

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

DAREUS DAWSON, *Applicant*

vs.

**EAH, INC.; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,
administered by BROADSPIRE, *Defendants***

**Adjudication Number: ADJ12964895
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 10, 2023

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

**DAREUS DAWSON
BENTHALE, MCKIBBIN & MCKNIGHT**

PAG/ara

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I.
INTRODUCTION

- 1. Applicant’s Occupation: Maintenance Technician
Applicant’s Age: 39
Date of Injury: December 6, 2019
Parts of Body In[j]ured: Left Hand
- 2. Identity of Petitioner: Applicant
Timeliness: Yes
Verification: Yes
- 3. Date of Findings and Award February 27, 2023
- 4. Applicant’s Contentions: Mr. Dawson did not agree to the Compromise and Release. His rights were not explained to him.

II.
STATEMENT OF THE CASE AND FACTS

Injured worker Dareus Dawson (“Mr. Dawson”) worked as a maintenance technician for EAH, Inc. He sustained an admitted injury to his left hand. Farber Oakland represented Mr. Dawson in his workers compensation claim. His attorney was Michael Ullrich, Esq. Mr. Dawson executed a Compromise and Release on July 20, 2021.

The settlement was based on the medical report of Dr. William G. Brose (“Dr. Brose”) the Panel Qualified Medical Examiner (“PQME”) for Mr. Dawson’s workers’ compensation claim. Dr. Brose issued a medical report on January 5, 2021. Dr. Brose reviewed Mr. Dawson’s medical reports, took a detailed history and performed a physical examination. Dr. Brose stated that the applicant returned to work after 4 days with modification. Mr. Dawson was terminated November of 2020. (Ex. F, pg.5). Dr. Brose reviewed the medical reports with the Mr. Dawson. PA Hollinger released the Applicant to regular duty November 12, 2020. (Ex. F, pg. 8) Pursuant to the AME guides applicant was 8% WPI. Dr. Brose provided an Almarez Guzman analysis of 23% impairment. Future medical care consisted of ongoing occupational therapy.

The WCJ found QME Dr. Brose’s report to be substantial evidence and settlement adequate. On August 5, 2021, the WCJ executed an Order Approving Compromise and Release.

On August 24, 2022, Mr. Dawson dismissed his attorney. On August 24, 2022, Mr. Dawson filed a Declaration of Readiness to proceed to set aside the Compromise and Release. On September 19, 2022, Mr. Dawson filed a Petition to Set Aside Compromise and Release. The issue at trial was whether the applicant can set aside the Compromise and Release. The WCJ denied the Mr. Dawson’s Petition to Set Aside the Compromise and Release. On March 14, 2023, Mr. Dawson filed a Petition for Reconsideration (“Petition”)

The WCJ acted in excess of its powers. For the following reasons the Applicant's petition should be denied.

III. DISCUSSION

Mr. Dawson has the burden to prove that Compromise and Release was secured by mistake, duress, fraud or undue influence. (*Draper v WCAB* (1983) 48 CCC 748) The Mr. Dawson did not file a Declaration of Readiness to proceed to set aside the Compromise and Release until 384 days after the Order Approving issued. It was not until the bank placed a levy on the applicant's account due to non-payment of child support that he contacted his attorney. (SOE pg. 8, ln. 33-34) Because Mr. Ullrich could not assist him was when he requested his file. Mr. Ullrich did not force Mr. Dawson to sign the Compromise and Release. (SOE pg. 8, ln. 46-47).

Mr. Dawson was of the belief that the settlement was not fair after he cashed his check. He stated that he was let go from his job, as he had to resign. However, that is not the case. The PQME Dr. Brose stated in his medical report that the applicant was terminated from his employment November 12, 2020. (Ex. F, pg. 8) This is prior to the Order Approving Compromise and Release.

The WCJ found the settlement to be adequate based on the medical report of Dr. Brose. (*Johnson v. Workmen's Comp. Appeals Bd.* (1970) 2 Cal.3d 964) (California Code of Regs. Title. 8, §10700) The WCJ found Dr. Brose's medical report substantial evidence in which to approve the settlement. The Appeals Court determined that to constitute substantial evidence ". . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Applicant testified in his own behalf. The WCJ did not find him credible due to inconsistencies in his testimony. It is well established that a WCJ's opinions regarding witness credibility are entitled to great weight, "because of the referee's [WCJ's] opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand." (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35Cal.Comp.Cases 500, 505]; *Sheffield Medical Group v. Workers' Comp. Appeals Bd. (Perez)* (1999) 70 Cal.App.4th 868 [64 Cal.Comp.Cases 358]; *Nash v. Workers' Comp. Appeals Bd.* (1994) 24 Cal.App.4th 1793 [59 Cal.Comp.Cases 324]; *Greenberg v. Workmen's Comp. Appeals Bd.* (1974) 37 Cal.App.3d 792 [39 Cal.Comp.Cases 242].) Those inconsistencies are also found in Mr. Dawson's Petition for Reconsideration. Mr. Dawson states that he never saw the Compromise and Release nor did he sign it. At trial, Mr. Dawson did not contend that he did not sign the Compromise and Release. (SOE pg. 5, ln. 35-37) His Petition states that the settlement was never explained to him this again contradicts the testimony at trial. (SOE pg. 5, ln. 39; SOE pg. 6, ln. 38-40). Mr. Dawson testified that his attorney did not force him to sign the Compromise and Release. (SOE pg. 8, ln. 46)

Mr. Ullrich the applicant's attorney testified that he met with Mr. Dawson and reviewed the settlement document with him. (SOE pg. 9, ln. 39-40, pg. 9, ln. 45-47, pg. 10, ln. 1). Mr. Dawson

did not express any specific reservations about the settlement at the time he executed the compromise and release. (SOE pg. 6, ln. 38-39.

Mr. Dawson's account was not breached but a levy was placed on it due to non-payment of child support. It was after the levy that Mr. Dawson was unhappy with the settlement. His attorney explained the settlement document. His attorney did not exert undue influence. The parties negotiated the settlement, agreed to the amount and executed the Compromise and Release. The WCJ found the medical report substantial evidence and reviewed the adequacy of the settlement amount.

Based upon the above, I recommend the denial of the Applicant's Petition for Reconsideration.

Date: March 21, 2023

Tammy Homen
Workers' Compensation
Administrative Law Judge