

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

**ANA MARQUEZ, *Applicant***

**vs.**

**NINE INCH NAILS ETC; NEW YORK MARINE AND GEN INS CO;  
LWP CLAIMS SACRAMENTO, *Defendants***

**Adjudication Number: ADJ17401990  
Van Nuys 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 March 16, 2023.

Applicant contends that she attempted to withdraw from the compromise and release (C&R) agreement after she signed it, but before approval by the WCJ, and that the WCJ should set aside the OACR.

We have not received an answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied or, in the alternative, treated as a Petition to set-aside.

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record and for the reasons discussed below, will dismiss the Petition as premature, and return this matter to the trial level for consideration of the Petition as one to set aside the OACR.

**BACKGROUND**

We will briefly review the relevant facts.

Applicant claimed injury to her wrist while employed by defendant as a housekeeper on July 10, 2020.

As relevant herein, the parties entered into the following stipulations, using DWC-WCAB form 10214(a), revised May 2020:

The body part being settled is described in Paragraph No. 1 as “320 wrist”. (C&R, ¶ 1, p. 5.) The date of injury was July 10, 2020.

In paragraph 9, the parties stipulated as follows:

This Compromise & Release resolves all Issues of TD/PD/Medical for the admitted 07/10/2020 left wrist Injury. Compromise & Release settlement is based on PTP report of Dr. Kourosh Shamlou dated 10/4/2021 finding 0% impairment to the left wrist, able to work without restrictions and need for future medical. Claimant wishes not to proceed with the Panel QME process and is not a Medicare Beneficiary. No Voucher owed. No P&S should payments be issued within 30 days of receipt of the OAC&R.

(C&R, ¶ 9 comments, p. 7.)

The October 4, 2021 report by primary treating physician (PTP) Dr. Shamlou states as follows:

DIAGNOSIS: Left wrist triangular fibrocartilage complex tear, status post arthroscopy and debridement.

DISCUSSION: In my opinion, this patient condition is at maximum medical improvement. She can continue with her usual work with no restriction. Her condition is as a direct result of the industrial injury while working for her employer. As a part of **future medical care, provisions should be given for future physician office visits, prescription and/or over-the-counter physical therapy for exacerbation of symptomatology, intraarticular injection, additional diagnostic testing and possibly redo surgical treatment in the form of arthroscopy.** She does not have any impairments related to this injury.

(Dr. Shamlou’s October 4, 2021 report, p. 1 (emphasis added).)

On March 2, 2023, applicant signed the C&R.

On March 4, 2023, attorney for defendant signed the C&R.

On March 8, 2023, the WCJ issued an OACR without holding a hearing. The OACR was served by way of mail on March 16, 2023.

On April 10, 2023, applicant filed a timely Petition for reconsideration, stating as follows:

I would like to have my settlement suspended. I was not aware that I was resolving my future medical care. I was not advised of my panel QME option, nor was I advised of my settlement options.

I signed the C&R but requested via phone to have it stopped with no response from the adjuster. I received the Addendums later which I did not sign. I tried calling the adjuster and e-mailed the adjuster requesting to stop the C&R for \$11,500 that I was not in agreement.

To this date my adjuster never responded. To my surprise I received the approved settlement.

(Petition, p. 1.)

## 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.”<sup>1</sup> (Lab. Code, § 5803.)<sup>2</sup>

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 the mutual consent of the parties and 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.) Stipulations between the parties must be interpreted to give effect to the mutual intention of the parties it existed at the time of contracting, so far as the same

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<sup>1</sup> To determine whether there is good cause to rescind the awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Labor Code § 5702; *County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118-1121 [65 Cal.Comp.Cases 1]; *Robinson v. Workers’ Comp. Appeals Bd. (Robinson)* (1987) 194 Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers’ Comp. Appeals Bd. (Huston)* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].) However, as recognized in *Weatherall*, the Appeals Board may also, in its discretion, reject factual stipulations and set the matter for hearing and further investigation. (*Weatherall, supra*, at 1119; Lab. Code, § 5702.)

<sup>2</sup> All statutory references are to the Labor Code unless otherwise stated.

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]; Civ. Code, § 1636.)

Here, applicant contends that she contacted the adjuster to withdraw from the settlement. If applicant withdrew from the settlement agreement prior to defendant's acceptance, it calls into question whether a contract was created. Moreover, applicant contends that she was not aware that she was resolving future medical care and was not advised that she was entitled to an evaluation by a panel QME, which calls into question what applicant's understanding was at the time that the settlement was negotiated. We observe that generally, the determination of compensability, the existence or extent of permanent impairment, and limitations, if any, resulting from an injury all require a medical evaluation. As an unrepresented employee, an evaluation by a QME, as opposed to a treating physician, to determine compensability, if any, and the existence or extent of permanent impairment is the appropriate course. (Lab. Code, §§ 4060-4062.3.)

“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(b).) This inquiry should carry out the legislative objective of safeguarding the injured worker from entering into unfortunate or improvident releases as a result of, for instance, economic pressure or lack of competent advice. (*Claxton v. Waters* (2004) 34 Cal.4th 367, 373 [69 Cal.Comp.Cases 895]; *Sumner v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 965, 972-973.) The worker's knowledge of and intent to release particular benefits must be established separately from the standard release language of the form. (*Claxton, supra*, at 373.)

Because no hearing was held, the WCJ did not have the opportunity to assess applicant's understanding of the proposed settlement agreement. Although applicant was not evaluated by a QME, the PTP opined that “provisions should be given for future physician office visits, prescription and/or over-the-counter physical therapy for exacerbation of symptomatology, intraarticular injection, additional diagnostic testing and possibly redo surgical treatment in the form of arthroscopy.” (Dr. Shamlou's October 4, 2021 report, p. 1.)

The WCJ's decision “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*).) An adequate and complete record is necessary to understand the basis for the WCJ's decision and

the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621.) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Hamilton, supra*, at 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).) Moreover, sections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-394 [62 Cal.Comp.Cases 924], *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc).)

While applicant alleges that she attempted to cancel acceptance of the settlement, as the WCJ notes, there is no evidence in the record on that issue. Consequently, the record is insufficient as to the issues of whether a contract was formed, whether applicant wished to withdraw from the settlement agreement, and whether the settlement was adequate.

Accordingly, we dismiss the 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 the 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, filed April 10, 2023, is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**JUNE 9, 2023**

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

**ANA MARQUEZ  
CHRIS LADD**

**JB/cs**

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

CS