

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

RUBEN REYES, *Applicant*

vs.

**BRIGHTVIEW LANDSCAPES LLC, insured by
ACE AMERICAN INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ18359573
Lodi District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant¹ seeks reconsideration of the Order Approving Compromise and Release (OACR), issued by the workers' compensation administrative law judge (WCJ) on March 14, 2024.²

As applicant's Petition is in Spanish and the record of proceedings does not contain a translation, it is difficult to assess applicant's contentions with any degree of specificity. We received an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied or, in the alternative, for guidance from the Appeals Board as to whether there are sufficient grounds to set aside the Order Approving Compromise and Release.

We have considered the allegations in the Petition, the answer, 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.

¹ Applicant is represented by an attorney, but filed the petition himself. The petition was written in Spanish and has not been translated.

² Although the OACR was signed on November 7, 2023, it was not served until March 14, 2024.

BACKGROUND

Applicant claimed injury in the form of amputation of the left middle and ring fingers to the middle phalanges while employed by defendant as a gardener on September 27, 2023. Defendant admits the injuries.

The record contains primary treating physician reports from September 28, 2023 and September 29, 2023, with a diagnosed of unspecified injury of left wrist, hand and finger(s), sequela. (Concentra Occupational Medical Center Reports, dated September 28, 2023 and September 29, 2023.)

On October 26, 2023, applicant attended an initial orthopedic consults with Jesse Dashe, M.D.

On November 1, 2023, applicant signed a compromise and release (C&R) with the assistance of a certified Spanish interpreter. The C&R was signed by applicant's attorney on November 1, 2023 and by defendant's attorney on November 2, 2023.

On November 2, 2023, defendant served the following: "Letter to WCAB, proposed order approving compromise & release, fully executed compromise and release, executed QME waiver." (Proof of service, dated November 2, 2023, all-caps in original.) Defendant also served all parties **except applicant** with the initial orthopedic evaluation report of Dr. Jesse Dashe dated November 26, 2023, upon which the C&R was based. (*Id.*)

The document titled "Qualified Medical Examiner Waiver" was signed by applicant and a certified Spanish language interpreter on November 1, 2023. It was signed by attorney for defendant on November 2, 2023. Applicant's attorney did not sign the document.

On November 7, 2023, the C&R was presented to the WCJ for approval at a walk-through hearing. Applicant was not present. (OACR and minutes, not served until March 14, 2024.)

On November 7, 2023, the WCJ signed the OACR and designated service to defendant, however defendant did not serve the OACR until March 14, 2024. (OACR served March 14, 2024, p. 1.)

On March 12, 2014, applicant filed a handwritten Petition for reconsideration.

On March 14, 2024, the OACR was served on applicant by way of mail.

On March 21, 2024, the matter came on for hearing, although applicant was not present. The minutes state:

Rancano & Rancano remains as the applicant's attorney of record. Applicant's settlement check was picked up by the applicant from Applicant's Attorney's office on 12/4/2023 as per Applicant's Attorney of record.

Defendant confirmed the check cleared on 12/5/2023. The Order Approving the Compromise and Release was served on 3/14/2024 as per the only Proof of Service filed in EAMS.

(Minutes, served March 26, 2024.)

On March 25, the WCJ served the Report, requesting that applicant's Petition for Reconsideration be denied, but stating that the WCJ looks to the Appeals Board as to whether or not there is sufficient grounds to set aside the Order Approving Compromise and Release. (March 25, 2024 Report, p. 3.)

DISCUSSION

Subject to the limitations of Labor Code³ section 5804, “[t]he 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.)

We observe that contract principles apply to settlements of workers' compensation disputes. 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 [47 Cal.Comp.Cases 832].) For a compromise and release agreement to be effective, the necessary elements of a contract must exist. (*Id.*)

The essential elements of contract include the mutual consent of the parties and 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.) A contract must be so interpreted as 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. (Civ. Code, § 1636; *TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, 27 (*TRB*

³ All further statutory references are to the Labor Code, unless otherwise noted.

Investments); *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) The essential elements of contract also include consideration. (Civ. Code, §§ 1550, 1584, 1595, 1605, et seq.)

Here, we are unable to ascertain what applicant understood, much less what he intended to settle. Applicant's Petition was written in Spanish and not translated by the parties or the WCJ. Moreover, applicant was not at the March 21, 2024 conference. If applicant did not understand the terms of the settlement, it calls into question whether the parties mutually agreed upon the same thing, which then calls into question whether a valid contract was formed. Applicant filed the Petition himself, not with the assistance of counsel. While applicant's attorney confirmed they remain as the attorney of record at a hearing on March 21, 2024, there is no evidence in the record that applicant himself confirmed this.

“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).) This inquiry should carry out the legislative objective of safeguarding the injured worker from entering into unfortunate or improvident releases as a result of, for instance, economic pressure or lack of competent advice. (*Claxton v. Waters* (2004) 34 Cal.4th 367, 373 [69 Cal.Comp.Cases 895]; *Sumner v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 965, 972-973.) The worker's knowledge of and intent to release particular benefits must be established separately from the standard release language of the form. (*Claxton, supra*, at 373.)

We note that while the parties may stipulate to the facts in controversy, the WCJ is not bound by the parties' stipulations and may make further inquiry into the matter “to enable it to determine the matter in controversy.” (Lab. Code, § 5702; see also *County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1119 [65 Cal.Comp.Cases 1]; *Turner Gas Co. v. Workers' Comp. Appeals Bd. (Kinney)* (1975) 47 Cal.App.3d 286 [40 Cal.Comp.Cases 253].)

Applicant was not evaluated by a QME, he had at most six visits with Concentra, and one consultation with Dr. Dashe, the orthopedic surgeon. On October 26, 2023, Dr. Dashe removed the sutures from applicant's amputated fingers and on November 1, 2023, applicant signed a C&R. Applicant was not cleared to return to work, he was not determined to be permanent and stationary,

his level of permanent disability, if any, was not rated. Because no hearing was held, the WCJ did not have the opportunity to assess applicant's understanding of the proposed settlement agreement.

Here, there is no evidence in the record regarding who advised applicant about the proposed settlement terms. Nor is there evidence in the record regarding how the WCJ was aware of what applicant knew or understood and what applicant was told with respect to the adequacy of the settlement. Because no hearing was held, the WCJ did not have the opportunity to assess applicant's understanding of the proposed settlement agreement.

The determination of compensability, the existence or extent of permanent impairment, and limitations, if any, resulting from an injury all require a medical evaluation. Sections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-394 [62 Cal.Comp.Cases 924], *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc).)

The WCJ's decision "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall ". . . make and file findings upon all facts involved in the controversy[.]" (Lab. Code, § 5313; *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Hamilton, supra*, at 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

Further, 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 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury (Silva)* (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.) 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].)

We note that to the extent that applicant is unable to attend a hearing in person, a hearing may be conducted remotely.

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 to assess applicant’s understanding of the settlement agreement, whether a contract was formed, and, if so, whether it was adequate.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration in response to the Order Approving Compromise and Release issued on March 14, 2024 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 13, 2024

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

**RUBEN REYES
RANCANO & RANCANO
HAIGHT, BROWN & BONESTEEL**

JB/pm

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