

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

**AZUCENA HERNANDEZ, *Applicant***

**vs.**

**ESPARZA ENTERPRISES INC.;  
PACIFIC CLAIMS MANAGEMENT FRESNO, *Defendants***

**Adjudication Number: ADJ21433393  
Bakersfield 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 September 17, 2025. Defendant requests rescission of the OACR in order to submit a new compromise and release (C&R) that includes language crediting defendant for permanent disability advances (PDAs) made to applicant.

Applicant, in pro per, filed a document with the title, "Notice of Objection to C&R Award," which we treat as an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied and, instead, the Petition be construed as a Petition to Set Aside the OACR and the matter returned to the trial level for further proceedings.

We have considered the allegations of the Petition and Answer and the contents of the Report with respect thereto. Based on our review of the record, and as 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**

We will briefly review the relevant facts.

Applicant claimed injury to the right knee arising out of and in the course of employment by defendant as a farm laborer on July 16, 2024.

Applicant's case was settled by way of C&R approved on September 17, 2025. On August 13, 2025, applicant signed the C&R. On August 14, 2025, attorney for defendant signed the C&R. On September 17, 2025, the WCJ issued the OACR.

On October 10, 2025, defendant filed the Petition on the following basis:

- 1) Defendant is requesting to rescind the OACR for this injury claim and submit a new C&R to note the Permanent Disability Advances (PDA's) as applicant has contacted I&A discussing this matter. Applicant has advised that she was not aware of PDA's being credited against her C&R.
- 2) Applicant states that at time of review with certified interpreter, and two witnesses alongside, she did not clearly understand that the PDA's would be credited as it was not included on the C&R.
- 3) At time of the C&R review and signing 08/13/2025, PDA's [sic] were not applicable. Defendant's 1st issuance of PDA was 08/15/2025, C&R was submitted to WCAB 08/27/2025 and award issued 09/17/2025.
- 4) Defendant is requesting petition for reconsideration to provide applicant with Compromise and Release noting the PDA's [sic].

(Petition, October 10, 2025, p. 3.)

On October 16, 2025, applicant filed the objection, indicating "[t]here was a misunderstanding on the claim that was settled. Both parties have agreed on a payment of fifteen thousand dollars, with no deductions or anything taken out. The defendants have failed to pay the full amount." (Notice of Objection, October 16, 2025, p. 2.) Applicant also filed a Declaration of Readiness to Proceed, requesting a status conference on the issue of the C&R.

## **DISCUSSION**

### **I.**

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on October 20, 2025, and 60 days from the date of transmission is December 19, 2025. This decision is issued by or on December 19, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on October 20, 2025, and the case was transmitted to the Appeals Board on October 20, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 20, 2025.

## II.

It is recognized that “[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.)

However, there must be a complete record for our review of 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 (Appeals Bd. en banc).) Moreover, all parties to a workers’ compensation proceeding 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].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and offer evidence in rebuttal. (*Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, supra, 82 Cal.App.4th at pp. 157-158, citing *Kaiser Co. v. Industrial Acc. Com.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710-712 [57 Cal.Comp.Cases 230].)

Additionally, decisions of the Appeals Board “must be based on admitted evidence in the record” (*Hamilton*, supra, at 476), and must be supported by substantial evidence (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]). As required by Labor Code section 5313 and explained in *Hamilton*, “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 p. 475.)

In the Report, the WCJ explains as follows:

There is an insufficient record to determine if the Order Approving the Compromise and Release should be vacated and if the Compromise and Release should be set aside. It appears as though the proper action would be to deny the Petition and remand the issue to be considered a Petition to Set Aside the settlement.

The Petition on its face does not establish a basis for granting the request to set aside the settlement as there is no evidence of a mutual mistake or fraud by the Applicant.

(Report, October 20, 2025, p. 2, ¶ 3-4.)

We agree. In the absence of a record, we are unable to evaluate either party's contentions. Accordingly, we dismiss the Petition for Reconsideration 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, the WCJ may treat the Petition as a petition to set aside the OACR, conduct further proceedings, and create a record on which a decision can be made as to whether there are grounds for setting aside the OACR. After the WCJ issues a decision, any aggrieved party may timely seek reconsideration.

Upon return to the trial level, the WCJ may wish to consider the following. In the instant case, defendant contends the PDAs should be credited against applicant's settlement. (Petition, October 10, 2025, p. 3). Applicant, on the other hand, was under the belief that the settlement was a fixed amount with no deductions. (Notice of Objection, October 16, 2025, p. 2.)

The party seeking to set aside the agreement must make a showing of good cause. Good cause includes fraud, duress, undue influence, mutual mistake of fact, mistake of law, invalidity of execution, incompetency, or minority at the time of execution of the agreement. (See California Workers' Compensation Law (Cont. Ed. Bar 4th Ed.) §§ 16.61 et seq.; see also *Argonaut Ins. Exch. v. Industrial Acc. Com.* (1958) 49 Cal.2d 706 [23 Cal.Comp.Cases 34]; *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160 [50 Cal.Comp.Cases 311]; *Carmichael v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 311 [30 Cal.Comp.Cases 169]; *Silva v. Industrial Acc. Com.* (1924) 68 Cal. App. 510 [11 IAC 266]; *City of Beverly Hills v. Workers' Comp. Appeals Bd.* (1997) 62 Cal.Comp.Cases 1691 (writ den.); *Bullocks, Inc. v. Industrial Acc. Com.* (1951) 16 Cal.Comp.Cases 253 (writ den.); *Pac. Indem. Co. v. Industrial Acc. Com.* (1946) 11 Cal.Comp.Cases 117 (writ den.).) Whether good cause exists is case specific. The circumstances surrounding the execution and approval of the agreement must be assessed. (See Lab. Code, § 5702; *Weatherall*, supra, 77 Cal.App.4th at pp. 1118-1121; *Robinson v. Workers' Comp. Appeals Bd.* (1987) 199 Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].)

We also observe that contract principles apply to settlements of workers' compensation disputes, and "[t]he 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, including an offer of settlement of a disputed claim by one of the parties, and an acceptance by the other. [Citation.]" (*Id.*)

The essential elements of contract include the mutual consent of the parties, as there can be no contract unless there is a meeting of the minds and the parties mutually agree upon the same thing in the same sense. (Civ. Code, §§ 1550, 1565, 1580; *German Sav. & Loan Soc. v. McLellan* (1908) 154 Cal. 710, 716; *Sackett v. Starr* (1949) 95 Cal.App.2d 128, 133.) "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. [Citations.]" (*County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].)

Accordingly, we dismiss the Petition for Reconsideration as premature and return the matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**DECEMBER 16, 2025**

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

**AZUCENA HERNANDEZ  
WORKERS COMP SOLUTIONS INC.**

**DC/cs**

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