

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

ALEXIS BENNETT, *Applicant*

vs.

**PULTE MORTGAGE CORPORATION;
OLD REPUBLIC INSURANCE COMPANY
administered by GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ11321138
Oakland District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.¹ This is our Opinion and Decision After Reconsideration.

Lien claimant John Ogai, M.D., seeks reconsideration of the Stipulation and Order to Pay Lien Claimant (Stipulation), approved by a workers' compensation administrative law judge (WCJ) on December 14, 2021. The Stipulation provided for payment of the sum of \$900.00 on the claimed balance of \$5,412.50. Lien claimant contends that he was not informed as to the dates for the mandatory settlement conference or the trial; that the address listed on the Official Address Record is incorrect; and that he did not authorize his representative to settle his lien for \$900.00.

We have not received an Answer from defendant.

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

We have considered the allegations in the Petition and the contents of the Report. Based on our review of the record and for the reasons discussed below, we will vacate our March 14, 2022 Order granting lien claimant's Petition for Reconsideration, dismiss lien claimant's Petition as premature, and return this matter to the trial level for consideration of the Petition as one to set aside the Order Approving the Stipulation.

¹ Commissioner Deidra E. Lowe, who signed the Opinion and Order Granting Petition for Reconsideration no longer serves on the Appeals Board. Another panelist has been assigned in her place.

BACKGROUND

Applicant claimed that while employed by defendant as a branch coordinator from April 5, 2017 to April 5, 2018, she sustained an industrial injury to her hand, arm, and wrist.

On July 21, 2021, Maximum Medical filed a lien on behalf of Dr. Ogai for fees for a supplemental medical-legal evaluation plus penalties and interest.

Applicant's case was resolved by way of a Compromise and Release (C&R), and on July 30, 2021 the WCJ issued an order approving the C&R (OACR).

On August 10, 2021, defendant's attorney filed a Declaration of Readiness (DOR) requesting a lien conference on October 11, 2021 at 1:30 P.M.

On October 11, 2021, defendant's attorney and a non-attorney representative for Dr. Ogai appeared and prepared a Pre-Trial Conference Statement. Trial was set for December 14, 2021.

According to Communications in the Electronic Adjudication Management System (EAMS), on October 12, 2021, a notice of the hearing was sent out by the Division of Workers' Compensation (DWC). It appears that notice was sent to lien claimant at the address listed on the Official Address Record of "PO BOX 3129 TORRANCE CA 90510."

On November 29, 2021, the WCJ issued an Order Granting the Representative's Petition for Virtual Lien Trial. Service was designed to lien claimant's representative, but Dr. Ogai was not served with the Order.

On December 14, 2021, the matter proceeded to a lien trial. Defendant appeared by way of their attorney and lien claimant appeared by way of his lien representative. The minutes reflect that a joint request was made for the matter to be taken off calendar (OTOC) because the dispute was resolved by an agreement. Defendant and lien claimant entered into a Stipulation and Order to pay lien claimant \$900.00 in satisfaction of his lien of \$5,412.50.

On January 6, 2022, lien claimant submitted a letter requesting an address change because he did not receive timely notice of his lien trial.

On January 11, 2022, lien claimant sought reconsideration.

DISCUSSION

I.

"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.)

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).) 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; *Hamilton, supra*, at p. 476.) 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 p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350])). The purpose of the requirement is “to assist the reviewing court to ascertain the principles relied upon by the lower tribunal, to help that tribunal avoid careless or arbitrary action, and to make the right of appeal or of seeking review more meaningful.” (*Evans, supra*, at p. 755.)

“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; *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613 (Appeals Board en banc).)

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 p. 158.) The “essence of due process is simply notice and the opportunity to be heard.” (*San Bernardino Community Hospital v. Workers’ Comp. Appeals Bd. (McKernan)* 74 Cal.App.4th 928, 936 (64 Cal. Comp. Cases 986).) 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. I.A.C. (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].)

One of the issues before us is that there is no record from the December 14, 2021 lien trial. In her Report, the WCJ confirms this fact in her Report. (Report, 1/21/2021, p. 2.) The WCJ removed the matter from the calendar at the joint request of defendant's attorney and lien claimant's hearing representative, thus we are unable to consider the basis for the WCJ's decision to approve the Stipulation & Order. Here, lien claimant was not present, no hearing was held, no record was created regarding lien claimant's services and his associated lien.

II.

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.* (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. (Civ. Code, §§ 1550, 1565; *Sackett v. Starr* (1949) 95 Cal.App.2d 128; *Sieck v. Hall* (1934) 139 Cal.App.2d 279, 291.) Moreover, there is no contract unless the parties agree upon the same thing in the same sense. (Civ. Code, § 1580; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.) 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. (*Burbank Studios, supra*, at p. 935.) 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; *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) The plain language of a contract is the first step in determining the intent of the parties. (Civ. Code, §§ 1638, 1639.)

"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 Appeals Board’s record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any. . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit 8, §10803.)

“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.” (*County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [65 Cal.Comp.Cases 1].) Stipulations are binding on the parties. (*Id.* at p. 1121.) However, if there is a showing of good cause, the parties may be permitted to withdraw from their stipulations. (*Id.*) Whether “good cause” exists to set aside a settlement depends upon the facts and circumstances of each case. “Good cause” includes mutual mistake of fact, duress, fraud, undue influence, and procedural irregularities. (*Johnson v. Workmen’s Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases 362]; *Santa Maria Bonita School District v. Workers’ Comp. Appeals Bd. (Recinos)* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Workers’ Comp. Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691, 1692 (writ den.); *Smith v. Workers’ Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp.Cases 311].) To determine whether there is good cause to rescind the awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Lab. Code, § 5702; *Weatherall, supra*, at pp. 1118-1121; *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].)

The WCJ states in her Report that no record was created at the hearing on December 14, 2021, thus creating a *Hamilton* problem. Thus, reconsideration is premature.

Accordingly, we vacate our Opinion and Order Granting Reconsideration, dismiss lien claimant’s Petition as premature, and upon return to the trial level the WCJ should treat the lien claimant’s Petition as one to set aside the Stipulation and Order issued on December 14, 2021. At

the hearing, the parties can provide evidence in support of their arguments, and the WCJ should create a record including a summary of the issues and evidence considered. After the WCJ issues a decision, either party may then timely seek reconsideration of that decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that our March 14, 2022 Opinion and Order Granting Petition for Reconsideration is **VACATED**.

IT IS FURTHER ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 10, 2025

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

**JOHN OGAI MD
MAXIMUM MEDICAL
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

DLM/oo

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