

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

TINA DONAHOE, *Applicant*

vs.

**FIREMAN'S FUND INSURANCE COMPANY; THE AMERICAN INSURANCE
COMPANY, adjusted by ESIS and by SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ1533475 (OAK 0336973); ADJ8601078
Oakland 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, Tina Donahoe, petitioned for reconsideration of the Findings and Award issued by the workers' compensation administrative law judge (WCJ) in this matter on May 13, 2021. In that decision, the WCJ found that applicant's injuries to her low back arising out of and in the course of her employment on August 29, 2006 (case ADJ1533475) and during a cumulative period ending July 30, 2010 (ADJ8601078), as an underwriter, by defendant, Fireman's Fund Insurance Company, caused permanent partial disability of 33% in the former case and 7% in the latter case. At the time of injuries, the employer was insured for workers' compensation liability by defendant, the American Insurance Company, adjusted by ESIS in case ADJ1533475 and by Sedgwick CMS in case ADJ8601078.

Applicant contends in her petition for reconsideration that the WCJ erred in not finding that applicant's injuries caused permanent total disability.

Defendant filed an answer contending that the petition for reconsideration should be denied.

The WCJ issued a report in which she recommended that the 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 April 22, 2022. The amount of the settlement is \$750,000, less an attorneys' fee of \$112,500, and less \$251,990 to fund a self-administered Medicare set aside trust, leaving a balance of \$385,510 payable to applicant in a lump sum. The Compromise and Release also provides that defendant will pay, adjust or litigate liens of record.

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. We also conclude that the attorneys' fee requested is reasonable and should be allowed. In addition, we conclude that the characterization of settlement proceeds contained in an addendum to the Compromise and Release is justified by the record.

Therefore, we will rescind the Findings and Award issued by WCJ on May 13, 2021, and approve the Compromise and Release.

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 and Award issued on May 13, 2021, be **RESCINDED**.

IT IS FURTHER ORDERED that the Compromise and Release filed April 22, 2022, be **APPROVED**.

AWARD IS MADE in favor of **TINA DONAHOE** against **THE AMERICAN INSURANCE COMPANY** as specified in the Compromise and Release.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 28, 2022

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

**TINA DONAHOE
FARNSWORTH LAW GROUP
COX & ASSOCIATES
LAUGHLIN, FALBO, LEVY & MORESI**

DH/ara

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