

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

WENDY STARBIRD, *Applicant*

vs.

**CITY OF LONG BEACH, permissibly self-insured;
CITY OF LONG BEACH WORKERS COMPENSATION DIVISION, *Defendants***

**Adjudication Numbers: ADJ16023818; ADJ19216226, ADJ21168644
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order (F&O) issued on February 11, 2026, in which the workers' compensation administrative law judge (WCJ) found, in relevant part, that: 1) "jurisdiction is appropriate [over the time restoration issues]"; 2) "applicant had knowledge of the dates and times missed [at work]" for the period from December 29, 2021 to May 18, 2022 "in advance of entering [into the] Stipulations with Request for Award" of March 27, 2025; 3) there was insufficient evidence of mistake of fact or law; 4) applicant "understood the language of the Stipulations"; 5) "the language notes that the agreement was in the spirit of compromise and there was a benefit provided to the [a]pplicant in exchange for limited reimbursement" and 6) "the Petition to Set Aside whether by DOR or [by] Petition was not timely." The WCJ ordered that the Stipulations of March 27, 2025 and corresponding Award not be set aside.

Applicant contends that she is entitled to full restoration of her hours while temporarily disabled because the stipulation to temporary disability in the Stipulations was based on an error of law and that the applicant was only advised of defendant's unlawful policy of partial restoration of her time after she agreed to the stipulation. Applicant further asserts that the petition to set aside

is timely pursuant to Labor Code section 5803¹ because the WCAB has continuing jurisdiction to rescind, alter, or amend its awards for good cause and pursuant to section 5804 based upon a petition filed within five years from the date of injury.

Defendant filed an answer. The WCJ issued a Report and Recommendation (Report) recommending denial of the Petition.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons outlined below, we will grant reconsideration, rescind the WCJ's decision, and return the matter to the WCJ for further proceedings consistent with this decision.

FACTS

Applicant sustained an admitted industrial injury in the form of breast cancer while employed by defendant as a police officer up to February 2, 2022. The injury was initially plead as a specific injury of February 2, 2022. The parties entered into Stipulations with Request for Award (Stipulations), and an Award issued on March 27, 2025.

On May 19, 2022, Dr. Priya Mitra, a radiation oncologist, took applicant off work from that date through at least June 6, 2022, due to the side effects of her treatment. (Applicant's Exhibit 8.) The parties utilized an Independent Medical Evaluator (IME), Dr. Lipper, to comment on the claimed injury. He issued a report dated May 7, 2023. (Applicant's Exhibit 6.) He found that applicant's breast cancer was presumptively related to employment, provided a rating, and found her at maximum medical improvement (MMI) as of the time radiation concluded. He was silent on periods of disability in this report.

On September 17, 2024, Dr. Lipper was cross-examined by way of deposition. He confirmed his opinion that applicant was MMI as of the date she returned to work, June 7, 2022, and that she was totally temporarily disabled up to that point. (Applicant's Exhibit 4, 11:19-25 and 12:2-10.)

It is unclear when liability for the claimed injury was accepted, but defendants issued a benefit notice dated September 30, 2024, which states the following:

You are entitled to full salary in lieu of temporary disability benefits (pursuant to Labor Code Section 4850) for various dates during 12/29/2021 through 06/03/2022.

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

We, along with your Department and Central Payroll, are in the process of restoring your time for this period.

(Joint Exhibit X.)

Additionally, there is a “Memorandum” with the subject line reading Wendy Starbird and dated September 30, 2024, which outlines dates to be restored as either temporary disability or “WD” dates. (Exhibit F.) The temporary disability dates are “12/29/21; 1/26/22; 2/11/22; 3/2/22-3/4/22; 3/9/22; 5/17/22; 5/24/22-6/3/22.” The “WD” dates are “2/10/22; 3/30/22; 4/6/22; 4/8/22; 4/12/22; 4/20/22-5/13/22; 5/18/22” with a handwritten note indicating “restore 2.0 WD per day only.” The memorandum is addressed to Valerie Brown from Pamela Holt/Workers’ Compensation. There is no evidence it was served on applicant or her attorney.

Initially this matter was set for trial on March 27, 2025. According to the signed Pre-Trial Conference Statement (PTCS) dated February 6, 2025, among the issues for trial were temporary disability and restoration of time. Defendant listed a benefit printout dated February 5, 2025 as a proposed exhibit. (Applicant’s Exhibit 2.) The benefit printout lists \$4,394.89 as “temporary disability-safety” for the period of December 29, 2021 through June 3, 2022 and “TD 4850 wage loss” totaling \$5,607.66 for the period of December 29, 2021 through June 3, 2022. The “TD 4850” lists “restore” for “check #” and a date of October 18, 2024. (Applicant’s Exhibit 2.) Though it appears that at the time of completion of the PTCS that temporary disability and/or section 4850 benefits were paid to applicant, they were not listed on the PTCS as having been paid.

On March 27, 2025, the parties entered into the Stipulations, and an Award issued that day. According to Paragraph 1, applicant sustained a specific injury on February 2, 2022, but according to Paragraph 9, they agreed that applicant sustained a cumulative injury during the period November 10, 1997 through February 2, 2022, based upon the findings of Dr. Lipper. At Paragraph 2, with respect to temporary disability, it only states: “SEE BELOW.” The stipulation does not list the rate of payment or the period of time reflected in the benefit printout that had been paid. In Paragraph 9, it states:

MMI date is 6/3/2022; in the interest of compromise, defendant will restore 20.50 hours of time to Applicant for the dates of 09/09/2022, 10/05/2022, and 08/31/2023. This agreement resolves all issues related to temporary disability with TPA/defendant to date of award.

On April 14, 2025, Applicant received an email from Elsa Law, “Personnel Administrator” for Long Beach Police Department, indicating that she to receive 160 hours of sick leave

restoration for temporary disability benefits for the dates of December 29, 2021, January 26, 2022, February 11, 2022, March 9, 2022, May 17, 2022, May 24, 2022, with the copy cut off thereafter. (Applicant's Exhibit 1.) The email also states that applicant was approved for restoration for:

WD for dates for a total of 42 hours. Please note that WD is limited to 2 hours per day. Upon review, we were able to confirm that only 12 hours of the 42 hours had been restored. Central payroll is working on restoring 30 hours.

The WD dates were listed as February 1, 2022, March 3, 2022, April 6, 2022, April 8, 2022, April 12, 2022, April 20, 2022 to May 13, 2022, and May 18, 2022.

On April 15, 2025, applicant responded, indicating that there had been an agreement for full restoration of sick hours during the period of December 29, 2021 through June 3, 2022. (*Id.*)

On June 9, 2025, applicant filed a Declaration of Readiness to Proceed (DOR) to expedited hearing alleging, "Defendant issued LC 4850 Benefit Notice dated 09/30/2024 indicating LC 4850 will cover the period 12/29/21-6/3/22. To date, full restoration of lost time within said period has not been completed (only partial). AA asserts this is improper."

On October 1, 2025, Applicant filed a Petition to Set Aside or Enforce Award. Applicant alleged that following the Award, defendant refused to restore all her sick leave hours for the period from December 29, 2021 through June 3, 2021. Applicant asserted that she was not advised of this at the time of the Stipulations and that the stipulation as to temporary disability was based on a benefit printout provided by defendant which showed that section 4850 benefits were paid for that period of time, thus constituting good cause to set aside the Award. Defendant objected.

On January 29, 2026, the parties proceeded to trial. At trial, the issues were earnings; temporary disability benefits; entitlement to section 4850 benefits; whether the WCAB has jurisdiction over the restoration of time; Petition to Set Aside Award and Defendant's Objection. Defendant's Petition for Costs and Sanctions and Applicant's Petition for Penalties were deferred. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 2:22-3:11.)

Applicant provided testimony. Applicant testified that she retired as a police detective, a sworn position, on July 4, 2025. (MOH/SOE, 6:12-13.)

She was diagnosed with breast cancer in December 2021. (*Id.* at 6:16.) Her course of treatment included a lumpectomy with radiation in March of 2022, which included whole breast radiation with boost dosages indicating 15 sessions of regular radiation and five boost doses of radiation. (*Id.* at 6:18-21.) She missed full and partial days due to radiation and its side effects. (*Id.*

at 7:4-7.) The benefit notice, Joint Exhibit X, reflected the time period from December 29, 2021 through June 3, 2022, during which she was undergoing these treatments and working with the side effects. (*Id.* at 7:1-5.) Her sergeant accommodated her schedule for partial days so that she would not exhaust all her sick time prematurely, but her doctors were recommending full days off. (*Id.* at 7:8-11.) Radiation concluded May 17, 2022, and she continued to experience fatigue, nausea, and burns to the skin and nipple. (*Id.* at 7:19-21.) Her doctors offered to provide notes to take her off work completely, but she declined despite not being able to perform full duties. (*Id.* at 9:6-7.) While she did not have official restrictions, her sergeant provided informal accommodations to her work schedule and duties. (*Id.* at 9:7-8.)

Applicant was provided restoration of two hours for each day that she received treatment between December 29, 2021 through June 3, 2022. (*Id.* at 8:2-4.) She was asked about her recollection of the PTCS from the proceedings in March of 2025. She confirmed that she did review it but did not recall whether all the disputed dates were listed on that document. (*Id.* at 8:20-21.) She also confirmed reading and signing the Stipulations and noted that the stipulation did not set forth the alleged unpaid dates set forth within the PTCS. (*Id.* at p. 8:24-9:3.) She discussed the email dated April 14, 2025 and confirmed that the email does confirm restoration of some dates, including 20.5 hours but she was unsure whether those hours stemmed from the stipulation. (*Id.* at 9:23-10:1.)

On February 11, 2026, the WCJ issued the F&O.

DISCUSSION

I.

Former 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, 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 March 9, 2026 and 60 days from the date of transmission is May 8, 2026. This decision is issued by or on May 8, 2026 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 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 March 9, 2026 and the case was transmitted to the Appeals Board on March 9, 2026. 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 March 9, 2026.

II.

Subject to the limitations of 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.” (Lab. Code, § 5803.) A legal error presents good cause to rescind, alter, or amend an award. Moreover, section 5804 provides that a petition filed within five years may be filed. The

Petition to Set Aside was filed within five years, and there is simply no dispute that it was timely.

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.) 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. (*Id.*) The essential elements of contract include the mutual consent of the parties. (Civ. Code, §§ 1550, 1565, 1580.) 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.) The essential elements of contract also include consideration. (Civ. Code, §§ 1550, 1584, 1595, 1605, et seq., 1659.) Since a compromise and release is a written contract, the parties' intention should be ascertained, if possible, from the writing alone, and the clear language of the contract governs its interpretation if an absurdity is not involved. (Civ. Code, §§ 1638, 1639; *TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, 27 (*TRB Investments*)). 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, supra*, at p. 27; *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other. (Civ. Code, § 1641.) The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage. (Civ. Code, § 1644.)

Here, we apply the above reasoning with respect to our responsibility to consider the actual language of the agreement to the Stipulations. Paragraphs 1 and 2 require that the information must be correctly provided. Here, it was not. In Paragraph 1, which is a stipulation as to injury and the date of injury, the injury was described as a specific injury. In Paragraph 2, which is a stipulation as to temporary disability, including periods of payment and rate of payment, the only statement was "SEE BELOW." Moreover, there is nothing in Paragraph 9 to indicate what type of temporary

disability benefits were paid, what the periods of payment were, and what the rate of payment was. The only statement in Paragraph 9 was that:

MMI date is 6/3/2022; in the interest of compromise, defendant will restore 20.50 hours of time to Applicant for the dates of 09/09/2022, 10/05/2022, and 08/31/2023. This agreement resolves all issues related to temporary disability with TPA/defendant to date of award.

Based on that statement, applicant reached maximum medical improvement on June 3, 2022, and the only consideration offered by defendant for temporary disability indemnity was for time after June 3, 2022. It is inconceivable that the WCJ considered that 20.50 hours of restored time was adequate to compensate a public safety officer who had undergone treatment for breast cancer, where the medical reporting clearly documented the IME's opinion that applicant had been temporarily disabled. Defendant argues that the language in paragraph 9 resolved all periods of temporary disability for consideration of 20.50 hours of restoration of sick time for dates that post-dated MMI.² This argument by defendant actually supports applicant's assertion that only the post MMI period was resolved in the Stipulations, and that it was otherwise not determined.

Based on this review of the document itself, there was no agreement as to the period from December 29, 2021 through June 3, 2022, and no agreement as to the rate of payment. Moreover, the WCJ failed to conduct a proper analysis at the time that he issued the Award. (See Lab. Code, § 5702; Cal. Regs., tit. 8, § 10700.) We also observe that while the parties point to a benefit statement as a basis for settlement, that evidence is only significant where the WCJ must interpret an ambiguous or contradictory term. Here, the agreement is not ambiguous; instead, on its face, it is silent. Thus, upon return, the WCJ must determine when applicant was temporarily disabled, the actual periods paid for temporary disability indemnity, the rate of payment, and the amounts still owed by defendant, if any. Moreover, as discussed below, the WCJ must consider the application of section 4850 and the amount of sick time that must be restored.

The Appeals Board has jurisdiction to determine periods of disability and award benefits under section 4850 or section 4650. Should it be determined that applicant was partially or fully disabled, she is entitled to benefits for the period of December 29, 2021 through June 3, 2022. Defendant is reminded of section 3201.5(b)(1). This section states:

² We also note that while section 4850 can be paid in lieu of temporary disability payments, they are not the same benefit. Thus, the stipulation may not have actually resolved section 4850 payments either.

Nothing in this section shall allow a collective bargaining agreement that diminishes entitlement of an employee to compensation payments for total or partial disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division.

(Lab. Code. § 3201.5(b)(1))

Section 4850 provides in relevant part:

Whenever any person listed in subdivision (b), who is employed on a regular, full-time basis, and *is disabled*, whether temporarily or permanently, by injury or illness arising out of and in the course of the person's duties, the person shall become entitled, regardless of the person's period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary *in lieu of temporary disability payments* or maintenance allowance payments, if any, that would be payable under this chapter, *for the period of the disability, but not exceeding one year, or until that earlier date as the person is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.*

Thus, should it be determined that applicant was temporarily disabled during the period in question or longer, section 4850 requires payment of full salary or lost wages. In *Austin v. Santa Monica* (1965) 234 Cal.App 2d 841, the court held that deducting sick time for each day of worker's compensation paid amounted to the injured worker paying for his own benefits. The court stated,

The word "salary" as used in section 4850, must be understood as encompassing the entire compensation to which the employee is entitled in order to bring it into harmony with section 3751 and 3752, which make clear that all earnings and benefits to which the employee is entitled must be paid to him without deduction "either directly or indirectly to cover the whole or any part of the cost of compensation under this division." (Lab. Code § 3751.)

(*Id.* at p. 846.)

The record is unclear whether the reduction in restoration of sick time or payments per benefit printout meets the requirements of full wage replacement as there was no employer testimony clarifying the benefit printout. However, to the extent there are monies still owed to applicant and a discrepancy between full restoration of hours and section 4850 benefits, we urge the parties to promptly attempt to adjust the matter between themselves in order to avoid further proceedings.

Accordingly, we grant the Petition for Reconsideration, rescind the decision, and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration Findings of Fact and Order issued by the WCJ on February 11, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order issued on February 11, 2026 by the WCJ is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

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

May 8, 2026

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

**WENDY STARBIRD
STRAUSSNER SHERMAN
MICHAEL SULLIVAN LAW**

TF/md

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