

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

ADOLFO HERNANDEZ, JR., *Applicant*

vs.

**UNIFIED GROCERS, INC.; SPRINGFIELD INSURANCE COMPANY,
as adjusted by AMTRUST NORTH AMERICA, INC., *Defendants***

**Adjudication Numbers: ADJ9573614, ADJ9698567, ADJ9573602, ADJ9573599
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

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

I.

Defendant, Springfield Insurance Company, petitions for reconsideration of the Joint Findings of Fact, Awards and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on March 9, 2020. In that decision, the WCJ found that applicant, Adolfo Hernandez's industrial injuries on August 31, 2013, to his thoracic spine, lumbar spine, right shoulder, psychiatric system, gastrointestinal system, endocrine system (in the form of diabetes) and central nervous system (in the form of a sleep disorder), and during the period September 1, 2004 to April 9, 2014, to his thoracic spine, lumbar spine, right shoulder, right upper extremity, brain, neurological system (in the form of a stroke), cardiovascular system (in the form of hypertension), psychiatric system, gastrointestinal system, digestive system (in the form of diarrhea), endocrine system (in the form of diabetes) and central nervous system (in the form of a sleep disorder) while employed by defendant, Unified Grocers, Inc. caused permanent partial disability of 90%.

Defendant contends in its petition for reconsideration that the WCJ erred in finding permanent disability of 90%.

Applicant filed an answer to the petition for reconsideration, contending that it should be denied.

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

Subsequently, at our request the parties participated in a commissioners' settlement conference and agreed to resolve applicant's claims by compromise and release. The Compromise and Release, which was filed on April 22, 2021, provides for a settlement amount of \$245,000, less credit to defendant for permanent disability indemnity paid of \$10,000, and less \$16,690 to fund a Medicare set aside trust and less an attorneys' fee of \$36,750, leaving a balance of \$181,560 payable to applicant as a lump sum. Defendant agrees to pay, adjust or litigate liens of record.

II.

To be timely, a petition for reconsideration must be filed with (i.e., received by) the WCAB within 25 days from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, former § 10507(a)(1), now § 10605(a)(1), former § 10845(a), now § 10940(a); former § 10392(a), now § 10615(b) (eff. Jan. 1, 2020).) A petition for reconsideration of a final decision by a workers' compensation administrative law judge must be filed in the Electronic Adjudication Management System (EAMS) or with the district office having venue. (Cal. Code Regs., tit. 8, former § 10840(a), now § 10940(a) (eff. Jan. 1, 2020).)

The Division of Workers' Compensation (DWC) closed its district offices for filing as of March 17, 2020 in response to the spread of the novel coronavirus (COVID-19).¹ In light of the district offices' closure, the Appeals Board issued an en banc decision on March 18, 2020 stating that all filing deadlines are extended to the next day when the district offices reopen for filing. (*In re: COVID-19 State of Emergency En Banc* (2020) 85 Cal.Comp.Cases 296 (Appeals Board en banc).) The district offices reopened for filing on April 13, 2020.² Therefore, the filing deadline for a petition for reconsideration that would have occurred during the district offices' closure was tolled until April 13, 2020.

¹ The March 16, 2020 DWC Newline may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-18.html>.

² The April 3, 2020 DWC Newline regarding reopening the district offices for filing may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-29.html>.

Labor Code section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (Lab. Code, § 5909.) Section 5315 provides the Appeals Board with 60 days within which to confirm, adopt, modify or set aside the findings, order, decision or award of a workers' compensation administrative law judge. (Lab. Code, § 5315.)

On June 5, 2020, the State of California's Governor, Gavin Newsom, issued Executive Order N-68-20, wherein he ordered that the deadlines in sections 5909 and 5315 shall be extended for a period of 60 days.³ Pursuant to Executive Order N-68-20, the time within which the Appeals Board must act was extended by 60 days. Therefore, this decision is timely.

Therefore, the petition for reconsideration is deemed filed on April 13, 2020, and the opinion granting the petition for reconsideration issued within the 60 day period.

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. In addition, we conclude that the attorneys' fee requested is reasonable and should be allowed.

³ Governor Newsom's Executive Order N-68-20 may be accessed here: <https://www.gov.ca.gov/wp-content/uploads/2020/06/6.5.20-EO-N-68-20.pdf>. (See Evid. Code, § 452(c).)

Therefore, we will rescind the Joint Findings of Fact, Awards and Order issued on March 9, 2020, 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 Joint Findings of Fact, Awards and Order issued on March 9, 2020, be **RESCINDED**.

IT IS FURTHER ORDERED that the Compromise and Release filed April 22, 2021, be **APPROVED**.

AWARD IS MADE in favor of **ADOLFO HERNANDEZ, JR.**, against **SPRINGFIELD INSURANCE COMPANY**, as specified in the compromise and release.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER



/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 27, 2021

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

**ADOLFO HERNANDEZ, JR.
GLAUBER, BERENSON & VEGO
FLOYD SKEREN MANUKIAN LANGEVIN**

DH/ara

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