

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

ANNETTE VALDEZ, *Applicant*

vs.

SOUTHERN CALIFORNIA GAS COMPANY, *Defendant*

**Adjudication Number: ADJ1991445 (POM0231941)
Pomona District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant, acting in pro per, is apparently seeking additional benefits. An Order Approving Compromise and Release (OACR) issued on February 28, 2002.

Applicant contends that the workers' compensation administrative law judge (WCJ) should have developed the record with respect to applicant's alleged psyche injuries.

We have not received an answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny Reconsideration.

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record and 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 OACR.

BACKGROUND

Applicant claimed injury to her psyche while employed by defendant during the period from February 10, 1981 to October 24, 1997.

On February 28, 2002, the WCJ issued the OACR.

On January 15, 2009, applicant filed a declaration of readiness (DOR). The disputed issues were identified as “1. Medical need” and “2. Wrong fire.”

On March 5, 2009, the matter proceeded to a hearing. Defendant had a representative present at the hearing and applicant attended pro per. According to the minutes, the matter was ordered taken off calendar and the minutes state “C&R for \$2,500. Stips [illegible].” (Minutes, March 5, 2009, p. 1.)

On January 20, 2017, applicant served a DOR seeking a status conference on the issues of future medical treatment and employment.

On March 9, 2017, applicant filed a DOR on the issues of future medical treatment, temporary disability, and sick pay, stating “I’m still sick & take medicine.” (DOR, March 9, 2017, pp. 1-2.)

On March 9, 2017, applicant also filed a Notice of Dismissal of Attorney.

On March 9, 2017, the matter was taken off calendar to allow further discovery. (Minutes, March 9, 2017, p. 1.)

On May 1, 2017, the matter came on for hearing. The minutes state that there were no issues pending and that “AA has not shown defendant or me any document showing that she was not competent when the C&R was signed.” (Minutes, May 1, 2017, p. 1.)

On August 3, 2021, applicant filed a Petition for Reconsideration.

DISCUSSION

“The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”¹ (Lab. Code, § 5803.²)

¹ To determine whether there is good cause to rescind the awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Labor Code § 5702; *County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118-1121 [65 Cal.Comp.Cases 1]; *Robinson v. Workers’ Comp. Appeals Bd. (Robinson)* (1987) 194 Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers’ Comp. Appeals Bd. (Huston)* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].) However, as recognized in *Weatherall*, the Appeals Board may also, in its discretion, reject factual stipulations and set the matter for hearing and further investigation. (*Weatherall, supra*, at p. 1119; Lab. Code, § 5702.)

² All future statutory references are to the Labor Code unless otherwise specified.

“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) (eff. Jan. 1, 2020).)

The Appeals Board’s record of proceedings is maintained in the adjudication file and includes: the pleadings, minutes of hearing, summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits identified 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, former § 10750, now § 10803 (eff. Jan. 1, 2020).) Here, minimal evidence has been moved into the record. Furthermore, the adjudication file in the Electronic Adjudication Management System (EAMS) does not appear to contain documents necessary to evaluate applicant’s allegations.

A WCJ’s decision must be based on admitted evidence and must be supported by substantial evidence (Lab. Code, §§ 5903, 5952 (d); *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (*Garza*) (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) “It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, at p. 475.) The WCJ is “charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at pp. 475-476; see Lab. Code, § 5313 and *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22.)

Moreover, all parties to a workers’ compensation proceeding retain the 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].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant . . .” (*Id.*, at

p. 158.) The “essence of due process is simply notice and the opportunity to be heard.” (*McKernan, supra*, at p. 936.) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties’ rights to due process. (*Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker, supra*, at pp. 157-158.) 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. (See *Gangwish, supra*, at p. 1295; *Rucker, supra*, at pp. 157-158, citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (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 [57 Cal.Comp.Cases 230].)

Based on the record, we cannot determine what relief applicant is seeking. Since there is currently minimal evidence in the record regarding applicant’s allegations, we will return this matter to the trial level for further proceedings. Upon return of this matter to the trial level, we recommend that the WCJ treat applicant’s Petition as a petition to set aside and set a hearing so applicant can provide evidence in support of her arguments and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, either party may then timely seek reconsideration of that decision.

Accordingly, we dismiss applicant’s Petition as premature and return this matter to the trial level.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration, filed August 3, 2021, is **DISMISSED**.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 12, 2021

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.³

**ANNETTE VALDEZ, IN PRO PER (2)
ALBERS MEDICAL PHARMACY
BRENNER STERNER
EMPLOYMENT DEVELOPMENT DEPARTMENT
FRED HAFEZI, M.D.
MANAGEDMED
SOUTHERN CALIFORNIA GAS COMPANY
SOUTHERN CALIFORNIA GAS COMPANY (Claims Administrator)**

JB/abs

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

³ It is a party's duty to inform the appeals board, district office, and all parties of any change of mailing address. (Cal. Code Regs., tit. 8, § 10205.5.) We note that applicant requested service at a different mailing address than the one currently contained in the official address record (OAR). (Cal. Code Regs., tit. 8, § 10205.5; Cal. Code Regs., tit. 8, § 10205.6; Cal. Code Regs., tit. 8, § 10628 (eff. Jan. 1, 2020).)