

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

FRANCISCO VILLEGAS, *Applicant*

vs.

**RESTAURANT EQUIPMENT FABRICATION; ICW GROUP INSURANCE
COMPANIES - SAN DIEGO, *Defendants***

**Adjudication Number: ADJ15927101
San Bernardino District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of the Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ) on July 21, 2022. In the alternative, defendant requests that the Petition be treated as a Petition to Set Aside the Compromise and Release (C&R).

Defendant contends that the OACR should be set aside due to the unilateral mistake of the defendant.

We have not received an answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

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 the 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 various body parts while employed by defendant as a shipper/receiver, during the period from October 7, 2020 to October 7, 2021.

The parties entered into a C&R to settle the following body parts: arm, wrist, back, knee, lower extremity, upper extremity, hand, fingers, and shoulder. On July 19, 2022, defendant submitted a signed C&R to the WCJ for approval by way of regular mail. The WCJ approved the C&R and issued the OACR on July 21, 2022. On July 26, 2022, defendant filed a Petition for reconsideration or, in the alternative, a Petition to set aside the C&R. Defendant also requested a hearing on the issue of its Petition to set aside the C&R.

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.” (Lab. Code, § 5803.) “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).)

Defendant requested a hearing on its petition to set aside the compromise and release. 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].) Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Id.*) A fair hearing includes 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.4 703, 710 [57 Cal.Comp.Cases 230].)

A WCJ is required to “make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together

with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Accordingly, we dismiss the Petition 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 that the WCJ treat the 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. After the WCJ issues a decision, any aggrieved person may then timely seek reconsideration of that decision.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the July 21, 2022 Order Approving Compromise and Release 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 26, 2022

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

**FRANCISCO VILLEGAS
BLOMBERG BERNSON
NEWHOUSE CREAGER
INSURANCE COMPANY OF THE WEST**

JB/abs

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