

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

AUDON MURILLO, *Applicant*

vs.

T.J. MAXX; ZURICH AMERICAN INSURANCE COMPANY, *Defendants*

**Adjudication Numbers: ADJ8005491, ADJ8005495
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration in this matter to further study the factual and legal issues presented. This is our Opinion and Decision After Reconsideration.

I.

Applicant, Audon Murillo, petitions for reconsideration of the Findings and Awards issued by the workers' compensation administrative law judge (WCJ) in this matter on December 2, 2020. In that decision, the WCJ found that applicant's injuries in these cases caused new and further disability amounting to 95% of 3%, the liability for such increase apportioned between the two injuries.

Previously, a WCJ had approved stipulations on January 22, 2014, that applicant, while employed by defendant, TJ Maxx, sustained injuries arising out of and in the course of his employment as follows: to his low back, neck and psyche and consisting of a sleep disorder and constipation on January 1, 2003, resulting in permanent partial disability of 12% and need of further medical treatment (case ADJ8005454); to his lumbar and thoracic back, neck, shoulders, psyche and consisting of a sleep disorder and constipation during a cumulative period ending June 23, 2011, resulting in permanent partial disability of 25% and need of further medical treatment (case ADJ8005491); and to his lumbar and thoracic back, neck, shoulders, psyche and consisting of a sleep disorder and constipation resulting in permanent partial disability of 45% and need of further medical treatment (case ADJ8005495). Subsequently, applicant's petition to reopen for

new and further disability was tried and submitted for decision in cases ADJ8005491 and ADJ8005495.

Applicant contends in his petition for reconsideration that the WCJ erred in not finding that applicant's injuries in cases ADJ8005491 and ADJ8005495 caused greater new and further disability and that the WCJ relied on physicians' reports that are not substantial evidence.

Defendant, Zurich American Insurance Company (Zurich) filed an answer to the petition for reconsideration, contending that it should be denied.

The WCJ issued a report in which he recommended that applicant's petition for reconsideration be denied.

Subsequently, at our request the parties participated in a commissioners' settlement conference and agreed to resolve applicant's claims in cases ADJ8005491 and ADJ8005495 by compromise and release.¹ The Compromise and Release, which was filed on May 20, 2021, provides for a settlement amount of \$30,000 in new money in addition to the compensation previously paid, less an attorneys' fee of \$4,500, leaving \$25,500 payable to applicant in a lump sum. Defendant agrees to pay, adjust or litigate liens of record.

II.

Labor Code section 5001 states in pertinent part that “[n]o release of liability or compromise agreement is valid unless it is approved by appeals board or referee.” WCAB Rule 10700 states that:

“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.)

Labor Code section 5002 states that:

“A copy of the release or compromise agreement signed by both parties shall forthwith be filed with the appeals board. Upon filing with and approval by the appeals board, it may, without notice, of its own motion or on the application of either party, enter its award based upon the release or compromise agreement.”

¹ Case ADJ8005494, in which there is an existing award of further medical treatment against an insurance carrier other than Zurich, is not being settled by the Compromise and Release.

After considering the compromise and release in light of the entire record, we conclude that the settlement amount is adequate and that the agreement is in the best interest of applicant. We have considered that any potential right to death benefits is being released. In addition, we conclude that the attorneys' fee requested is reasonable and should be allowed.

Therefore, we will rescind the Findings and Awards issued on December 2, 2020, in cases ADJ8005491 and ADJ8005495 and approve the Compromise and Release.

Finally, we commend the parties for engaging in good faith negotiations and successfully resolving this matter without the need for further litigation.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued on December 2, 2020, in case ADJ8005491 and the Findings and Award issued on December 2, 2020, in case ADJ8005495, be **RESCINDED**.

IT IS FURTHER ORDERED that the Compromise and Release filed May 20, 2021, in those cases be **APPROVED**.

AWARD IS MADE in favor of **AUDON MURILLO** against **ZURICH AMERICAN INSURANCE COMPANY**, as specified in the Compromise and Release.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 21, 2021

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

**AUDON MURILLO
LAW OFFICE OF DENNIS J. HERSHEWE
NEWHOUSE & CREAGER**

DH/ara

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