

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

ISRAEL HERNANDEZ, *Applicant*

vs.

**DRAGADOS-FLATIRON-SUKUT VENTURE; ZURICH AMERICAN
INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ8918941
Salinas 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.

Defendant, Zurich American Insurance Company, petitions for reconsideration of the Findings and Award issued by the workers' compensation administrative law judge (WCJ) in this matter on September 30, 2020. In that decision, the WCJ found that applicant, Israel Hernandez's injury arising out of and in the course of his employment as a carpenter by defendant, Dragados-Flatiron-Sukut Venture, on May 29, 2012, caused need of further medical treatment and permanent total disability.

Defendant, which insured the employer for workers' compensation liability at the time of the injury, contends in its petition for reconsideration that the WCJ erred in finding that the injury caused permanent total disability.

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

The WCJ issued a report in which he recommended that 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, which was filed on May 27, 2021, provides for a settlement of \$969,624.00, less permanent disability indemnity previously paid of \$50,579.60, less credit for

a temporary disability indemnity overpayment of \$2,080.04, less \$119,624 to fund a self-administered Medicare set-aside trust and less an attorneys' fee of \$145,443.60, leaving \$651,896.60 payable to applicant in a lump sum. The Compromise and Release also provides defendant agrees to pay, adjust or litigate liens of record with jurisdiction reserved. In addition, the compromise and release provides that applicant's attorney, Jeffrey L. Tade, will hold the attorneys' fee allowed in trust pending a resolution of the lien of applicant's former attorneys, Rucka, O'Boyle, Lombardo & McKenna.

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 and Award issued on September 30, 2020, 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 in this matter on September 30, 2020, be **RESCINDED**.

IT IS FURTHER ORDERED that the Compromise and Release filed May 27, 2021, be **APPROVED**, and that jurisdiction be reserved on the issue of the proper division of the attorneys' fee between applicant's current and former attorneys.

AWARD IS MADE in favor of **ISRAEL HERNANDEZ** against **ZURICH AMERICAN INSURANCE COMPANY** as specified in the Compromise and Release.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 3, 2021

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

**ISRAEL HERNANDEZ
LAW OFFICES OF JEFFREY L. TADE
SHAW, JACOBSMEYER, CRAIN & CLAFFEY, PC**

DH/ara

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