

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

ORA DAVIS, *Applicant*

vs.

**UNIVERSAL PROTECTION SERVICE dba ALLIED UNIVERSAL,
(Permissibly Self-Insured);
administered by ESIS CHATSWORTH, *Defendants***

**Adjudication Number: ADJ11868980
Long Beach District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

On April 18, 2023, applicant, in pro per, filed a Petition for Reconsideration of the March 30, 2023 Award approving the Stipulations with Request for Award (Stipulations) issued by the workers' compensation administrative law judge (WCJ). The Workers' Compensation Appeals Board received the Petition for Reconsideration on May 1, 2023.

On May 1, 2023 the WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), wherein the WCJ recommends that the Petition be dismissed and the matter be returned to her for consideration of applicant's Petition as a petition to set aside the Stipulations and Award. Defendant filed an Answer after the WCJ issued her Report.

Based on our review of the record, the reasons discussed below and the reasons stated in the WCJ's Report, 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 Stipulations and Award. By this action, we make no determination as to the merits of applicant's Petition.

BACKGROUND

Applicant sustained a specific injury on April 18, 2018 to various body parts while employed as a security guard by defendant Universal Protection Service dba Allied Universal.

On January 20, 2023, applicant filed a Petition for Judge Review. She alleged in essence that the defense attorney improperly obtained a second Panel Qualified Medical Examiner

(PQME) and unfairly interfered with her medical treatment. Applicant also alleged that her attorney ignored defendant's attorney's actions.

On March 30, 2023, the matter came up for hearing. On March 10, 2023, applicant's attorney filed a Petition to be Relieved as Attorney of Record. The minutes reflect that applicant, her attorney, and attorney for defendant were present at the hearing. Applicant asked to speak to the WCJ before proceeding further. (Report and Recommendation On Petition For Reconsideration, 5/1/2023, p.2.)

Per the WCJ's Report and Recommendation (Report) neither applicant's January 20, 2023 Petition for Judge Review nor applicant's attorney's Petition to be Relieved were brought to the attention of the WCJ. (Report and Recommendation On Petition For Reconsideration, 5/1/2023, p.3.) A joint request for an Order to Take Off Calendar (OTOC) was made and the minutes indicate that the WCJ approved the Stipulations. (Minutes of Hearing (MOH), 3/30/23 trial.) The minutes do not indicate that testimony was taken from any party or representative. (Minutes of Hearing (MOH), 3/30/23 trial.)

On April 4, 2023 applicant's attorney filed a Petition to Reopen alleging:

“... a material and substantial change in her medical condition causing an increase in her symptoms leading to additional medical treatment. Applicant further alleges this material and substantial change is causing new and further disability. Both temporary and/or permanent in nature.”

The same day, April 4, 2023, applicant's attorney filed a First Amended Petition to be Relieved as applicant's attorney. A review of the Electronic Adjudication Management System (EAMS) does not indicate that the WCJ took any action regarding the applicant's attorney's First Amended Petition to be relieved as applicant's attorney.

On April 18, 2023, applicant in pro per filed a Petition for Reconsideration contending that her attorney misinformed her and her concerns stated in her January 20, 2023 Petition to the WCJ were not addressed by the WCJ at the hearing. In addition, applicant contends that defendant's attorney's actions played a role in her settling her case.

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.)¹

“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).)

The legal principles governing compromise and release agreements are the same as those governing other contracts. (*Burbank Studios v. Workers’ Co. Appeals Bd. (Yount)* (1982) 134 Cal.App.3d 929, 935.) For a compromise and release 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 (*Id.*) There can be no contract unless there is a meeting of the minds and the parties mutually agree upon the same thing. (Civ. Code, §§ 1550, 1565, 1580; *Sackett v. Starr* (1949) 95 Cal.App.2d 128; *Sieck v. Hall* (1934) 139 Cal.App.279, 291; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.)

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 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], citing Civ. Code, §1636.)

Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) As defined in *Weatherall*, “A stipulation is ‘An agreement between opposing counsel ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,’ (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves ‘to obviate need for proof or to narrow range of litigable issues’ (Black’s Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding.” (*Weatherall, supra*, at p. 1119.)

A party seeking to set aside an Award after it has become final must make a showing of good cause, pursuant to Labor Code section 5803 which consists of a showing of fraud, duress, undue influence, mutual mistake of fact, mistake of law, invalidity of execution, incompetency, or

¹ All further statutory references are to the Labor Code unless otherwise stated.

minority at the time of execution of the agreement. To determine whether there is good cause to rescind the Stipulations and Award, the circumstances surrounding its execution and approval must be assessed. (See § 5702; *Weatherall, supra*, 77 Cal.App.4th at pp. 1118-1121; *Robinson v. Workers' Comp. Appeals Bd. (Robinson)* (1987) 199 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].)

Additionally, there must be a complete record in order to review the case. “[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision (*Hamilton v. Lockheed Corporation* (2001) 66 Cal. Comp. Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947 (Appeals Bd. *en banc*).) Decisions of the Appeals Board must be based on admitted evidence in the record. *Hamilton v Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board *en banc*).

Applicant contends that she was misinformed by her attorney, and that defense counsel improperly obtained a second PQME and interfered with her medical treatment. However, there is no testimony nor evidence in the record regarding applicant’s allegations. Additionally, as noted by the WCJ in her Report, the WCJ was not aware of applicant’s Petition for Judge Review or applicant’s attorney’s Petition to be Relieved as Attorney of Record at the time she approved the Stipulations.

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 4 p. 158.) The “essence of due process is simply notice and the opportunity to be heard.” (*San Bernardino Community Hosp. v. Workers' Compensation Appeals Bd. (McKernan)*(1999), 74 Cal.App.4th 928, 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].)

Since there is no admitted evidence in the record regarding applicant's allegations, we will return this matter to the trial level for further proceedings as requested by the WCJ. We agree with the WCJ's recommendation that she treat applicant's Petition as a petition to set aside the Stipulations and the Award. Upon return of this matter to the trial level, she may set a hearing in order to provide applicant an opportunity to submit evidence in support of her arguments and to create a record upon which a decision can be made.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 19, 2023

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

**DAVIS ORA
JACKSON & JACKSON
GALE SUTOW & ASSOCIATES**

DM/abs

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