

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

WENDY THOMPSON, *Applicant*

vs.

**SANTA YNEZ VALLEY JOURNAL;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ8004567
Santa Barbara 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. Pursuant to our authority, we accept defendant's supplemental pleading filed on November 23, 2022. (Cal. Code Regs., tit. 8, § 10964.) Based on our review of the record, and for the reasons stated below, we will deny reconsideration.

This matter proceeded to trial on May 30, 2019. The WCJ issued a Findings & Award on August 14, 2019 finding applicant was permanently totally disabled and allowing an attorney fee of 20%. Defendant sought reconsideration and the Appeals Board granted the petition for further study and the matter was referred to mediation. As a result of the mediation, the parties entered into a Compromise and Release (C&R) in the total amount of \$685,000.00. Paragraph 7 of the C&R provides that "The parties agree to settle the above claim(s) on account of the injury(ies) by the payment of the SUM OF: \$685,000.00 The following amounts are to be deducted from the settlement amount: \$25,300.00 for permanent disability advances through [June 26, 2013[:] \$121,058.93, payable to WENDY THOMPSON FOR NON-SUBMIT MSA[:][and] \$137,000.00 request as applicant's attorney's fee." The \$137,000.00 attorney fee amounts to 20% of the settlement. Applicant and applicant's attorney signed the C&R on October 12, 2022 and the attorney for defendant State Compensation Insurance Fund (SCIF) signed it on October 14, 2022.

On October 24, 2022,¹ the Appeals Board rescinded the August 14, 2019 Findings of Fact and Award and remanded this matter to the WCJ for consideration of the C&R. The WCJ issued an Order Approving Compromise and Release on October 24, 2022, approving the settlement terms agreed to by the parties, including the attorney fee of \$137,000.00.

In its Petition for Reconsideration, defendant asserts that the WCJ's "finding that an attorney's fee of \$137,000.00 is reasonable and will be allowed is not supported by evidence." (Petition for Reconsideration, a p. 4:15-16.) However, a stipulation between the parties, which is what a settlement amounts, need not be supported by substantial evidence. As defined in *County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1]), "A stipulation is 'An agreement between opposing counsel ... ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*Weatherall, supra*, 77 Cal.App.4th at p. 1119.) "Stipulations are designed to expedite trials and hearings and their use in workers' compensation cases should be encouraged." (*Robinson v. Workers' Comp. Appeals Bd. (Robinson)* (1987) 194 Cal.App.3d 784, 791 [52 Cal.Comp.Cases 419].)

Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*Weatherall, supra*, at p. 1121.) While the Appeals Board has the authority to reject parties' stipulations, this "discretion does not validate capricious decisionmaking." (*Weatherall, supra*, 77 Cal.App.4th at p. 1119.) The "appropriate standard by which a stipulation should be set aside" is not whether it is "bad for the worker;" but rather, the standard is whether there is good cause to set aside the parties' stipulations. (*Id.* at p. 1121.) "[When] there is no mistake but merely a lack of full knowledge of the facts, which...is due to the failure of a party to exercise due diligence to ascertain them, there is no proper ground for relief." (*Huston v. Workers' Comp. Appeals Bd. (Huston)* (1979) 95 Cal.App.3d 856, 866 [44 Cal.Comp.Cases 798].)

¹ Commissioner Sweeney, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

Showing good cause to set aside an approved award is a high bar. “Good cause” to set aside an order or stipulations depends upon the facts and circumstances of each case. “Good cause” includes mutual mistake of fact, duress, fraud, undue influence, and procedural irregularities. (*Johnson v. Workers’ Comp. Appeals Bd.* (1970) 2 Cal. 3d 964, 975 [35 Cal.Comp.Cases 362]; *Santa Maria Bonita School District v. Workers’ Comp. Appeals Bd.* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Worker’s Comp. Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691, 1692 (writ den.); *Smith v. Workers’ Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp.Cases 311] (writ den.)) Defendant was represented by an attorney throughout these proceedings. That attorney executed the C&R on October 14, 2022, thereby entering into an agreement, i.e., stipulation, as to how the matter would be settled. That settlement between the parties included a request for an attorney fee in the amount of \$137,000.00.

In his report, the WCJ stated that

[I]n determining if applicant’s counsel was entitled to a 20% fee, the WCJ considered the following:

1. The complexity of the case;
2. The letter from applicant acceding to the 20% fee requested and detailing the support for the 20% fee requested;
3. The fact that an opinion on decision issued finding applicant to be 100%;
4. That applicant’s counsel was awarded an attorney’s fee of \$191,684.91;
5. The fact that the case was up on reconsideration and settled in mediation.

(Report, at p. 2.)

Attorney fees are discretionary. (Lab. Code, § 5710.) Based on our review of the record we are persuaded that the WCJ properly acted within his discretion to approve the C&R terms as agreed to by the parties.

A party is harmed by the undoing of an approved award based on a showing that does not constitute good cause. Permitting a party to subsequently withdraw from an agreement because they have changed their mind endangers the finality of approved settlements and undermines transactional stability in the workers’ compensation system and risks discouraging future settlements. Defendant here has not even alleged grounds in its petition that could constitute good cause to set aside the C&R.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 3, 2023

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

**WENDY THOMPSON
GHITTERMAN, GHITTERMAN & FELD
STATE COMPENSATION INSURANCE FUND**

PAG/abs

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