WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSEPH WASHINGTON, *Applicant*

vs.

MICHELS CORPORATION (MICHELS CONSTRUCTION, INC.);
XL SPECIALTY INSURANCE COMPANY c/o SEDGWICK, *Defendants*

Adjudication Number: ADJ19771743
Anaheim District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION

Defendant seeks to set aside, or in the alternative, seeks reconsideration of the Stipulation and Award and/or Order (Stipulation), which was approved by the workers' compensation administrative law judge (WCJ) on August 11, 2025.

Defendant contends, in relevant part, that the Stipulation should be rescinded as the temporary disability rate and temporary disability period listed are inaccurate.

We have not received an Answer from the applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration be dismissed as premature and the matter be remanded for a hearing on whether good cause exists to set aside the Stipulation.

We have considered the allegations of defendant's Petition, the Amended Petition, and the contents of the Report. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and for the reasons discussed below, we will dismiss the Petition for Reconsideration and return this matter to the trial level for consideration of the Petition as one to set aside the Stipulation.

DISCUSSION

I.

Former Labor Code section 5909[1] 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, 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 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 August 26, 2025, and 60 days from the date of transmission is Saturday, October 25, 2025. The next business day that is 60 days from the date of transmission is Monday, October 27, 2025. (See Cal. Code. Regs., tit. 8, § 10600(b).[2] This decision is issued by or on Monday, October 27, 2025, so that we have timely acted on the petition as required by section 5909(a).

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

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[1] All section references are to the Labor Code, unless otherwise indicated.

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

act on a petition. 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 August 26, 2025, and the case was transmitted to the Appeals Board on August 26, 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 section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 26, 2025.

II.

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].)

Here, as the moving party, defendant has the burden of proof to show, by a preponderance of the evidence, they should be relieved from the Stipulation entered into with applicant. (See Lab. Code, § 5705 [the burden of proof rests upon the party with the affirmative of the issue]; see also Lab. Code, § 3202.5 ["All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence"].) Defendant seeks to set aside the Stipulation, but no evidence of good cause has been admitted into the record. In the absence of evidence, we are unable to evaluate defendant's contentions and the Petition is premature.

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.)

Accordingly, we will dismiss the Petition for Reconsideration and return this matter to this trial level. Upon return, we recommend that the WCJ treat the Petition as a petition to set aside the Stipulation and set a hearing as there is currently no evidence admitted into the record regarding defendant's contentions. At the hearing, the parties will have an opportunity to create a record, raise all relevant issues, and submit evidence upon which a decision can be made by the WCJ. After the WCJ issues a decision, either party may then timely seek reconsideration of that decision.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 27, 2025

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

JOSEPH WASHINGTON
HUMPHREY & ASSOCIATES
LUNA, LEVERING & HOLMES

JL/abs

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION AND
NOTICE OF TRANSMITTAL TO THE APPEALS BOARD
PURSUANT TO LABOR CODE SECTION 5909(B)

I

INTRODUCTION

Defendant, MICHEL'S CORPORATION, and their insurance carrier XL SPECIALTY INSURANCE COMPANY have filed a Petition to Set Aside Stipulation and Award or in the alternative a Petition for Reconsideration dated August 25, 2025 in reference to a Stipulation and Award dated August 11, 2025.

II

FACTS

The above captioned case was set for an Expedited Hearing before the undersigned on August 11, 2025. Applicant Attorney appeared with an executed Stipulation that resolved the temporary disability at issue. The undersigned approved the Stipulation and the matter was Ordered off calendar.

Defendants now assert that there was a mistake in the rate of the temporary disability reflected in the Stipulation and seeks to set aside the Stipulation and Award. This is a unilateral request.

DISCUSSION

Procedurally:

The Petition for Reconsideration is timely filed.

Substantively:

The Petition requests that the Stipulation and Award be set aside asserting that a unilateral mistake on the proper temporary disability rate constitutes good cause for setting aside the agreement. Applicant's position in this matter is unknown.

As such, the undersigned requests that the matter be returned to the Trial level for a Hearing to determine if there is good cause to set aside the Stipulation and Award.

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be dismissed as premature and that the matter be remanded to the undersigned for a Hearing on whether good cause exists to set aside the Stipulation and Award.

I prepared and transmitted this case to the Recon Unit on August 26, 2025.

DATE: 08/26/2025

John Cyprien
WORKERS' COMPENSATION JUDGE