

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

MARIA FLORES, *Applicant*

vs.

**FLAP HAPPY; INSURANCE COMPANY OF THE WEST,
CALIFORNIA INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ10671022; ADJ11268290
Van Nuys 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.

Defendant Insurance Company of the West seeks reconsideration of the Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ) on April 20, 2020, wherein the WCJ approved a settlement agreement between applicant and California Insurance Company.

Petitioner contends that the OACR does not sufficiently account for petitioner's permanent disability advances to applicant.

We received an answer from defendant California Insurance Company.

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 we adopt and incorporate, and for the reasons discussed below, we will affirm the OACR.

We observe 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.* (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.*) The essential elements of contract include consideration. (Civ. Code, §§ 1550, 1584, 1595, 1605, et seq., 1659.) The essential elements of contract also include the mutual consent of the parties. (Civ. Code, §§ 1550, 1565, 1580.) 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.2d 279, 291; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.) Here, the parties to the Compromise and Release (C&R) agreement were applicant and California Insurance Company, adjusted by Applied Risk Services. (Compromise and Release (C&R), pp. 1-3.) Here, Insurance Company of the West was not a party to the settlement, however, California Insurance Company explicitly reserved its right to seek contribution against other joined defendants.

Where, as here, a case involves a cumulative injury, as set forth in section 5500.5, “any insurance carrier for any employer may enter into a compromise and release agreement settling either all or any part of the employee’s claim.” (Lab. Code, §§ 5005; 5500.5.) Stated another way, and subject to the limitations of section 5500.5(a), an employee may choose to obtain an award for their entire cumulative injury from one or more employers. (*Flesher v. Workers' Comp. Appeals Bd.* (1979) 23 Cal.3d 322, 325-326 [44 Cal.Comp.Cases 212]; *Rex Club v. Workers' Comp. Appeals Bd. (Oakley-Clyburn)* (1997) 53 Cal.App.4th 1465, 1472 [62 Cal.Comp.Cases 441].)

Under section 5500.5(e), the settling insurer may thereafter institute separate proceedings to determine apportionment of liability and the right of contribution. (*Flesher, supra*, at 327; *Oakley-Clyburn, supra*, at 1465, 1472; *Raischell & Cottrell, Inc. v. Workers' Comp. Appeals Bd.* (1967) 249 Cal.App.2d 991, 995 [32 Cal.Comp.Cases 135].) This procedure is intended to promote a prompt determination of an injured worker’s entitlement to workers’ compensation benefits. (*Oakley-Clyburn, supra.*) As noted by the WCJ, petitioner is entitled to seek credit for permanent disability indemnity payments previously made. The settling defendant reserved its right to seek contribution, with jurisdiction reserved to the WCJ in the event of a dispute. Moreover, petitioner appears to have filed a petition for contribution.

Accordingly, as our decision after reconsideration, we affirm the OACR.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Approving Compromise and Release issued by the workers' compensation administrative law judge on April 20, 2020 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 28, 2022

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

**MARIA FLORES
LAW OFFICES OF APPEL RIMBACH
BRADFORD & BARTHEL
LAW OFFICES OF JOAN SHEPPARD
INSURANCE COMPANY OF THE WEST
CALIFORNIA INSURANCE COMPANY**

JB/abs

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

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ10671022; ADJ11268290

MARIA FLORES

-vs.-

**FLAP HAPPY; INSURANCE
COMPANY OF THE WEST;
CALIFORNIA INSURANCE
COMPANY**

**WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:**

Randal Hursh

DATE: May 20, 2020

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

Maria Flores, born [], filed an application for adjudication of claim in case number ADJ10671022 alleging that while employed during the period August 17, 2013 through August 13, 2016 as a seamstress, at Los Angeles, California, by Flap Happy Feet, Inc., she sustained injury arising out of and in the course of employment to her neck, shoulder, arm, wrist, and hand. During the cumulative trauma the employer was insured by California Insurance Company from July 11, 2015 through July 11, 2016, and by Insurance Company of the West from July 1, 2016 through August 13, 2016. Additionally, she filed an application in case number ADJ11268290 alleging a specific injury on March 12, 2018.

On April 2, 2020 applicant and defendant California Insurance Company submitted a compromise and release of case number ADJ10671022. By its terms the compromise and release settled the entire period of the cumulative trauma, including all issues except future medical treatment. Petitioner was not a party to the compromise and release. An order approving the compromise and release issued on April 15, 2020. Insurance Company of the West filed a timely verified petition

for reconsideration of the April 15, 2020 Order Approving Compromise & Release. Petitioner alleges the “order is not supported by the findings of fact”, but fails to articulate how it is aggrieved by the order.

II **FACTS**

As indicated above, applicant and defendant California Insurance Company submitted a compromise and release of case number ADJ10671022 on April 2, 2020. Petitioner, Insurance Company of the West, was not a party to the compromise and release. However, by its terms the compromise and release settled the entire period of the cumulative trauma, including all issues except future medical treatment. Paragraph 7 of the compromise and release did not indicate any amount to be deducted from the settlement amount for permanent disability advances. An order approving the compromise and release issued on April 15, 2020.

III **DISCUSSION**

A **Petitioner is Not Aggrieved**

Labor Code § 5005 provides that:

In any case involving a claim of occupational disease or cumulative injury, as set forth in section 5500.5, the employee and any employer, or any insurance carrier for any employer, may enter into a compromise and release agreement settling either all or any part of the employee’s claim, including a part of his claim against any employer.

In this case, petitioner’s codefendant entered into a compromise and release with applicant. The compromise and release settled all benefit claims, except future medical treatment, for the entire period of cumulative trauma. Neither the compromise and release nor the order approving it established any liability or imposed any obligation upon petitioner. On the contrary, the compromise and release and order approving ended the cumulative trauma claim by applicant against petitioner, except for future medical treatment.

B
No Finding of Fact as Alleged by Petitioner

Petitioner alleges that this judge “found as a part of his Order Approving Compromise & Release agreement that no permanent disability was advanced to applicant for the continuous trauma claim.” (Petition for reconsideration, page 3, lines 8 -10). This is simply not true. No finding of fact regarding permanent disability advances was made. Paragraph 2 of the April 15, 2020 Order Approving Compromise & Release (EAMS document ID 72639080) merely recites that after the deduction of attorney’s fees the balance is payable to applicant “LESS PERMANENT DISABILITY ADVANCES & OTHER DEDUCTIONS PER C & R, PARAGRAPH 7.” In this case, the settling parties did not list any permanent disability advances or other deductions in paragraph 7. The terms of the settlement were the choice of the settling parties. Petitioner did not participate in the compromise and release and therefore did not have standing to dictate its terms.

It is noted that in paragraph 8 of the compromise and release (EAMS document ID 32051180) the settling defendant reserved its right to seek contribution against petitioner. Should contribution proceedings be instituted petitioner can assert a claim for offset or credit for any permanent disability advances it made.

IV
RECOMMENDATION

It is respectfully recommended defendant’s petition for reconsideration be denied.

DATE: May 20, 2020

/s/ Randal Hursh
Randal Hursh
Workers’ Compensation
Administrative Law Judge