

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

AMED NAGI ALI, *Applicant*

vs.

**CROWN BUILDING MAINTENANCE (Permissibly Self-Insured);
administered by GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Numbers: ADJ10787820, ADJ11071657
San Francisco 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.

Applicant acting in pro per¹ seeks reconsideration of the August 25, 2022, Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ) on August 25, 2022.

Applicant contends that the OACR should be set aside.

We received a response from applicant's counsel regarding applicant's pro per Petition for Reconsideration (Petition) and have reviewed it.

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 response from applicant's counsel and the contents of the Report.

Based on our review of the record and for the reasons discussed below, we will vacate our December 1, 2022 Order granting applicant's petition for reconsideration, dismiss applicant's Petition as premature, and return this matter to the trial level for consideration of the Petition as one to set aside the OACR.

¹ Applicant's Petition for Reconsideration is dated 9/14/2022 and was received on 10/3/2022.

BACKGROUND

Applicant claimed injury on January 27, 2017, to various body parts while employed by defendant as a janitor. Applicant filed an amended application on May 17, 2017, claiming injury to an additional body part while employed by defendant as a janitor.

Applicant also claimed injury on August 9, 2017, to various body parts while employed by defendant as a janitor.

On August 23, 2022, applicant, his attorney, and attorney for defendant signed a C&R for ADJ10787820 and ADJ11071657. Paragraph One of the C&R for ADJ10787820 is marked as a specific injury occurring on January 27, 2017 and lists the following body parts: teeth, ear, eye, and “ 999; ANY AND ALL PER APPLICATION AND CLAIM FORM.” Paragraph One of the C&R for ADJ11071657 is marked as a specific injury occurring on August 9, 2017 and lists the following body parts: arms, chest, shoulders, neck, upper extremities, psych, “999; ANY AND ALL PER APPLICATION AND CLAIM FORM.” The comments section of paragraph 9 (C) and (D) of the C&R state:

“(C) THIS SETTLEMENT IS INTENDED TO RESOLVE ALL ISSUES BETWEEN THE PARTIES UP TO THE DATE OF THE ORDER IN THIS MATTER. ANY OTHER BODY PARTS OR DENIED CLAIMS OF INJURIES HAVE BEEN CONTEMPLATED IN THIS SETTLEMENT AND ARE DENIED BY DEFENDANT.

(D) SEE ATTACHED PARAGRAPH 9 CONTINUED.”

On August 24, 2022, attorney for defendant submitted the C&R to the WCJ for approval by way of letter. The letter references the five (5) panel QME reports that had all been e-filed.

On August 25, 2022, without holding a hearing, the WCJ issued an OACR, which states:

Based upon a review of the medical file, the disability factors contained therein, and the reasons for settlement set forth in the agreement, the Compromise and Release is deemed adequate.

In determining the adequacy of the Agreement, the following has been considered:

The parties have considered the release of death benefits in reaching their agreement.

The parties to the above entitled action having filed a Compromise and Release herein, settling this case for \$30,000, and requesting that it be approved, and this

judge having considered the entire record, including the Compromise and Release:

IT IS ORDERED that said Compromise and Release is approved. Award is made payable as follows, one lump-sum to applicant, less permanent disability advances previously made, if any, less reasonable attorney fees in the amount of \$4,500. (OACR, August 25, 2022, p. 1.)

On October 3, 2022, applicant filed his Petition. He contends: “The compensation isn’t covered all the accidents. . . . The compensation is \$30,000. This is not enough for all the payments that I have paid for my accidents. Only teeth, I had to pay \$15,000. Please reconsider to pay me more for all injuries that I suffered.” (Petition, October 3, 2022, p. 1.)

On December 19, 2022, defendant filed an Answer to the Petition.

DISCUSSION

“The 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.”² (Lab. Code, § 5803.)

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 as it existed at the time of contracting, so far as the same is ascertainable and lawful. (*County of San Joaquin v. Workers’ Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193], citing Civ. Code, §1636.)

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.) 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 (*Id.*) 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.)

² All further statutory references are to the Labor Code unless otherwise stated.

Further, stipulations such as those in a compromise and release are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal. App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) “Good cause” to set aside stipulations depends on the facts and the circumstances of each case and includes mutual mistake of fact, duress, fraud, undue influence, and procedural irregularities. (*Johnson v. Workers' Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases 362]; *Santa Maria Bonita School District v. Workers' Comp. Appeals Bd.* (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].) However, when “there is no mistake but merely a lack of full knowledge of the facts, which . . . is due to the failure of a party to exercise due diligence to ascertain them, there is no proper ground for relief.” (*Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 866 [44 Cal.Comp.Cases 798] quoting *Harris v. Spinall Auto Sales, Inc.* (1966) 240 Cal.App.2d 447.)

The parties must clearly identify each injury and list the corresponding body parts in Paragraph One because that section requires that the parties state, “with *specificity* the date(s) of the injury(ies) and what body part(s) of body, conditions or systems are being settled.” (C&R, Paragraph One, p.7, emphasis added.) Paragraph one (1) allows the parties to clearly identify the settlement of multiple injuries with corresponding body parts by requiring that the parties list the case number, the type of injury, the date of injury and settled body parts (*Id.*)

Additionally, we note that our cursory review of the C&R shows that it did not sufficiently identify the body parts that were settled. For example, it is improper to list “any and all per application and claim form” in the other body parts section. The C&R must identify each body part that is to be settled with specificity, and the items listed must be actual body parts in order to clearly demonstrate that both parties mutually agreed on settlement. Additionally, the broad language of Paragraph Nine cannot override the specific language of Paragraph One.

“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 a hearing to take evidence when necessary to determine whether the agreement should be approved or disproved, or issue findings and awards.” (Cal. Code Regs., tit. 8, §10700(b).)

Additionally, there must be a complete record in order to review the case. “[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 v. Lockheed Corporation* (2001) 66 Cal. Comp. Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947 (Appeals Bd. en banc).) The Appeals Board's record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit 8, §10803.)

Furthermore, all parties in workers' compensation proceedings retain their fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805] (*Rucker*)). A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, supra, 82 Cal.App.4th at pp. 157-158, citing *Kaiser Co. v. Industrial Acc. Com.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710-712 [57 Cal.Comp.Cases 230].)

Here, applicant contends that the C&R should be set aside. The WCJ did not hold a hearing on the C&R and did not have the opportunity to assess the basis of the parties' understanding of the C&R. Therefore, the parties must have an opportunity to be heard and the WCJ must create a complete record.

Accordingly, we vacate our December 1, 2022, Order granting applicant's Petition, dismiss applicant's Petition as premature, and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, we recommend that the WCJ treat applicant's Petition as a petition to set aside and set a hearing so applicant can provide evidence in support of his arguments and create a record upon which a decision can be made by the WCJ.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that our December 1, 2022, Opinion and Order Granting Petition for Reconsideration is **VACATED**.

IT IS FURTHER ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 29, 2023

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

**AMED NAGI ALI
CHELVAM LAW FIRM
LAUGHLIN, FALBO, LEVY & MORESI, LLP**

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