

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

ROQUE NERI-HERNANDEZ, *Applicant*

vs.

GENEVA STAFFING, INC.; CALIFORNIA INSURANCE GUARANTEE ASSOCIATION on behalf of CASTLEPOINT NATIONAL INSURANCE COMPANY, in liquidation, administered by INTERCARE; CONSOLIDATED FABRICATORS CORPORATION, insured by UNITED STATES FIRE INSURANCE COMPANY, adjusted by CRUM & FORSTER, Defendants

**Adjudication Numbers: ADJ7995806, ADJ11753256
Stockton District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

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

I.

Applicant, Roque Neri-Hernandez, petitioned for reconsideration of the Findings of Fact and Award issued by the workers' compensation administrative law judge (WCJ) in this matter on October 28, 2019, in case ADJ7995806. In that decision, the WCJ found that applicant sustained injury to his right hand and gastrointestinal system, but not his psyche, arising out of and in the course of his employment on July 11, 2011, as a machine operator and tender by defendant, Geneva Staffing, doing business as Work Force Outsourcing, Inc., then insured for workers' compensation liability by Castlepoint National Insurance Company. Defendant, California Insurance Guarantee Association (CIGA) is the successor to the insurance carrier, which is now in liquidation. The WCJ deferred determination of the issue of permanent disability pending further development of the record.

Applicant contends in his Petition for Reconsideration that the WCJ erred in finding that applicant did not sustain injury to his psyche arising out of and in the course of his employment.

Applicant argues that applicant's psychiatric injury was caused by a sudden and extraordinary employment condition within the meaning of subdivision (d) of Labor Code section 3208.3.

CIGA filed an answer contending that the Petition for Reconsideration should be denied.

The WCJ issued a report in which he recommended that applicant's Petition for Reconsideration be denied.

Subsequently, at our request the parties participated in a commissioners' settlement conference and agreed to resolve this matter by Compromise and Release.

The Compromise and Release was filed on September 15, 2021. The Compromise and Release provides for the settlement of applicant's claim in case ADJ7995806 against CIGA and United States Fire Insurance Company (US Fire), the workers' compensation insurance carrier for the alleged special employer, Consolidated Fabricators Corporation. The Compromise and Release also provides for the settlement of applicant's undecided claim in case ADJ11753256 in which it is alleged that applicant sustained injury arising out of and in the course of employment on August 31, 2017.

The amount of the settlement is \$575,000, less credit for permanent disability indemnity paid of \$101,449.97, plus any indemnity paid after September 1, 2021, less an attorneys' fee of \$86,250, leaving \$387,300.03 payable to applicant as a lump sum.

The Compromise and Release also provides that US Fire, the workers' compensation insurance carrier for the alleged special employer, Consolidated Fabricators Corporation, will pay CIGA \$370,773.73 in full settlement of CIGA's reimbursement claim against US Fire.

II.

Labor Code section 5001 states in pertinent part that "[n]o release of liability or compromise agreement is valid unless it is approved by appeals board or referee."

WCAB Rule 10700 states that:

"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.)

Labor Code section 5002 states that:

“A copy of the release or compromise agreement signed by both parties shall forthwith be filed with the appeals board. Upon filing with and approval by the appeals board, it may, without notice, of its own motion or on the application of either party, enter its award based upon the release or compromise agreement.”

After considering the Compromise and Release in light of the entire record, we conclude that the settlement amount is adequate and that the agreement is in the best interest of applicant. We have considered that any potential right to death benefits is being released. In addition, we conclude that the attorneys’ fee requested is reasonable and should be allowed.

Therefore, we will rescind the Findings of Fact and Award issued by the workers’ compensation administrative law judge (WCJ) on October 28, 2019, in case ADJ7995806, and approve the Compromise and Release in both cases ADJ7995806 and ADJ11753256.

Finally, we commend the parties for engaging in good faith negotiations and successfully resolving this matter without the need for further litigation.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Findings of Fact and Award issued on October 28, 2019, be **RESCINDED**.

IT IS FURTHER ORDERED that the Compromise and Release filed September 15, 2021, in cases ADJ7995806 and ADJ11753256 be **APPROVED**.

AWARD IS MADE in favor of **ROQUE NERI-HERNANDEZ** against **CALIFORNIA INSURANCE GUARANTEE ASSOCIATION** through **INTERCARE** for **CASTLEPOINT NATIONAL INSURANCE COMPANY, in liquidation**, as specified in the Compromise and Release.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 24, 2021

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

**ROQUE NERI HERNANDEZ
RANCANO LAW
BENTHALE, MCKIBBIN & MCKNIGHT
COLEMAN CHAVEZ**

DH/ara

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