

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

**IMMANUEL SHOTWELL, *Applicant***

**vs.**

**SWIFT TRANSPORTATION (Permissibly Self-Insured);  
administered by GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11021104  
Bakersfield District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Applicant, in pro per<sup>1</sup>, seeks reconsideration of the June 14, 2023, Order Approving Compromise and Release (OACR) wherein the presiding workers' compensation administrative law judge (PWCJ) approved of the parties settlement agreement.

On June 21, 2023, applicant filed an "objection to settlement," and subsequently, on June 28, 2023, applicant filed a Petition for Reconsideration (Petition) contending that:

"1. Decision of award was procured by incorrect info. and are [*sic*] Fraud. 2. Evidence does not justify the finding of fact) reason [*sic*] ! wrong SSI number? 3. Asking for new discoverer [*sic*] with future medical, and long term disability payments. 4. I ask in truth that the first Offer be not approve [*sic*]. For reason wrong information aa number wan't [*sic*] nime [*sic*]. ADDion [*sic*] Reasons: The amount was not enough [*sic*] do [*sic*] to the fact I am 51 in age, and if [*sic*] will be hard for me to find work with These injuries that are permanent, and permanent disability" (Petition for Reconsideration, 6/28/2023, p. 1.)

Applicant's Petition is somewhat unclear and it appears he contends that the OACR should be set aside because the Compromise and Release (C&R) does not list his social security number and the settlement is for a different person. Further, he is requesting new discovery for future medical care and long term disability payments, and that the amount he was awarded is not enough given his assertion that it will be difficult for him to find work given his age and injuries which he alleges are permanent and require permanent disability.

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<sup>1</sup> On March 16, 2023, applicant filed a Notice of Dismissal of Attorney dated March 13, 2023.

We did not receive an answer from defendant. The PWCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the petition be denied.

We have considered the allegations of applicant's Petition and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will 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.

### **BACKGROUND**

Applicant claimed industrial injury to his ankle and knee on April 7, 2017, while employed by defendant as an Over-the-Road (OTR) Truck driver/loader/unloader.

On June 14, 2023, applicant and defendant's attorney signed a C&R for ADJ11021104. Paragraph One of the C&R is marked as a specific injury occurring on April 7, 2017, and lists the following body parts: ankle, back, neck, and knee. (C&R, 6/14/2023, p. 3.) The C&R lists a social security number and applicant contends that the number listed in the C&R does not belong to him. (C&R, 6/14/2023, p. 1.)

On June 14, 2023, the PWCJ issued an OACR approving the C&R via a walk through appearance. The walk through appearance sheet lists applicant as appearing in pro per<sup>2</sup> and defendant's attorney<sup>3</sup>. The Order/comments section of the walk through appearance sheet states: "15% withholding for former atty \$6750 lien claim without prejudice." (Walk Through Appearance Sheet, 6/14/2023, p. 1.) On June 20, 2023, defendant's attorney submitted a letter to the PWCJ requesting a correction to applicant's social security number listed in the C&R. (Letter from Defendant's attorney to PWCJ, 6/20/2023.) On June 21, 2023, applicant filed an "objection to settlement," apparently in response to defendant's attorney's correspondence to the PWCJ requesting that applicant's social security number is corrected in the C&R. (Objection to Settlement Letter from applicant, 6/20/2023.)

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<sup>2</sup> The appearance sheet does not list an Information & Assistance Officer as being present nor contacting applicant to explain the proceedings (i.e. meaning of the C&R and OACR) to him.

## 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.”<sup>4</sup> (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.4<sup>th</sup> 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.)

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.4<sup>th</sup> 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].)

“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

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<sup>4</sup> All further statutory references are to the Labor Code unless otherwise stated.

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).)

Here, applicant claims that the award was procured by fraud because the wrong social security number was used. Further, applicant is requesting new or additional discovery for future medical care and long term disability payments. The PWCJ did not hold a hearing regarding the parties understanding of the C&R and there is no record to review in order to understand if the parties understood the meaning of the C&R.

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 dismiss applicant's Petition for Reconsideration as premature, and return this 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** that applicant's Petition for Reconsideration is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**AUGUST 28, 2023**

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

**IMMANUEL SHOTWELL  
MANNING KASS**

**DM/oo**

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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