

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

DELENA ASHLEY, *Applicant*

vs.

**ALLIED PROFESSIONAL NURSING CARE, INC.;
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ14030912
Riverside District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

On April 25, 2022, applicant, acting in pro per, filed a Petition for Reconsideration (Petition) of a decision dated "March 18, 2022." We received an answer from defendant. The workers' compensation administrative law judge (WCJ) prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be dismissed, where: (1) the record did not contain a decision issued on this date, thereby rendering the Petition questionably untimely; (2) the case was resolved on March 15, 2022 through a Compromise and Release Agreement; and (3) the Petition failed to set forth specifically and in full detail the grounds for reconsideration as required by Labor Code sections 5902 and 5903.

We have considered the Petition for Reconsideration, defendant's answer, and the contents of the Report, and we have reviewed the record in this matter. 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 Order Approving Compromise and Release issued by the WCJ on March 15, 2022.

BACKGROUND

Applicant claimed to have sustained injury to her eye, nervous system, and skin on February 4, 2019 while employed by defendant, Allied Professional Nursing Care, Inc., as a Vocational Nurse. On March 15, 2022, defendant and applicant, acting in pro per, submitted a Compromise and Release Agreement (C&R) to the WCJ, agreeing to settle applicant's case for a

lump sum of \$15,000. The same day, the WCJ issued the Order Approving Compromise and Release (OACR) without holding a hearing. (OACR, March 15, 2022.)¹ On April 25, 2022, applicant, again acting in pro per, filed her Petition for Reconsideration.

DISCUSSION

In her Petition, applicant seeks reconsideration of a decision dated “March 18, 2022.” No such decision appears in the file for this case or any companion case, and, as the WCJ indicated in his Report, it is therefore unknown whether the Petition was timely filed. However, a review of applicant’s claim demonstrates that, in substance, she seeks to set aside the OACR, which was issued three days earlier, on March 15, 2022. Applicant claims, in essence, that the C&R was based upon incomplete and/or erroneous information that justifies setting aside the OACR. In so arguing, applicant references a “skin patch test” that she believes should have been reviewed by the PQME, Dr. Sameer Gupta, prior to issuing a decision as to whether she had a ratable permanent impairment. Applicant states that Dr. Gupta did not discuss the results of this test in the PQME Report, which was the basis for the C&R. (C&R, p. 7 [“Settlement based upon reporting of PQME Sameer Gupta, M.D. dated 3/18/2020. Dr. Gupta found no ratable impairment and applicant’s claim was merely an exacerbation.”].)

“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).) 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’ Comp. Appeals Bd.* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193], citing Civ. Code, § 1636.)

Additionally, there must be a complete record for our review of 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 (Appeals Bd. en banc).) The Appeals Board’s record of proceedings is

¹ Based on a review of the record, no Minutes of Hearing or Summary of Evidence (MOH/SOE) were filed.

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].)

Because no hearing was held, the WCJ did not have the opportunity to assess the basis of the C&R and to determine whether it was adequate. There is no MOH/SOE addressing the C&R in the record. Therefore, we cannot make a decision without giving the parties an opportunity to be heard and for the WCJ to create a complete record for our review.

Accordingly, we will dismiss the Petition as premature and return this matter to the trial level. Upon return of this matter to the trial level, we recommend that the WCJ treat the Petition as a petition to set aside the OACR and set a hearing so that applicant can provide evidence in support of the arguments contained in the Petition and create a record upon which a decision can be made by the WCJ.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 24, 2022

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

**DELENA ASHLEY
SIEGEL, MORENO & STETTLER**

AH/oo

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