

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

SVEVA MARGHERITA BESANA, *Applicant*

vs.

**YP HOLDINGS LLC; AMERICAN ZURICH INSURANCE;
AIG CLAIMS/THIRD PARTY ADMINISTRATOR, *Defendants***

**Adjudication Number: ADJ13873540
Los Angeles District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant acting in pro per seeks reconsideration of the Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ) on September 21, 2023.

Applicant contends that the OACR should be set aside because it was procured by fraud.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the OACR should not be set aside and the Petition should be denied.

We have considered the allegations of the applicant's Petition, defendant's Answer, and the contents of the WCJ's 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 a cumulative injury from January 23, 2014¹ to January 15, 2020, to her nervous system, including stress/psych while employed by defendant as an "employee"².

¹ Applicant contends: "The injury/injuries began prior to this date [January 23, 2014] but the only evidence of the injury/injuries was known to my PCP when he signed a Short Term Disability form where the STD started on 1/23/2014."

² Applicant's application for adjudication lists "employee" as occupation at the time of injury. Applicant's occupation at the time of injury is listed as Product Management Team Lead in the C&R.

On June 15, 2021, applicant served defendant with a Petition For Penalties which was filed on June 22, 2021. On June 29, 2021, defendant answered applicant's Petition for Penalties.

On September 11, 2023, the fully executed C&R signed by applicant, defendant's attorney and two witnesses was filed.

On September 21, 2023, without holding a hearing the WCJ issued an Order Approving Compromise and Release (OACR).

Applicant filed a Petition for Reconsideration (Petition) date stamped October 2, 2023, and filed on October 16, 2023, contending that the order, decision, or award was procured by fraud and

“ . . . The C&R should include the penalties for a late payment for all that was my right to receive back then. I ask the Judge to review the petition and medical records and see that it would have been indisputable that my presence in the office was leading to injuries. I ask that the \$35,000.00 amount in the C&R be augmented by the correct penalty(I take that to be \$10,000.00). If we need to discuss the events in court to make sure that there was knowledge of the injuries on the part of the employer we can schedule a hearing for the penalty under LC 5814.”

On October 11, 2023, attorney for defendant Gallagher Bassett AIG West filed an Answer opposing applicant's Petition with a Request For Costs and Sanctions.

On October 16, 2023, attorney for defendant American Zurich Insurance Company 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.”³ (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.)

³ All further statutory references are to the Labor Code unless otherwise stated.

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.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 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 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 her arguments and create a record upon which a decision can be made by the WCJ.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 30, 2023

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

**SVEVA MARGHERITA BESANA
STOCKWELL HARRIS
LAW OFFICES OF MAVREDAKIS CRANERT CRAWFORD**

DM/oo

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