendant Select Staffing, insured by XL Insurance America, administered by Broadspire Services Inc.

Defendant issued both temporary disability benefits and claimed permanent disability advances. Defendant issued the claimed permanent disability advances to Applicant between 10/30/2019 and 11/12/2020, along with cover letters identifying the payments as permanent disability.

A Compromise and Release agreement was drafted and signed by the parties on 06/2/2022. The amount of permanent disability advances was left blank on paragraph 7 of the C&R, but Paragraph 9 included the language "DEFENDANT TO TAKE FULL CREDIT FOR ALL PDA'S PAID THROUGH THE DATE OF THE OACR."

An Order Approving Compromise and Release was issued in this matter on 09/08/2022. In issuing payments on the C&R, Defendant asserted credit for the claimed PD advances made between 10/30/2019 and 11/12/2020 totaling $3,480.00.

Applicant disputed the claimed credit and filed a Declaration of Readiness to Proceed. The matter came for Trial and was submitted on 06/27/2023.

The Opinion on Decision was drafted 08/18/2023. The Findings and Order issued on 08/21/2023, confirming Defendant's entitlement to credit for PD advances totaling $3,480.00, and

denying the Applicant's request for attorney's fees for enforcement of the Compromise and Release.

Both the Findings and Order and the Opinion on Decision were served together by mail on 08/22/2023. The Petition for Reconsideration was timely filed on 09/15/2023.

III
DISCUSSION

a. The WCJ acted within his powers in issuing the Findings and Order of 08/21/2023.

Applicant does not raise novel issues or assertions of new errors in the Petition for Reconsideration, but merely reiterates the position taken at Trial, which was rejected by the Court. Applicant argues that the Court erred by not applying the holding in the decision of Nared v. Hertz Rent a Car (2020) Cal. Wrk. Comp. P.D. LEXIS 354 to find that the language "subject to proof" is ambiguous and should be ignored as boilerplate. This WCJ disagrees.

First, Nared is a panel decision which does not bind the Court. Panel decisions like Nared generally turn on specific facts of the case, and selected excerpts from their holdings do not bind other courts.

Second, the reported facts of Nared are distinguishable from the instant case. The PD advances in the Nared case were made after the C&R was signed, and in this case they were made before the agreement was signed, so the issue is quite different. In the Nared case, Applicant did not know at the time the agreement was signed how the payments would be made, and the WCAB determined that the meaning of the words "according to proof" was ambiguous as to payments which had not happened at the time of signing.

In the instant case, the payments had already occurred, and letters were sent to the Applicant plainly describing the amounts paid as permanent disability advances. Defendant's Exhibits E and H (PD delay, PD start notice), together with Defendant's Exhibits H through L (benefits printouts) demonstrate that Applicant was fully aware of the amount of PD received when he signed the agreement, and no evidence from the Applicant was offered in rebuttal.

The Nared panel noted that contracts are to be interpreted giving effect to the intention of the parties at the time of the agreement, citing Civil Code §1636. Nared, supra, at p.4. The ambiguity from permanent disability advances in Nared arose after signing the settlement. The

advances in the current case were made before signing, so there was no ambiguity at the time of signing.

It is further noted that the language "subject to proof" actually appears in the Order Approving Compromise and Release in this case, rather than the signed Compromise and Release document. The language is therefore irrelevant as to determining the intentions of the parties in drafting and signing the settlement months beforehand.

b. The Findings of Fact are supported by the evidence.

The first Finding of Fact was that Defendant issued PD advances. This Finding is supported by Defendant's Exhibits H through L, which included a cover letter addressed to the Applicant indicating the nature and amount of the advances, as well as detailed summaries of the payments actually issued. There was no objection to admission of these documents at Trial, and no evidence offered in rebuttal.

The second Finding of Fact is that Applicant received notice of the nature of the permanent disability advances prior to signing the Compromise and Release. This Finding is supported directly by Defendant's Exhibit H (PD start notice), and also supported circumstantially by Defendant's Exhibits C, E, and G (TD notices showing payment at a different rate), Defendant's Exhibit E (PD delay notice suggesting that permanent disability advances would be forthcoming). There was no objection to admission of these documents at Trial, and no evidence offered in rebuttal.

The third Finding of Fact was that Defendant's credit is valid. This factual aspect of this Finding was supported by the evidence cited above, and the legal aspect of this Finding was supported by the plain language of the settlement document, specifically in Paragraph 9:

"DEFENDANT TO TAKE FULL CREDIT FOR ALL PDA'S PAID THROUGH THE DATE OF THE OACR."

The Finding of Fact is supported by evidence showing the dates of PD advances were between 10/30/2019 and 11/12/2020, all of which came before the Order Approving issued on 09/08/2022. It is noted that no extrinsic evidence was presented in support of Applicant's position. Instead, Applicant essentially argues that since the phrase "according to proof" was deemed ambiguous in the Nared case, the phrase "FULL CREDIT FOR ALL PDA'S PAID" should be deemed ambiguous here. This argument carried no weight with the Court.

c. The Findings of Fact dated 08/21/2023 support the Findings and Order dated 08/21/2023 and Opinion on Decision dated 08/18/2023.’

The Court’s findings that PD advances were issued, that Applicant was aware of the nature of the advances, and that the PD credit was valid, led inescapably to the Findings and Order and Opinion on Decision that issued: That the Defendant was entitled to take credit in the amount of $3,480.00, and that no attorney’s fees for enforcement of the Compromise and Release would be awarded.

IV
RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

Date: 09/28/2023

/s/ *Keith N. Pusavat*

KEITH N. PUSAVAT
Workers’ Compensation Judge