

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

JANICE MCINROE, *Applicant*

vs.

**COUNTY OF LOS ANGELES, PERMISSIBLY SELF-INSURED;
SEDGWICK CLAIMS MANAGEMENT, ADMINISTRATOR, *Defendants***

**Adjudication Number: ADJ7880197
Long Beach District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Award issued by the workers' compensation administrative law judge (WCJ) on July 22, 2021. Defendant contends that the settlement signed by the parties and approved by the WCJ did not accurately reflect the settlement agreement between applicant and defendant, and that the WCJ should set aside the Award.

We received an answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration. We have considered the allegations of defendant's Petition, the Answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will dismiss defendant's Petition as premature, and return this matter to the trial level for consideration of the Petition as one to set aside the Award.

FACTUAL BACKGROUND

Applicant claimed injury to various body parts while employed by defendant as a child support officer on August 5, 2010.

In defendant's petition, it alleges that on February 4, 2013, defendant sent applicant a letter stating defendant had overpaid applicant \$581.83 in temporary disability benefits, and that overpayment would be deducted from any permanent disability benefits to which applicant may become entitled.

On June 28, 2021, attorney for applicant signed the Stipulations with Request for Award.

On July 6, 2021, applicant signed the Stipulations with Request for Award.

On July 20, 2021, attorney for defendant signed the Stipulations with Request for Award.

On July 20, 2021, defendant submitted the Stipulations with Request for Award to the WCJ electronically. The Stipulations with Request for Award were silent on the issue of credit for temporary disability overpayment.

On July 22, 2021, the WCJ issued the Award, which states as follows:

AWARD IS MADE in favor of JANICE MCINROE against COUNTY OF LOS ANGELES/CHILS [sic] SUPPORT 371 permissibly self-insured and administered by SEDGWICK of:

- (A) Additional temporary disability indemnity in accordance with section 2(a) above;
- (B) Permanent disability indemnity in accordance with section 3 above; Less the sum of \$828.00, payable to applicant's attorney as the reasonable value of services rendered. Fees are to be commuted pursuant to section 6;
- (C) Liens in accordance with section 7;
- (D) Further medical treatment in accordance with section 4;
- (E) Reimbursement for medical-legal expenses in accordance with section 5;
- (F) Stipulations in sections 8 and 9 are approved;
- (G) The matter is ordered taken off calendar.

(July 22, 2021 Award, p. 1.)

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

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

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 further statutory references are to the Labor Code unless otherwise stated.

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' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193]; Civ. Code, § 1636.) For a Stipulations with Request for Award agreement to be effective, the necessary elements of a contract must exist, including an offer of settlement of a disputed claim by one of the parties, and an acceptance by the other. (*Burbank Studios v. Workers' Comp. Appeals Bd.* (1982) 134 Cal.App.3d 929, 935.) There can be no contract unless there is a meeting of the minds and the parties mutually agree. (*Sackett v. Starr* (1949) 95 Cal.App.2d 128; Civ. Code, § 1550, see *Sieck v. Hall* (1934), 139 Cal.App. 279; Civ. Code, § 1565.)

“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 WCJ does state here that “[a]ny errors, omissions, or ambiguities in the settlement document are to be construed against the drafter of the document...”, and “[a]ny mistake made by Petitioner or the claims examiner in drafting the Stipulation with Request for Award is a unilateral mistake which is not a good cause reason to set aside the Award.” (Report).

Here, defendant contends that after the Award had issued on July 22, 2021, defense counsel learned that a portion of the permanent disability advances listed as having been paid to applicant in the benefits paid document previously provided to applicant's counsel was actually a temporary disability overpayment and there was therefore an error on the settlement document as to characterization of benefits. Defense counsel claims that they contacted applicant's attorney on July 29, 2021, who initially agreed to have \$581.83 withheld from applicant's permanent disability payments, but later retracted that agreement and stated any efforts to withhold the \$581.83 would be considered sanctionable. Applicant's counsel contends defendant should have filed a petition for credit rather than unilaterally take credit for the alleged overpayment. The WCJ recommends the petition for reconsideration be denied on the grounds that the mistake was unilateral rather than mutual. However, there is no evidence in the record with respect to defendant's contentions.

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.)

Further, 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].) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572,

[The] commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law. (*Id.* at 577.)

Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Rucker, supra*, at 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 v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 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].)

Accordingly, we dismiss defendant's Petition for Reconsideration as premature, and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, we recommend the WCJ treat defendant's Petition as a petition to set aside and set a hearing so defendant can provide evidence in support of its arguments and create a record upon which a decision can be made by the WCJ.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the July 22, 2021 Award is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 27, 2021

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

**JANICE MCINROE
PERONA, LANGER, BECK, SERBIN & HARRISON
LAW OFFICES OF BECERRA & ASSOCIATES**

HAV/ara

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