

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

GABRIEL VELA, *Applicant*

vs.

**NORTHWOODS RESORTS;
TECHNOLOGY INSURANCE COMPANY administered by
AMTRUST NORTH AMERICA, *Defendants***

**Adjudication Number: ADJ9343576
Long Beach 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. This is our Opinion and Decision After Reconsideration.

Applicant, in pro per, seeks reconsideration of the Order Approving Compromise and Release (OACR), issued by the workers' compensation administrative law judge (WCJ) on June 5, 2017.

Applicant appears to contend, in relevant part, that he has been aggrieved by the OACR and requests that it be rescinded.

We have not received an Answer.

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

We have considered the allegations of applicant's Petition and the contents of the Report. Based on our review of the record and for the reasons discussed below, we will vacate our "Opinion and Order Granting Reconsideration" and dismiss the Petition as premature so that the WCJ can consider the Petition as one to set aside the OACR.

FACTS

We will briefly review the relevant facts.

Applicant claimed injury to his shoulders, upper extremities, nervous system-psych, and unclassified while employed by defendant as an engineer on December 20, 2013.

The parties entered into a settlement agreement by way of a Compromise and Release (C&R) to settle applicant's claimed injury. The C&R reflects that there were no payments for temporary or permanent disability. Paragraph 9 states that:

This compromise and release agreement incorporates the attached addenda and resolves all issues of pd, td, future medical care, out of pocket expenses, and mileage. The parties enter this settlement agreement in lieu of lengthy litigation to avoid the costs and uncertainties of further litigation, as a good faith dispute exists as to aoe/coe and the nature and extent of injuries.

Further defendant would call employer witnesses to testify regarding initial aggressor and post termination defenses. Applicant stipulates to no injury aoe/coe. [All capitals in original.]

Applicant would claim at trial that he was not the initial aggressor. [Handwritten.]

In pertinent part, the Addenda states that:

Applicant warrants and represents, and the parties stipulate, that Applicant did not sustain any compensable injury as a result of Applicant's employment by defendant other than the alleged injuries listed in this Compromise and Release, and that as a result of said alleged injuries Applicant did not sustain injury to any body part, system, or condition not listed in this Compromise and Release. All claims of injury to any body part, system or condition not listed in this Compromise and Release are hereby dismissed with prejudice.

On June 5, 2017, defendant presented the C&R in the amount of \$30,000.00 to the WCJ for approval by way of a walk-through appearance. Neither applicant nor his attorneys were present. The WCJ approved the C&R and issued the OACR on the same day.

On January 2, 2019, applicant filed a Petition for Reconsideration. He appeared to allege that his injuries had worsened and that he was unable to work. The Petition was filed by applicant without his attorney.

However, on January 25, 2019, applicant submitted a Notice of Dismissal of Attorney to dismiss the Law Office of John A. Mendoza.

On March 7, 2019, we issued an "Opinion and Order Dismissing Petition for Reconsideration" on the grounds that the Petition was untimely filed.

On May 31, 2019, the Court of Appeal issued an Order to dismiss the petition for a writ of review as the applicant did not timely seek reconsideration before the WCAB.

On December 3, 2022, applicant filed a second Petition. He alleged the following in the Petition: conflict of interest; attorney malpractice/negligence; character assassination; stress, anxiety, depression; and contempt of court.

DISCUSSION

Subject to the limitations of Labor Code section 5804, “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.”¹ (Lab. Code, § 5803.)

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 1118.)

Once it is determined that an agreement is final, 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 § 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].)

All parties in workers' compensation proceedings 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].) Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Id.*) A fair hearing includes 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.4 703, 710 [57 Cal.Comp.Cases 230].)

A WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Additionally, 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).) 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.)

Here, applicant contends he is aggrieved by the OACR on the grounds discussed above. He also alleges there to be a conflict of interest, attorney malpractice/negligence, character assassination, stress, anxiety, and depression, and contempt of court without further discussion and details as to these allegations. Because no hearing was held, the WCJ did not have the opportunity to assess applicant's arguments or evidence. Based on the record before us, when applicant filed the initial January 2, 2019 Petition, the WCJ and we should have treated it as a petition to set aside the OACR and provided applicant with the opportunity to present evidence at a hearing. Instead, we dismissed the petition on jurisdictional grounds with no consideration of the merits. The issue here is not whether the petition was timely, but whether there is good cause under Labor Code section 5803 to set it aside, an issue that was not previously considered by the WCJ.

Accordingly, we vacate our Opinion and Order Granting Reconsideration and dismiss the Petition. Upon return, we recommend that the WCJ treat the Petition as a petition to set aside the OACR and set a hearing, so the parties have an opportunity to create a record, raise all relevant issues, and submit evidence. 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 the Opinion and Order Granting Petition for Reconsideration issued by the Workers' Compensation Appeals Board on February 6, 2023 is **VACATED**.

IT IS FURTHER ORDERED that the December 3, 2022 Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

CRAIG L. SNELLINGS, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 4, 2025

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

**GABRIEL VELA, IN PRO PER
TESTAN LAW**

JL/abs

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