

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

GUILLERMO HERNANDEZ, *Applicant*

vs.

**LA CUSTOM FINISH; IMPERIUM INSURANCE; ATHENS ADMINISTRATORS,
*Defendants***

**Adjudication Number: ADJ7803005
Los Angeles District Office**

OPINION AND DECISION AFTER RECONSIDERATION

We granted reconsideration¹ in this matter to further study the factual and legal issues presented. This is our Opinion and Decision After Reconsideration.

I.

Applicant, Guillermo Hernandez, petitioned for reconsideration of the Findings and Award issued by the workers' compensation administrative law judge (WCJ) in this matter on April 16, 2021. In that decision, the WCJ found that applicant sustained injury to his hands, wrists, psyche, lumbar spine, cervical spine, knees, right shoulder and gastrointestinal system arising out of and in the course of his employment as a painter during a period ending January 25, 2011, by defendant, LA Custom Finish, resulting in temporary disability from February 11, 2011, through February 8, 2013, permanent partial disability of 97% and need of further medical treatment.

Applicant contends in his petition for reconsideration that the WCJ erred in not finding that the injury caused permanent total disability.

Defendant Imperium, which insured the employer for workers' compensation liability at the time of the injury, filed an answer contending that the petition for reconsideration should be dismissed or denied.

The WCJ issued a report in which he recommended that the petition for reconsideration be denied.

¹ Commissioner Deidra E. Lowe, who was on the panel that granted reconsideration to further study the factual and legal issues in this case, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

Subsequently, at our request the parties participated in a commissioners' settlement conference and agreed to resolve this matter by compromise and release with an open award of further medical treatment.

The executed Compromise and Release was filed on August 29, 2022. The amount of the settlement is \$630,000 in new money less an attorneys' fee of \$94,500, leaving a balance of \$535,500 payable to applicant in a lump sum. The Compromise and Release also provides that defendant will remain liable for further medical treatment necessary to cure or relieve applicant from the effects of the injury to his hands, wrists, psyche, lumbar spine, cervical spine, knees, right shoulder and gastrointestinal system, except that applicant's potential right to reimbursement of home health care expense, past and future, is being settled.

On September 8, 2022, the parties filed a signed Addendum to the Compromise and Release that clarifies that the settlement amount of \$630,000 is new money and is payable in addition to the temporary disability indemnity previously awarded by the WCJ.

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. We also conclude that the attorneys' fee requested is reasonable and should be allowed.

Therefore, we will rescind the Findings and Award and substitute a new Findings and Award, which deletes the WCJ's findings as to permanent disability and attorneys' fees which are superseded by the Compromise and Release 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 on April 16, 2021, is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. GUILLERMO HERNANDEZ, while employed during the period January 25, 2010, to January 25, 2011, as a painter, Occupational Group No. 380 at Los Angeles, California, by LA Custom Finish, sustained an injury arising out of and in the course of employment to his bilateral hands, bilateral wrists, psyche, lumbar spine, cervical spine, bilateral knees, right shoulder, lower gastrointestinal system, and upper gastrointestinal system.
2. At the time of injury, the employer's workers' compensation carrier was Imperium Insurance and Granite State Insurance. Applicant has elected against defendant Imperium Insurance pursuant to Labor Code 5500.5(c).
3. Pursuant to the parties' stipulation, at the time of injury the employee's earnings were \$780.00 per week, warranting indemnity rates of \$520.00 for temporary disability per week.
4. Pursuant to the parties' stipulation, the applicant became permanent and stationary on August 15, 2019, pursuant to the reporting of the Agreed Medical Examiner Dr. Steven Silbart.
5. Applicant is found to be entitled to 104 weeks of temporary disability benefits which is found to have run from February 11, 2011 through February 8, 2013, at the rate of \$520.00 per week totaling \$54,080.00, less credit for temporary disability benefits paid to date of \$45,577.00 resulting in a balance owed to applicant of \$8,503.00. Of the temporary disability benefits owed to applicant, 15% or \$1,275.45 shall be withheld for attorney fees.

6. Applicant is entitled to further medical treatment to cure and/or be relieved from the effects of the industrial injury.

7. Applicant's request for penalties on the grounds that defendant failed to issue temporary disability and permanent disability benefits at the correct weekly rate is denied without prejudice, as no formal Petition for penalties has been received by the WCJ.

IT IS FURTHER ORDERED that the Compromise and Release filed August 29, 2022, including the Addendum filed September 8, 2022, be **APPROVED**.

AWARD IS MADE in favor of **GUILLERMO HERNANDEZ** against **IMPERIUM** of:
(a) temporary disability indemnity as set forth in Finding 5, (b) \$630,000, less an attorneys' fee of \$94,500 payable to Graiwer & Kaplan as set forth in the Compromise and Release, and (c) further medical treatment necessary to cure or relieve applicant from the effects of the injury to his hands, wrists, psyche, lumbar spine, cervical spine, knees, right shoulder and gastrointestinal system, except that applicant's potential right to reimbursement of home health care expense, past and future, is settled as set forth in the Compromise and Release.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 9, 2022

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

**GUILLERMO HERNANDEZ
GRAIWER & KAPLAN
PEARLMAN, BROWN & WAX**

DH/ara

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