

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

JESUS ACEVES, *Applicant*

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendants*

**Adjudication Number: ADJ8712310
Santa Barbara Satellite District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration¹ in this matter to study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Applicant timely petitioned for reconsideration of the Findings of Fact and Order issued by the workers' compensation administrative law judge (WCJ) on March 18, 2020, served on March 30, 2020. We granted reconsideration to study the factual and legal issues presented.

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, §§ 10605(a)(1), 10615(b), 10940(a).) 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, § 10940(a).)

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).² 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

¹ Following the grant of reconsideration, Commissioners Sweeney and Dodd became unavailable to participate and Commissioner Lowe no longer serves on the Appeals Board. Other panelists were substituted in their place.

² The March 16, 2020 DWC Newline may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-18.html>.

banc.) The district offices reopened for filing on April 13, 2020.³ Therefore, the filing deadline for a petition for reconsideration that would have occurred during the district offices' closure was tolled until April 13, 2020.

Following their participation in a commissioners' settlement conference set at our request, applicant and SIBTF resolved applicant's claim against SIBTF by Compromise and Release. The Compromise and Release was filed on July 21, 2022.

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(b) 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(b).)

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."

(See Lab. Code § 5003 [setting forth requirements for form and contents of the agreement].)

After considering the Compromise and Release in light of the entire record and the risks to applicant of further litigation, we conclude that the settlement amount is adequate and that the agreement is in applicant's best interest.

We also conclude that the attorneys' fee requested is reasonable in light of the complexity of the case and should be allowed.

Therefore, as our Decision After Reconsideration, we rescind the Findings of Fact and Order and approve the Compromise and Release, including the attorneys' fee requested.

³ 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>.

Finally, we commend the parties for their willingness to bargain in good faith and resolve 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 Findings of Fact and Order issued by the workers' compensation administrative law judge on March 18, 2020 be **RESCINDED**.

IT IS FURTHER ORDERED that the Compromise and Release be **APPROVED**.

AWARD IS MADE in favor of **JESUS ACEVES** against the **SUBSEQUENT INJURIES BENEFITS TRUST FUND** as specified in the Compromise and Release agreement.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 26, 2022

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

**JESUS ACEVES
GHITTERMAN GHITTERMAN & FELD
OFFICE OF THE DIRECTOR-LEGAL UNIT**

RLN/abs

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